

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON JUSTICE RESOURCE)	Court of Appeals No. _____
CENTER,)	
)	
Petitioner,)	
)	
v.)	
)	
OREGON DEPARTMENT OF)	
CORRECTIONS,)	
)	
Respondent.)	

**PETITION FOR JUDICIAL DETERMINATION OF
VALIDITY OF RULES ADOPTED
BY THE OREGON DEPARTMENT OF CORRECTIONS**

1.

Pursuant to ORS 183.400 and in conformance with Oregon Rule of Appellate Procedure 4.15, Petitioner Oregon Justice Resource Center (“petitioner”) petition this Court for review of the Oregon Department of Corrections rules: OAR 291-105-0015, OAR 291-105-0021; OAR 291-105-0046; OAR 291-105-0066; OAR 291-105-0066; OAR 291-105-0072; OAR Exhibit 1, OAR Ch. 291, Div. 105; OAR Ch. 291, Div. 011.

2.

The parties to this review are:

Oregon Justice Resource Center
 (“OJRC”)

Oregon Department of Corrections
 2575 Center Street NE
 Salem, Oregon 97301

Petitioner on Review

Respondent on Review

3.

The names, bar numbers, addresses, and telephone numbers of the attorneys for the parties are:

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Of Attorney for Petitioner on
Review Oregon Justice Resource
Center

Of Attorney for Respondent on
Review Oregon Department of
Corrections

4.

Attached as Exhibit 1 through 3 to this petition are a copy of the challenged rules for which review is sought.

5.

Petitioner is a “person” within the meaning of ORS 183.310(8) who may bring this petition. ORS 183.400(1). Oregon Justice Resource Center (“OJRC”) is a Portland-based non-profit organization founded in 2011. OJRC works to dismantle systemic discrimination in the administration of justice by promoting civil rights and by enhancing the quality of legal representation to traditionally

underserved communities. OJRC serves this mission by focusing on the principles that our criminal justice system should be founded on: fairness, accountability, and evidence-based practices.

6.

Petitioner is not willing to stipulate that the agency record may be shortened.

7.

Petitioner seeks to have the rules in question set aside one or more of the grounds provided in ORS 183.400(4).

8.

The certificate of filing and service attached to this petition for review shows that its filing and service are consistent with the requirements of ORS 19.260.

9.

Petitioner is entitled to recover their attorney fees and costs incurred herein pursuant to ORS 183.497.

DATED this 21th day of December, 2021

By: s/Benjamin Haile

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Of Attorney for Petitioner on Review
Oregon Justice Resource Center

Department of Corrections

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Chapter 291

Division 11

SEGREGATION (DISCIPLINARY)

291-011-0005

Authority, Purpose, and Policy

(1) The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: To establish procedures and standards for the placing and maintenance of inmates in disciplinary segregation. Inmates in violation of rules of prohibited conduct are placed in disciplinary segregation.

(3) Policy: It is the policy of the Department of Corrections to establish and maintain disciplinary segregation operations separate from the main inmate population in Department of Corrections facilities. This rule cannot cover all possible events; it is intended to direct only the relative routine aspects of segregation operations. Inmates in disciplinary segregation status will be treated fairly and impartially with the best interest of staff, inmates, and the institution in mind.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0010

Definitions

(1) Close Supervision Status: Placement of an inmate so that he/she is more restricted than other inmates in disciplinary segregation status. This status is designated for inmates whose actions disrupt the safe and orderly operation of disciplinary segregation.

(2) Disciplinary Segregation: The placement of an inmate in a housing program status which separates him/her from the main population of the facility in accordance with Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Disciplinary Segregation Supervisor: That person designated by the functional unit manager to oversee the daily operation of the Disciplinary Segregation Unit (DSU).

(4) Dry Cell Status: A visual inspection process which, after reasonable suspicion has been established, allows for the placement of an inmate in a cell for the safe recovery of internally concealed foreign substances, instruments, and other contraband.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, or Assistant Director, or administrator and has responsibility for the delivery of program services or the coordination of program operations. In a correctional facility, the superintendent is the functional unit manager.

(6) Long-Term Status: Any inmate confined in segregation status or in disciplinary segregation for 30 or more consecutive days.

(7) Mental Health Professional: An individual who by virtue of his/her education, credentials, and experience is permitted to care for the mental health needs of patients. This includes, but is not limited to, psychiatrists, psychologists, psychiatric social workers and psychiatric nurse practitioners.

(8) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(9) Officer-of-the-Day: That person designated by the functional unit manager and approved by the Assistant Director for Operations or Institutions Administrator to act on behalf of the functional unit manager during non-business hours and other periods when the functional unit manager may be absent.

(10) Oregon Accountability Model: A plan composed of six components that is designed to strengthen the department's ability to hold inmates and offenders accountable for their actions and staff accountable for achieving the mission and vision of the department.

(11) Qualified Health Care Professional: This includes physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients.

(12) Reasonable Suspicion: An apparent state of objective facts and rational inferences drawn there from which would permit a reasonable and experienced correctional staff person to conclude that an inmate is possessing contraband or is committing a crime or rule violation or conspiring or attempting the same.

(13) Short-Term Status: Any inmate confined in segregation status or in disciplinary segregation less than 30 consecutive days.

Statutory/Other Authority: ORS 179.040, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

Reverted to DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 6-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0015

Selection of Disciplinary Segregation Unit (DSU) Staff

(1) Selection Criteria: To qualify for a post solely assigned to disciplinary segregation, the employee:

(a) Must have successfully completed trial service;

(b) Must have completed mental health training for working with mentally ill inmates as provided by the Professional Development Unit; and

(c) Must have achieved a satisfactory on the most recent performance appraisal at the time of application and assignment to disciplinary segregation. At a minimum, the staff member must meet the criteria listed in this rule:

(A) Have demonstrated support of the Oregon Accountability Model;

(B) Have demonstrated maturity and tolerance;

(C) Have demonstrated a constructive interest in working with inmates in disciplinary segregation;

(D) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(E) Have demonstrated the ability to use good judgment.

(2) Assignments to Disciplinary Segregation Posts:

- (a) Assignment to disciplinary segregation posts will be made by the functional unit manager or designee and will be reviewed at least semi-annually.
- (b) Rotation of staff assigned to disciplinary segregation posts may occur as it is found to be in the best interest of the employee or the facility, upon determination by the functional unit manager or designee.
- (c) Staff may not be assigned to a disciplinary segregation post for a period exceeding 24 consecutive months. Any staff having been assigned to a disciplinary segregation post for 24 consecutive months must be reassigned to a post not associated with a special housing unit for a minimum of six months.
- (d) Temporary assignment to a fixed disciplinary segregation post will be made by the functional unit manager or designee. Temporary assignments shall be given only to employees who meet the initial qualifications as specified in this rule, unless waived by the Assistant Director for Operations or designee. Whenever possible, temporary assignments will be given only to employees who have successfully completed training specified by the Department of Corrections.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0020

Handling Disturbances/Officer-in-Charge

- (1) Any and all disturbances which involve inmates in disciplinary segregation will be reported immediately to the officer-in-charge who will take any necessary, immediate emergency action. When any disturbance occurs that requires an unusual incident report, the officer-in-charge will immediately notify the appropriate administrative staff. The unusual incident report will be completed as required by the Department of Corrections policy on Unusual Incident Reporting Process (40.1.6).
- (2) The officer-in-charge or designee will make the decisions, organize, assign, direct, control and observe, but will not become physically involved in situations where an inmate must be subdued and placed in or removed from a cell, nor in other disturbance situations which require time to organize necessary control action and assemble personnel.
- (3) The use of physical force, chemical agents, and/or physical restraints must be in accordance with the Department of Corrections rule on Use of Force (OAR 291-013).

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0025

Assignment and Removal of Inmates

- (1) Inmates will be assigned to disciplinary segregation in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or designee or the officer-in-charge may order immediate placement of an inmate in disciplinary segregation when it is necessary to protect the inmate or others, or for the safety, security and orderly operation of the facility.
- (2) Immediately following any verbal threat of self destruction or act of self-destruction by an inmate, a mental health professional, if readily available or a registered nurse if a mental health professional is not readily available, will be

consulted by the officer-in-charge to determine the proper course of action, in accordance with the rule on Suicide Prevention in Correctional Facilities (OAR 291-076).

(3) Dry Cell Status:

(a) An inmate may be placed on dry cell status by the officer-in-charge.

(b) An inmate placed on dry cell status will remain isolated from other inmates for a period not to exceed 72 hours, unless authorized by the functional unit manager.

(c) An inmate shall not be permitted visits while on dry cell status.

(d) There will be no interruption of normal food intake. The inmate will be provided water upon request.

(e) Additional specific procedures for placing an inmate on dry cell status are included in the department's policy on Dry Cell Status (40.1.11).

(4) Inmates assigned to the Disciplinary Segregation Unit may be temporarily assigned to other treatment, program or service units (e.g., infirmary, Administrative Segregation Unit, Special Management Unit) for treatment or programming as deemed necessary and advisable by the department. Once the inmate has been assigned to a unit other than the Disciplinary Segregation Unit, the operating policies of the newly assigned unit will be used to manage the inmate.

(5) Release from disciplinary segregation, other than for emergency medical treatment or for transfer to another agency, will be authorized only upon order of the functional unit manager or designee.

(6) Inmates assigned to disciplinary segregation will be permitted minimally to leave their cell for visits, exercise, showers, medical, dental, mental health or authorized services or activities. An employee designated by the officer-in-charge will assign escort supervision. Disciplinary-segregated inmates will not be permitted to leave their cells without prior approval from the disciplinary segregation supervisor. Routine staff/inmate interviews shall take place at the inmate's cell.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

Reverted to DOC 10-2001, f. & cert. ef. 3-21-01

DOC 13-2005(Temp), f. & cert. ef. 9-27-05 thru 3-26-06

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CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0030

Situational Reviews

(1) Inmates assigned to disciplinary segregation shall remain so assigned for only the shortest length of time necessary to achieve the purpose for which assignment was prescribed in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(2) For inmates who have been identified with severe or the highest mental health treatment needs, a clinical interview will be conducted and documented by a qualified mental health professional upon notification of the admission of the inmate into a disciplinary segregation unit. Requests for psychological intervention by a qualified mental health professional may also be initiated by a staff member working in disciplinary segregation, or by an inmate in disciplinary segregation.

(3) An assessment will be made by the Special Needs Inmate Evaluation Committee on each inmate in continuous disciplinary segregation at least every 30 days. Adjustment to segregation and early release from segregation will be considered for recommendation to the functional unit manager.

(4) Close Supervision:

(a) A close supervision status cell may temporarily be used to house an inmate:

(A) Whose behavior is deemed so aggressive or destructive that housing for protection of self, others or property is indicated.

- (B) Whose behavior creates a serious disruption to the safety, security or orderly operation of the unit.
- (b) An inmate placed on close supervision status must be reviewed and approved by the officer-in-charge or designee.
- (c) An inmate on close supervision status will be reviewed daily by the officer-in-charge. If the inmate's behavior warrants, he/she may be removed from close supervision status.
- (d) The security manager or Assistant Superintendent of Security will review inmates on close supervision status at least weekly.
- (5) Every inmate in disciplinary segregation status will be checked at least once every 30 minutes, but on an irregular basis by a DSU staff member.
- (6) Inmates will receive visits from the disciplinary segregation supervisor at least once a shift.
- (7) A qualified health care professional will tour the unit daily unless medical or mental health attention is needed more frequently.
- (8) The officer-in-charge or designee will tour the Disciplinary Segregation Unit at least once per shift.
- (9) The functional unit manager or designee and the security manager or Assistant Superintendent of Security will tour the Disciplinary Segregation Unit weekly.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

- DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06
- DOC 10-2001, f. & cert. ef. 3-21-01
- CD 19-1991, f. & cert. ef. 8-21-91
- CD 33-1987, f. & ef. 8-28-87
- CD 18-1987(Temp), f. & ef. 3-5-87
- CD 23-1985, f. & ef. 8-16-85
- CD 33-1983, f. & ef. 10-14-83
- CD 21-1978, f. & ef. 8-29-78

291-011-0035

Maintaining and Recording Information

- (1) Disciplinary segregation logs will be maintained with the following methods:
 - (a) All entries made with ink.
 - (b) Mistakes will be lined out and initialed by the person who made the error.
 - (c) No spaces will be left blank between entries.
 - (d) No pages will be skipped.
 - (e) No sheets will be removed.
 - (f) Sheets may be added for continued or additional information.
 - (g) All logs will be retained in accordance with archive records retention schedules.
 - (h) All entries in the log must bear the staff member's signature.
 - (i) All logs will be reviewed monthly by the Assistant Superintendent of Security or security manager.
- (2) Disciplinary segregation logs will record the following minimum information:
 - (a) All movement in or out or within the Disciplinary Segregation Unit and purpose of the visit.
 - (b) All cell assignments in the Disciplinary Segregation Unit.
 - (c) All unusual incidents that occur in the Disciplinary Segregation Unit.
 - (d) All inmate telephone calls.
 - (e) All cell searches.
 - (f) All 30-minute cell checks.

- (g) All services and activities deprived or not provided an inmate as required by this rule.
- (h) Any non-compliance of a requirement of this rule, which should immediately be reported to the Assistant Superintendent of Security or security manager.
- (i) All exercise periods.
- (j) All inmates placed on close supervision or dry cell status.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

- DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06
- DOC 10-2001, f. & cert. ef. 3-21-01
- CD 19-1991, f. & cert. ef. 8-21-91
- CD 33-1987, f. & ef. 8-28-87
- CD 18-1987(Temp), f. & ef. 3-5-87
- CD 23-1985, f. & ef. 8-16-85
- CD 33-1983, f. & ef. 10-14-83
- CD 21-1978, f. & ef. 8-29-78

291-011-0040

Security

(1) Door Security:

- (a) Entry doors into the Disciplinary Segregation Unit and the entry door to each tier in disciplinary segregation will be locked at all times, except when in use for authorized traffic. If the entry doors to the facility are open, all entry doors to the tiers must be locked.
- (b) Cell doors will be closed and locked at all times, except during inspections and when an inmate is entering or leaving the cell. There will be no instances of two occupied cells on individual tiers or two occupied cells in the same section being opened at any given moment, except in case of an emergency (i.e., emergency evacuation).
- (c) Two staff members to one inmate must be present at the cell when the door of any occupied single person cell is unlocked.
- (d) If the cell houses two inmates and only one inmate is to be removed from the cell, at least three staff members must be present to complete the removal. The cell door will remain secured until the inmate scheduled for removal has been restrained.
- (e) At least four staff members must be present at the cell when the door of any cell occupied by two unrestrained inmates is unlocked or opened or when both inmates are removed from the cell at the same time.

(2) Escort Security:

- (a) All inmates will be placed in restraints when escorted by staff.
- (b) Escort levels in the Disciplinary Segregation Unit will be determined by the Assistant Superintendent of Security or security manager. The escort level will be based on the inmate's behavior while housed in disciplinary segregation.
- (c) Minimally, the escort level must be one staff member to one inmate when the inmate is outside the segregation unit. Escort requirements can be adjusted to two staff members to one inmate when deemed appropriate.

(3) Searches:

- (a) Every inmate assigned to the Disciplinary Segregation Unit will be skin searched before being placed in a cell. All items of clothing issued or worn by the inmate will be thoroughly examined for contraband. All inmates will be searched in accordance with the Department of Corrections rule on Searches (Institutions) (OAR 291-041).
- (b) Inmates entering the Disciplinary Segregation Unit for purposes other than segregation will be minimally frisk searched.
- (c) Every item of material or equipment (i.e., book magazine, clothing, etc.) will be carefully searched by the disciplinary segregation staff before acceptance in the Disciplinary Segregation Unit.
- (d) All disciplinary segregation cells and cell equipment will be visually inspected daily.
- (e) Every disciplinary segregation cell will be searched at least twice monthly and before and after each occupancy.

- (A) Any deficiencies noted will be immediately reported to the disciplinary segregation supervisor.
- (B) Any unauthorized materials located will be removed and delivered immediately to the disciplinary segregation supervisor and processed in accordance with the rule on Personal Property Control (Inmate) (OAR 291-117).
- (C) Sanitation standards will be maintained to ensure the same standards as those required throughout the facility.

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0050

Property

(1) Any personal property, as defined in the Department of Corrections rule on Personal Property Control (Inmate) (OAR 291-117), not permitted in the cell of any disciplinary-segregated inmate will be properly protected in a location designated by the functional unit manager. Upon release from the Disciplinary Segregation Unit, the inmate will check his/her personal property and sign the property sheet.

(2) The following standard items are issued to all inmates in disciplinary segregation:

- (a) Writing utensil;
- (b) Coveralls (orange)/two-piece scrub;
- (c) Shower shoes (one pair);
- (d) Towel;
- (e) Blanket(s) (staff will determine appropriate number issued consistent with general population standards);
- (f) Sheets (two total);
- (g) Mattress;
- (h) Pillow;
- (i) Pillow case;
- (j) Socks (one pair);
- (k) Soap;
- (l) Toothbrush;
- (m) Comb;
- (n) Undergarments;
- (o) Property box;
- (p) Envelopes (two);
- (q) Writing paper; and
- (r) Inmate communication forms (two total).

(3) Inmates classified as short-term status are allowed the standard issued items plus the following personal property:

- (a) Envelopes (20 total);
- (b) Library book (one);
- (c) Newspaper (one);

(d) Magazines (three total);

(f) Legal work (pending); and

(g) Address book.

(4) Those inmates classified as long-term status are allowed the standard issued items, personal property identified for short-term status inmates, plus the following personal property:

(a) Library books (three total)

(b) Disciplinary Segregation Unit approved canteen items purchased after admission to DSU;

(c) Photographs (ten total); and

(d) Magazines and newspapers which MAY be exchanged if approved by the disciplinary segregation supervisor.

(5) Property for inmates in close supervision status includes the following (unless a specific deprivation order exists as authorized in OAR 291-011-0064):

(a) Clothing (coveralls, shower shoes, undergarments, socks);

(b) Bedding/linens (mattress, pillow and pillowcase, two sheets, blankets and towel); and

(c) Basic hygiene items (toothbrush, comb, toilet paper and soap).

(6) An inmate on close supervision status will not be allowed to maintain personal property in his/her cell. Pen or pencil, paper, envelopes and mail/legal work will be issued daily if requested for a four-hour block of time.

(7) Disciplinary-segregated inmates will be permitted to retain basic personal health items (i.e., dentures, prescribed glasses, hearing aids).

(8) Disciplinary-segregated inmates will be permitted religious items as approved by the chaplain and security manager in accordance with the rule on Religious Activities (OAR 291-143).

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0060

Services and Activities

(1) Canteen: Canteen items may be purchased every other week by those inmates who have available funds in their trust accounts.

(a) Close supervision status and short-term status inmates may ONLY purchase envelopes (maximum of 20).

(b) Long-term status inmates may purchase authorized items from the disciplinary segregation canteen list and additional items as authorized by the functional unit manager.

(2) Food:

(a) Except when under special diet specifically prescribed by the medical officer, each disciplinary-segregated inmate shall receive food prepared in accordance with the sanitation standards specified in the Department of Corrections rule on Food Service Programs (OAR 291-061). Inmates in disciplinary segregation will receive food of the same quality and standard ration as inmates in general population, unless security circumstances dictate otherwise or the inmate has been placed on a special medically approved diet. Partial meals will not be served.

(b) Religious diets must be approved by the facility chaplain.

(c) Food delivery to each inmate in his/her cell will be accomplished by a staff member.

- (d) Controlled feeding (nutra loaf) may be substituted for the meal in accordance with the department's rule on Controlled Feeding (OAR 291-083).
- (e) Food shall never be used as a reward or as a punishment.
- (3) Clothing: A clean set of outer garments and undergarments will be provided on an exchange basis three times a week.
- (4) Linen: A clean towel will be provided when an inmate showers. Clean sheets and pillow cases will be provided on a weekly basis.
- (5) Medical/Dental/Mental Health Services:
- (a) Each disciplinary-segregated inmate will be visited at least daily by a member of the medical staff. The medical staff member will then process requests for medical, dental, and mental health services to the appropriate staff member.
- (b) Health care and mental health services will be provided to inmates in disciplinary segregation according to the Department of Corrections rule on Health Services (Inmate) (OAR 291-124).
- (c) If a disciplinary-segregated inmate complains of a medical, dental or psychological problem at other than the time of the medical staff member's visit, the staff member receiving the complaint will notify the disciplinary segregation supervisor who will make the request for service to the appropriate section in a timely manner. The request for service will be documented on the inmate's record.
- (d) If the disciplinary-segregated inmate's medical or mental health condition is not treatable in his/her cell, the inmate will be escorted to appropriate facilities. Unless otherwise ordered by the Assistant Superintendent of Security or security manager, security supervision will be maintained throughout the inmate's examination and treatment.
- (e) Any disciplinary-segregated inmate transferred from the facility for treatment will, upon his/her return, resume disciplinary segregation assignment unless confinement elsewhere is recommended by facility medical, dental, or mental health professionals and approved by the functional unit manager or the officer-of-the-day.
- (6) Personal Hygiene:
- (a) Inmates in disciplinary segregation will have the opportunity to shower and shave at least three times weekly.
- (b) Arrangements for haircuts will be made by the disciplinary segregation supervisor once a month.
- (7) Inmate Communication Form: Each disciplinary-segregated inmate may write to any staff member by submitting an inmate communication form. Inmate communication forms will be made available once per day. Submitted inmate communication forms will be forwarded without undue delay.
- (8) Correspondence:
- (a) Each disciplinary-segregated inmate will be allowed to correspond in accordance with the Department of Corrections rule on Mail (Inmate) (OAR-291-131).
- (b) Disciplinary segregation staff will inspect all incoming mail prior to distributing to inmate. All legal mail must be opened in the presence of the inmate.
- (9) Visits: Inmates assigned to disciplinary segregation shall be granted visits in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127).
- (10) Legal visits will not be denied to a segregated inmate unless his/her conduct is so disruptive that the safety, security and orderly operation of the facility would be compromised.
- (11) Reading:
- (a) Reading material will be issued or exchanged at least weekly.
- (b) The disciplinary segregation supervisor will coordinate activity with the appropriate staff member to assure adequate availability of books and/or magazines for disciplinary-segregated inmates. All such items entering or leaving disciplinary segregation shall be inspected by the Disciplinary Segregation Unit staff member handling entry/exit for contraband and/or abuse.
- (12) Exercise: Inmates in disciplinary segregation will be provided opportunity to exercise a minimum of 40 minutes, which includes shaving and showering, per day, five days a week, in an area and manner specified by the functional unit manager, unless security, staff availability or safety considerations dictate otherwise as authorized by the security manager.
- (13) Religious Services:
- (a) Religious Services staff will visit each disciplinary-segregated inmate once a week, if the inmate requests.

(b) No inmate will be denied the opportunity to receive religious guidance from staff chaplains or approved religious volunteers while in disciplinary segregation. The practice of his/her religion may be restricted to the inmate's cell.

(14) Work: Inmates in disciplinary segregation will only be permitted work assignments that include maintenance of their own quarters and the disciplinary segregation facilities.

(15) Telephone Services: Telephone calls related to legal matters will be handled in accordance with the Department of Corrections rule on Telephones (Inmate) (OAR 291-130). Telephone calls other than legal calls will be limited to verified emergency situations (death, serious illness, or injury to an immediate family member, etc.) or as authorized by the functional unit manager or designee.

(16) Legal Activities: Inmates assigned to disciplinary segregation shall be permitted to pursue their legal activities according to the procedures prescribed in the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139).

Statutory/Other Authority: ORS 179.040, 421, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

DOC 10-2001, f. & cert. ef. 3-21-01

CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

CD 18-1987(Temp), f. & ef. 3-5-87

CD 23-1985, f. & ef. 8-16-85

CD 33-1983, f. & ef. 10-14-83

CD 21-1978, f. & ef. 8-29-78

291-011-0064

Forfeiture/Deprivation of Service or Activity

(1) A disciplinary-segregated inmate may be required to forfeit or be temporarily deprived of any service or activity when the inmate is using them to destroy or damage property, obstruct security, or threatens physical violence to himself/herself or others. If an inmate is using any service or activity for self-destruction, that service/activity may be temporarily removed upon order of the officer-in-charge or designee. Any item(s) withheld shall be returned at the earliest possible time when the basis for removal has ceased to exist. Deprivation orders will be reviewed every eight hours by the officer-in-charge.

(2) Services and activities may be forfeited or deprived as a result of a disciplinary sanction in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Forfeiture of a service/activity will be reviewed weekly by the Special Needs Inmate Evaluation Committee.

Statutory/Other Authority: ORS 179.040, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

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CD 19-1991, f. & cert. ef. 8-21-91

CD 33-1987, f. & ef. 8-28-87

291-011-0080

Disciplinary Segregation Units in Minimum Custody Facilities

(1) Due to their size and available staffing, minimum custody facilities will be exempt from the following provisions of the Department of Corrections rule on Segregation (Disciplinary) (OAR 291-011). These provisions will be modified as described below.

(2) An inmate may be placed on close supervision status under the provisions listed in OAR 291-011-0030 and remain so until terminated by the functional unit manager or transfer to another facility.

(3) Recreation outside of the cell will not be available.

(4) Staff Selection Criteria: Employees regularly assigned to the facility will staff the Disciplinary Segregation Unit.

(5) Inmates in disciplinary segregation requesting psychological intervention will be referred to the facility medical staff.

(6) Inmates in disciplinary segregation will be visited by a qualified health care professional at least daily, unless medical attention is ordered more frequently in specific cases by the facility's physician. Requests for medical attention made to security staff will be referred to the officer-in-charge who will determine the appropriate action to be taken.

(7) Facilities that have five or seven-day-a-week health care available will ensure that inmates in disciplinary segregation are seen by a health care official each day.

(8) Door Security: The outer door to each segregation cell shall remain locked when not in use for authorized traffic.

(9) When possible, staff will restrain all inmates in a cell prior to the unlocking/opening of the cell door. The functional unit manager may waive this requirement based upon facility design and operational requirements.

(10) Property: In addition to authorized issued items, the following property will be authorized in disciplinary segregation:

(a) Personal letters;

(b) Photographs (ten total, will not be retrieved from inmate's personal property);

(c) Paperback books (three total);

(d) Magazines (three total, will not be retrieved from inmate's personal property);

(e) Legal papers requiring immediate action (approved by facility legal librarian);

(f) Pen or pencil;

(g) Paper;

(h) Envelopes; and

(i) Medically approved denture cleanser and denture adhesive.

(11) Canteen will not be available except for the purchase of ten envelopes.

(12) If a disciplinary segregated inmate complains of medical, dental or mental health problems at other than the time of the medical staff member's visit, the officer-in-charge will consider the request and determine if immediate action is warranted. If necessary, the officer-in-charge will utilize the established mental health/medical on-call system.

(13) All requests for religious guidance or counseling will be submitted in writing by the inmate and directed to the chaplain or approved religious volunteer for the facility.

(14) Inmates receiving disciplinary sanctions of 14 days or less may complete their sanctions at these facilities. Any inmate sanctioned to 15 or more consecutive days of disciplinary segregation shall be transferred to a facility capable of housing disciplinary segregated inmates in compliance with OAR 291-011-0015 through 291-011-0064.

Statutory/Other Authority: ORS 179.040, 423.020, 423.030 & 423.075.

Statutes/Other Implemented: ORS 179.040, 423.020, 423.030 & 423.075

History:

DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

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Chapter 291

Division 105

PROHIBITED CONDUCT AND PROCESSING DISCIPLINARY ACTIONS

[291-105-0005](#)

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.068, 421.180, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to define the rules of conduct governing adults in custody and outline the procedures to be followed in processing disciplinary action(s).

(3) Policy:

(a) It is the policy of the Department of Corrections to hold adults in custody accountable for misconduct while incarcerated, and to promote and reinforce pro-social behavior by adults in custody, through a system of disciplinary rules and procedures that embrace the Oregon Accountability Model and Correctional Case Management.

(b) Adults in custody under Department of Corrections supervision shall be disciplined for violation of specified rules of prohibited conduct in accordance with the procedures set forth in these rules. The primary objectives of these rules are:

(A) To provide for the safe, secure, efficient, and orderly management of Department of Corrections facilities, the safety and security of Department employees, the public, adults in custody, and property of the Department of Corrections;

(B) To establish norms of acceptable conduct and consistent and fair procedures for the processing of misconduct reports for adults in custody

(C) To allow a range of appropriate disciplinary sanctions for violation of the rules of prohibited conduct for adults in custody; and

(D) To encourage positive behavioral change.

(c) To promote these objectives, adults in custody found in violation of the rules of prohibited conduct are issued individualized sanctions based upon the totality of the circumstances (including input from stakeholders, and the adult in custody's behavior, strengths, and needs, subject to modification upon order of the Hearings Officer and functional unit manager or designee.

(d) The Department intends that the authorization in OAR 291-105-0100 to withdraw an order and direct the disciplinary hearing to be reopened applies retroactively to disciplinary orders issued on, before, or after these rules.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

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DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

DOC 11-2011(Temp), f. & cert. ef. 6-10-11 thru 12-7-11

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

CD 30-1985, f. & ef. 8-16-85
CD 8-1985(Temp), f. & ef. 6-19-85
CD 25-1982, f. & ef. 11-19-82
CD 13-1980, f. & ef. 4-15-80
CD 19-1979(Temp), f. & ef. 10-19-79
CD 7-1979, f. & ef. 3-14-79

291-105-0010

Definitions

- (1) Adjudicator: The assigned employee within the facility responsible for the disposition of all informal hearings and minor misconduct reports that are to be adjudicated without a formal hearing.
- (2) Adult in Custody (AIC): A person incarcerated or detained in a correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision, or a diversion program. For the purposes of these rules, AIC includes individuals who are in the legal custody of the Department of Corrections but are temporarily outside of the physical custody of the Department of Corrections for reasons that include, but are not limited to, transport, court proceeding, medical appointments, work assignment, programs, or interstate compact. AIC also includes those who have been released onto Short-Term Transitional Leave, Non-Prison leave, or emergency leave.
- (3) Attempt: Conduct that constitutes a substantial step towards the commission of a rule violation.
- (4) Calendar Day: All weekdays, weekends, and holidays.
- (5) Conduct Order: An Oregon Department of Corrections form that allows for various interventions to affect positive behavioral change, and without the need for a disciplinary hearing, in accordance with OAR 291-105-0021(1). Restriction of an AIC's privileges through a conduct order can be for no more than 72 hours.
- (6) Conspiracy: An agreement between an AIC and one or more persons to engage in, cause, or conceal a rule violation.
- (7) Contraband: Any article or thing that an AIC is prohibited by statute, rule, or order from obtaining or possessing, that the AIC is not specifically authorized to obtain or possess, or that the AIC alters without authorization.
- (8) Controlled Substance: A drug or its precursor as listed in ORS 475.005 through 475.999.
- (9) Dangerous or Deadly Weapon: Any instrument, article, or substance specifically designed for or readily capable of causing death or serious physical injury.
- (10) Deadly Force: Physical force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- (11) Department of Corrections Facility: Any institution, facility, or employee office, including the grounds, operated by the Department of Corrections.
- (12) Distribution: The transfer of contraband from one person to another. This term includes smuggling or the deliberate destruction of evidence.
- (13) Drugs: Any controlled substance as listed in ORS 475.005 through 475.999.
- (14) Electronic Communication Device: A device designed to be used for or is readily capable of being used for making or receiving wireless communication transmissions.
- (15) Employee: Any person who is employed full time, part time, or under temporary employment by the Department of Corrections or Oregon Corrections Enterprises.
- (16) Escape Device: Any item designed for, physically altered for, or readily capable of being used to facilitate an escape from a secure housing unit, a facility, or from custody.
- (17) Facility: Any institution, facility, or employee office, including the grounds, that an AIC under the supervision of the Department of Corrections is assigned.
- (18) Fine: A monetary sanction imposed in accordance with these rules (OAR 291-105.) AIC fines shall be deposited as established under ORS 421.068 as confiscated funds.
- (19) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.
- (20) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator, and who has responsibility for the delivery of program

services or coordination of program operations. In a correctional setting the functional unit manager is the superintendent.

(21) Good Cause: Adequate or substantial grounds or reason to take (or not take) an action prescribed by law. What constitutes good cause is usually determined on a case-by-case basis and is thus relative.

(22) Hearings Officer: A DOC employee assigned to review and adjudicate misconduct reports through a formal hearing.

(23) Intoxicant: Any substance, including but not limited to, unauthorized medication, alcoholic beverages, and inhalants, which causes a disturbance of mental or physical capacity resulting from the introduction of the substance in the body.

(24) Lesser Included Violation: Any violation which is a lesser degree of the charged violation (for example, AIC Assault III is a lesser included violation of AIC Assault II.)

(25) Local Jail: Any city or county lock-up or local correctional facility.

(26) Money: Cash, money orders, personal checks, warrants, certified checks, and other remittances.

(27) Non-Employee Service Provider (NSP): An individual who provides services or programs to the Department or to AICs, but not as a paid employee of the Department. Examples of non-employee service providers include contractors, volunteers, mentors, criminal justice partners, and government agency partners.

(28) Non-Prison Leave: A period of leave preceding an established release date granted to AICs successfully completing the institution phase of an Alternative Incarceration Program. Non-Prison Leave is designed to provide AICs with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.751, ORS 421.508, ORS 421.510 and the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(29) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule, or procedure during periods when the functional unit manager is not readily available.

(30) Order: Any direction given to an AIC that directs or forbids the doing of some act over which the AIC has control. An order may be written, verbal, or gestured communication (including all Department of Corrections rules; functional unit rules, and procedures; all federal, state, and local laws; conditions of leave; and court-ordered terms and conditions).

(31) Oregon Corrections Enterprises (OCE): A semi-independent state agency established under ORS 421.344 that is a non-Department of Corrections agency or division. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(32) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms, or other physical methods used to restrain, subdue, control, or intimidate another person, or to compel another person to act in a particular way or to stop acting in a particular way.

(33) Physical Injury: Impairment of physical condition or substantial pain. An impairment of physical condition can include, but is not limited to, an abrasion, scrape, scratch, bruise, contusion, or swelling.

(34) Possession: To have physical possession of or otherwise exercise dominion or control over property.

(35) Public Safety Officer: Corrections officers, emergency medical dispatchers, emergency medical technicians, firefighters, parole and probation officers, police officers, certified reserve officers, reserve officers, telecommunicators, and regulatory specialists.

(36) Restitution: A monetary amount ordered in accordance with these rules (OAR 291-105). Restitution funds will be credited to the institution or program suffering fiduciary loss or cost from the AIC misconduct, and shall be the actual cost incurred.

(37) Security Device: Any fixture, device, or tool, the purpose of which is to assist with safety or security.

(38) Security Threat Activity: AIC behavior that poses a significant threat to the safe and secure operation of a facility.

(39) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common name, identifying symbol, or characteristic, which serves to distinguish themselves from others; and

(b) Have members, affiliates, or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violate Department of Corrections rules; and

(c) Have the potential to act in concert to present a threat, or potential threat, to employees, non-employee service providers, public, visitors, AICs, or the secure and orderly operation of the institution.

(40) Serious Physical Injury: Injury that creates a substantial risk of death, causes protracted disfigurement, impairment of health, loss or impairment of any bodily organ function, or death.

(41) Sexual Activity: Sexual contact includes, but is not limited to: contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person or of oneself, excluding contact incidental to a physical altercation; and any other intentional touching to include kissing and fondling.

(42) Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature directed toward another, including, but not limited to, demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(43) Short-Term Transitional Leave: A period of leave preceding an established release date granted in accordance with ORS 421.168 and the Department's rule on Short-Term Transitional Leave and Emergency Leaves (OAR 291-063) to AICs for transitional opportunities that promote successful reintegration into the community.

(44) Working Day: Monday through Friday, excluding Saturday, Sunday, or legal holidays.

(45) Working File: Those documents maintained in a Department of Corrections facility, Community Corrections office, or functional unit for administrative, operational, or case management purposes.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075 & 475.005

History:

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DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & ef. 10-2-87

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

CD 7-1979, f. & ef. 3-14-79

[291-105-0013](#)

AIC Access to the Rules of Prohibited Conduct

During the admission and orientation process, AICs will be provided with the Rules of Misconduct (291-105-0015) and Rights in Formal and Informal Hearings (291-105-0056). Spanish-speaking AICs will receive copies in Spanish; other AICs with a language barrier will receive assistance from an individual who speaks their language. AICs with a visual, speech, or hearing disability shall be provided with assistance appropriate to the degree of their disability. In addition, OAR 291-105 will be available for review in the legal library and general library of each facility. Copies also may be obtained in accordance with the Department's rules on Release of Public Records (OAR 291-037), or from the library coordinator upon request at the AIC's expense in accordance with the Department's rules on Legal Affairs (OAR 291-139).

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

291-105-0015

Rules of Misconduct

(1) Violations Involving Property

(a) 1.01 Arson: An AIC commits arson when that AIC starts an unauthorized fire or causes an explosion.

(b) 1.05 Property I: An AIC commits Property I when that AIC, except as authorized by an employee, destroys, abuses, alters, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce issued property in a timely manner; and:

(A) 1.05.01 The State-owned or employee-owned property involved exceeds \$100 in value; or

(B) 1.05.02 The misconduct involves the functioning of a security device; or

(C) 1.05.03 The misconduct involves a threat to the safety, security, or orderly operation of a facility; or

(D) 1.05.04 The misconduct includes possession of an unauthorized or altered blade, such as a razor blade or pencil sharpener.

(c) 1.06 Property II (minor violation): An AIC commits Property II when that AIC, except as authorized by an employee, destroys, alters, abuses, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce issued property in a timely manner.

(d) 1.10 Contraband I: An AIC commits Contraband I when that AIC:

(A) 1.10.01 Possesses any intoxicant or is intoxicated; or

(B) 1.10.02 Possesses any drug paraphernalia; or

(C) 1.10.03 Has gone through any authorized screening process such as urinalysis, breathalyzer, oral swabs, etc. and has been found to have any controlled substance or intoxicant in urine, blood, or other body parts; or

(D) 1.10.04 Fails to provide or refuses to submit an acceptable sample for testing or submits an unacceptable sample for testing; or

(E) 1.10.05 Alters, substitutes, contaminates, or destroys a urine sample; or

(F) 1.10.06 Possesses money in the amount of \$10 or more (this excludes trust account funds); or

(G) 1.10.07 Possesses illegitimately obtained property or trust account funds valuing \$100 or more.

(e) 1.11 Contraband II: An AIC commits Contraband II when that AIC possesses contraband, including that listed in Contraband I and Contraband III, that creates a threat to the safety, security, or orderly operation of a facility, including but not limited to:

(A) 1.11.01 Tobacco or smoking paraphernalia, unauthorized medication, items of barter, checks, money under \$10, or unauthorized sexually explicit material; or

(B) 1.11.02 Items that were obtained by threats of or actual theft, forgery, or coercion.

(f) 1.12 Contraband III (minor violation): An AIC commits Contraband III when that AIC possesses contraband, including that listed in Contraband I and Contraband II, or un-cancelled stamps, expired self-medication, legal material belonging to another AIC, or property in excess of that authorized.

(g) 1.15 Drug Possession: An AIC commits Drug Possession when that AIC possesses a controlled substance.

- (h) 1.20 Possession of Body Modification Paraphernalia: An AIC commits Possession of Body Modification Paraphernalia when that AIC possesses items capable of being used in body modification, including but not limited to, motors, needles, and ink.
- (i) 1.25 Unauthorized Use of Information Systems I: An AIC commits Unauthorized Use of Information Systems I when that AIC operates or uses any information system equipment (including terminals, personal computers, tablet computers, minicomputers, work stations, controllers, printers, copiers, fax machines, or phones) if the usage exceeds the conditions of use or access granted by the Director, functional unit manager, or designee in the following manner:
- (A) 1.25.01 To send, receive, or read messages or e-mails, access the Internet, or access any employee-only programs or computer systems; or
- (B) 1.25.02 To conduct illegitimate business activity; or
- (C) 1.25.03 To do unauthorized legal work.
- (j) 1.26 Unauthorized Use of Information Systems II: An AIC commits Unauthorized Use of Information Systems II when that AIC operates or uses any information system equipment (including terminals, personal computers, tablet computers, minicomputers, work stations, controllers, printers, copiers, fax machines, or phones) if the usage exceeds the conditions of use or access granted by the Director, functional unit manager, or designee in the following manner:
- (A) 1.26.01 To prepare a letter or other unauthorized document; or
- (B) 1.26.02 To make copies, view video, or listen to audio files for personal use; or
- (C) 1.26.03 To use the phone, Video Interactive Phone system, or any incentive level electronic device in excess of, or outside, the parameters permitted under the Department's rules.
- (2) Violations Against Persons
- (a) 2.01 Staff Assault I: An AIC commits Staff Assault I when that AIC:
- (A) 2.01.01 Causes physical injury to or commits a physical attack on an employee, public safety officer, or non-employee service provider; or
- (B) 2.01.02 Causes bodily fluids (human or animal) to come in contact with an employee, public safety officer, or non-employee service provider; or
- (C) 2.01.03 Commits a physical attack on an employee, visitor, public safety officer, or non-employee service provider and uses a dangerous or deadly weapon; or
- (D) 2.01.04 Harms or endangers the well-being of an animal in the care and custody of DOC or used to conduct DOC affairs; or
- (E) 2.01.05 Refuses to stop any assaultive behavior after being ordered to do so, which necessitates an employee to use physical force to stop the behavior and which results in employee injury.
- (b) 2.02 Staff Assault II: An AIC commits Staff Assault II when that AIC commits a physical attack on an employee, public safety officer, non-employee service provider, or animal in the care and custody of DOC.
- (c) 2.03 Assault of a Member of the Public: An AIC commits Assault of a Member of the Public when that AIC commits a physical attack, endangers the well-being of, or causes bodily fluids (human or animal) to come in contact with any person or animal who is not an employee, a non-employee service provider, AIC in the care and custody of DOC, or an animal in the care and custody of DOC.
- (d) 2.05 AIC Assault I: An AIC commits AIC Assault I when that AIC:
- (A) 2.05.01 Causes serious physical injury to another AIC or causes injury to another AIC that requires transporting the AIC to an outside agency for medical care; or
- (B) 2.05.02 Causes physical injury to another AIC and uses a dangerous or deadly weapon; or
- (C) 2.05.03 Commits a unilateral attack in a location or under circumstances that create a threat to the safety, security, or orderly operation of a facility; or
- (D) 2.05.04 Refuses to stop assaultive behavior after being ordered to do so which necessitates an employee to use physical force to stop the assaultive behavior; or
- (E) 2.05.05 Causes bodily fluids (human or animal) to come in contact with another AIC.
- (e) 2.06 AIC Assault II: An AIC commits AIC Assault II when that AIC:

- (A) 2.06.01 Commits a unilateral attack or is involved in a mutual fight that causes physical injury to another AIC; or
- (B) 2.06.02 Is involved in a mutual fight in a location or under circumstances that create a threat to the safety, security, or orderly operation of a facility.
- (f) 2.07 AIC Assault III: An AIC commits AIC Assault III when that AIC commits a unilateral attack or is involved in a mutual fight with another AIC.
- (g) 2.10 Disrespect I: An AIC commits Disrespect I when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person that involves racial, religious, or sexual harassment or a physical threat to the other person.
- (h) 2.11 Disrespect II: An AIC commits Disrespect II when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person, in a manner or circumstances that create a threat to the safety, security, or orderly operation of a facility.
- (i) 2.12 Disrespect III (minor violation): An AIC commits Disrespect III when that AIC directs hostile, sexual, abusive, or threatening language or gestures (verbal or written) toward or about another person.
- (j) 2.15 Extortion I: An AIC commits Extortion I when that AIC compels or induces any person, who is not an AIC, to act or refrain from acting, by threats, force, or intimidation.
- (k) 2.16 Extortion II: An AIC commits Extortion II when that AIC:
- (A) 2.16.01 Compels or induces another AIC to act or refrain from acting by threats, force, or intimidation; or
- (B) 2.16.02 Compels or induces an employee to act, to refrain from acting, or to refrain from performing a job duty through use of demands.
- (l) 2.20 Sexual Assault/Abuse: An AIC commits Sexual Assault/Abuse when that AIC engages in sexual activity and the victim does not consent, is unable to consent or refuse consent, or is coerced into such activity by expressed or implied threats of violence.
- (m) 2.25 Sexual Harassment: An AIC commits Sexual Harassment when that AIC:
- (A) 2.25.01 Makes repeated and unwelcomed sexual advances or requests for sexual favors, or
- (B) 2.25.02 Makes repeated and unwelcomed verbal comments, gestures, or actions of a derogatory or offensive sexual nature, directed toward or about another, including demeaning references to gender; or
- (C) 2.25.03 Makes repeated and unwelcomed sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- (n) 2.30 Non-Assaultive Sexual Activity: An AIC commits Non-Assaultive Sexual Activity when that AIC solicits or engages in sexual activity and the sexual activity is conducted without violence, threat of violence, coercion, or use of a weapon.
- (o) 2.40 Hostage Taking: An AIC commits Hostage Taking when that AIC seizes, holds, or otherwise significantly deprives the liberty of another person.
- (p) 2.45 Body Modification: An AIC commits body modification when that AIC alters or allows any person to be altered by tattooing, piercing, puncturing, scarring, etc., including modifying or perpetuating any previous modification.
- (3) Violations Involving Fraud or Deception
- (a) 3.01 False Information to Employees I: An AIC commits False Information to Employees I when that AIC presents or causes the presentation of false or misleading information to an employee or non-employee service provider that creates a threat to the safety, security, or orderly operation of a facility. False or misleading information shall include gestures, verbal, or written communications.
- (b) 3.02 False Information to Employees II (minor violation): An AIC commits False Information to Employees II when that AIC presents or causes the presentation of false and misleading information to an employee or non-employee service provider. False or misleading information includes gestures, verbal, or written communications.
- (c) 3.05 Forgery: An AIC commits Forgery when that AIC falsely makes, completes, alters, or presents a written instrument.
- (d) 3.10 Gambling: An AIC commits Gambling when that AIC wagers anything of value in games of chance, possesses paraphernalia associated with gambling, or possesses the proceeds of gambling activity.
- (e) 3.15 Fraud: An AIC commits fraud when that AIC deceives another person or business in order to obtain money, property, or something of value.

- (4) Violations Against the Orderly Operation of the Department or a Facility:
- (a) 4.01 Disobedience of an Order I: An AIC commits Disobedience of an Order I when that AIC overtly refuses to promptly or in a timely manner comply with a valid order, which creates a threat to the safety, security, or orderly operation of a facility.
- (b) 4.02 Disobedience of an Order II: An AIC commits Disobedience of an Order II when that AIC fails to comply with a valid order, which creates a threat to the safety, security, or orderly operation of a facility.
- (c) 4.03 Disobedience of an Order III (minor violation): An AIC commits Disobedience of an Order III when that AIC fails to comply with a valid order.
- (d) 4.04 Leave Violation: An AIC commits a Leave Violation when that AIC:
- (A) 4.04.01 Refuses or fails to follow a valid order or condition of Short-Term Transitional Leave.
- (B) 4.04.02 Refuses or fails to follow a valid order or condition of Non-Prison Leave.
- (e) 4.05 Disturbance: An AIC commits a Disturbance when that AIC advocates, incites, creates, engages in, maintains, or promotes a situation characterized by unruly, noisy, or violent conduct, or unauthorized group activity, which disrupts the orderly administration of or poses a direct threat to the security of a facility, facility programs, or the safety of an employee or another person.
- (f) 4.10 Distribution I: An AIC commits Distribution I when that AIC:
- (A) 4.10.01 Distributes or receives any controlled substance, intoxicant, drug paraphernalia, or money in the amount of \$10 or more (not including funds maintained by DOC in an AIC trust account); or
- (B) 4.10.02 Possesses any controlled substance, intoxicant, drug paraphernalia, or money in the amount of \$10 or more (not including funds maintained by DOC in an AIC trust account), which have been packaged for distribution.
- (g) 4.11 Distribution II: An AIC commits Distribution II when that AIC:
- (A) 4.11.01 Distributes or receives contraband that creates a threat to the safety, security, and orderly operation of a facility; or
- (B) 4.11.02 Possesses contraband that has been packaged for distribution and that creates a threat to the safety, security, and orderly operation of a facility; or
- (C) 4.11.03 Knowingly destroys evidence to interfere with an employee's ability to identify the contraband.
- (h) 4.15 Compromising an Employee: An AIC commits Compromising an Employee when that AIC knowingly engages an employee, public safety officer, non-employee service provider, or any person involved in DOC programs or activities in a personal relationship or business transaction, excluding AICs or visitors approved under DOC visiting rules.
- (i) 4.20 Escape I: An AIC commits Escape I when that AIC departs without authorization from:
- (A) 4.20.01 Within the security perimeter of a facility; or
- (B) 4.20.02 The immediate control of an employee or public safety officer while in secure physical custody and outside a secure facility perimeter; or
- (C) 4.20.03 The immediate control of a secure cell or secure housing unit.
- (j) 4.21 Escape II: An AIC commits Escape II when that AIC departs without authorization from:
- (A) 4.21.01 The grounds of a facility without a secure perimeter; or
- (B) 4.21.02 The direct supervision of personnel authorized to supervise AICs while outside a facility secure perimeter; or
- (C) 4.21.03 Short-Term Transitional Leave or Non-Prison Leave and a warrant or an order for arrest and return of the AIC has been issued.
- (k) 4.25 Possession of an Escape Device: An AIC commits Possession of an Escape Device when that AIC possesses any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a facility or from custody.
- (l) 4.30 Possession of a Weapon: An AIC commits Possession of a Weapon when that AIC possesses an instrument, article, or substance specifically designed for, physically altered for, or readily capable of causing death or serious physical injury to a person or animal.

(m) 4.33 Possession of an Electronic Device: An AIC commits Possession of an Electronic Device when that AIC possesses an unauthorized electronic communication device.

(n) 4.35 Racketeering: An AIC commits Racketeering when that AIC engages in illicit activity that is carried out for the purpose of personal or financial gain through unlawful acts.

(o) 4.40 Unauthorized Area I: An AIC commits Unauthorized Area I when that AIC fails to be present in any location designated by assignment, programmed activity, call out, or employee or non-employee service provider directive (or is in any location not designated by assignment, programmed activity, call out, or employee or non-employee service provider directive) that creates a threat to the safety, security, or orderly operation of a facility.

(p) 4.41 Unauthorized Area II (minor violation): An AIC commits Unauthorized Area II when that AIC fails to be present in any location designated by assignment, programmed activity, call out, or employee or non-employee service provider directive (or is in any location not designated by assignment, programmed activity, call out, or employee or non-employee service provider directive).

(q) 4.45 Unauthorized Organization I: An AIC commits Unauthorized Organization I when that AIC is part of a group of two or more persons (whether formal or informal), who collectively, or in concert, create or actively promote, recruit, participate in, or is involved in security threat activity.

(r) 4.46 Unauthorized Organization II: An AIC commits Unauthorized Organization II when that AIC:

(A) 4.46.01 Supports, displays, or endorses through verbal, visual, or written acts or communication any club, association, or organization that is a security threat group; or

(B) 4.46.02 Engages in a petition drive without specific authorization from the functional unit manager.

[ED. NOTE: To view attachments referenced in rule text, click here to view rule.]

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 16-2000, f. & cert. ef. 6-19-00

DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-14-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & ef. 10-2-87

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80, Renumbered from 291-040-0050

CD 19-1979(Temp), f. & ef. 10-19-79, Renumbered from 291-040-0050

CD 7-1979, f. & ef. 3-14-79

CD 36, f. 11-5-76, ef. 11-15-76

CD 34(Temp), f. & ef. 7-19-76

CD 33, f. 6-16-76, ef. 7-1-76

CD 12(Temp), f. & ef. 10-20-72 thru 2-16-73

CD 11(Temp), f. & ef. 10-20-72 thru 2-16-73

CD 8(Temp), f. & ef. 10-20-72 thru 2-16-73

291-105-0021

Procedures for Handling Misconduct by AICs

(1) Corrective Action: Employees shall be expected to use less formal procedures if the act or acts of misconduct do not constitute an immediate and continued threat to life, health, facility security, employee authority, or serious property damage or destruction, and in a manner that promotes and embraces the Oregon Accountability Model. Less formal

corrective action may include: a reprimand, a warning, counseling, a conduct order, or as otherwise authorized by the functional unit manager, Officer-in-Charge, or designee.

(a) Employees issuing a conduct order shall promptly complete the conduct order and forward it to the Officer-in-Charge or designee for review.

(b) The Officer-in-Charge or designee shall review and approve, cancel, or modify the conduct order as soon as practicable or within four hours of it being issued. If the Officer-in-Charge or designee determines that the incident warrants a misconduct report rather than a conduct order, the Officer-in-Charge or designee will ensure the conduct order is cancelled and a misconduct report submitted. If the Officer-in-Charge or designee determines a conduct order is necessary to immediately address safety and security concerns, and a misconduct report is warranted, the misconduct report shall reflect the reason(s) for issuing both a conduct order and a misconduct report.

(c) The AIC shall be notified a conduct order is being issued as soon as practicable. A copy of the conduct order shall be delivered to the AIC as soon as practicable or within four hours of it being approved, cancelled, or modified.

(2) Misconduct Reports:

(a) When the behavior justifies submission of a misconduct report, the employee shall legibly print, sign, and file a misconduct report with an immediate supervisor or the Officer-in-Charge, no later than 24 hours after sufficient evidence or information is gathered, discovered, or observed to support a rule violation. Determination of the sufficiency of evidence shall be a matter of judgment for the employee submitting the report and the immediate supervisor reviewing the report. The misconduct report will reflect the reason(s) for delay of submission if submitted after the 24-hour period.

(b) The reviewing supervisor will ensure the report is accurate, appropriate, and supported by sufficient information. If not supported or appropriate, the reviewing supervisor will refer the report back to the author for additional investigation or for less formal action. The report will have a printed, legible name and signature of the author and reviewing supervisor. The reviewing supervisor or designee shall be responsible for providing the AIC with a legible copy of the misconduct report, Rules of Misconduct (291-105-0015), and the notice of hearing and rights within 24 hours of the filing of the report, unless the AIC is unavailable to be served. If the report is not served to the AIC within 24 hours, the reviewing supervisor or designee shall notify the Hearings Unit of the reason for delay, which will be made part of the record.

(c) The AIC will be allowed 24 hours, after being served the misconduct report, before a hearing is conducted to prepare a defense unless the AIC waives this right.

(d) The misconduct report shall be submitted to the Hearings Unit on an approved Department of Corrections form and shall be as specific and comprehensive as possible. Upon receipt of the misconduct report, the Hearings Unit shall note the date received on the form.

(A) The misconduct report shall include a description of any unusual relevant AIC behavior and information regarding how the employee became aware of the behavior. The report shall identify all discovered information related to the incident (including video, memos, etc.). The misconduct report must contain sufficient and complete facts to support the alleged rule violation(s), including a description of what the restitution is for and the amount of restitution to be ordered, if applicable. The misconduct report must contain sufficient information to allow the AIC to prepare a defense.

(B) Attempt or Conspiracy: If an AIC attempts to commit or enters into a conspiracy to commit an act of prohibited conduct, it shall be considered the same as if the AIC had completed or accomplished the prohibited act.

(e) The misconduct report must specifically allege all the rule violations the AIC is alleged to have violated and demonstrate conduct constituting an attempt or conspiracy.

(f) Reports from all employee and non-employee service provider witnesses shall also be submitted.

(g) When the alleged misconduct occurs while the AIC is in the temporary physical custody of a jurisdiction other than the Department of Corrections, employees from that jurisdiction may provide a written description of the misconduct to the Officer-in-Charge:

(A) On review of such written information, the Officer-in-Charge at the facility receiving the AIC back into the physical custody of the Department may determine that the described action violates a rule or rules of prohibited conduct and direct that an employee submit a conduct order, misconduct report, or both.

(B) The written description provided by the temporary custody jurisdiction shall accompany the misconduct report. A misconduct report shall not be submitted absent a written description of the allegation from the temporary physical custody jurisdiction.

(C) If it is determined that the other jurisdiction maintained the AIC in a similarly restrictive status, the AIC shall receive credit for the number of days held in segregation type status by the other jurisdiction.

(3) Placement on Disciplinary Segregation Status: An AIC charged with committing a rule violation may be placed on disciplinary segregation status pending resolution of the charge through a formal hearing. This action will be taken when the functional unit manager or designee or the Officer-in-Charge determines that the alleged rule violation or violations are of such seriousness that the security of a facility is at risk and requires immediate removal of the AIC from the general population, or determines that the AIC is a threat to the community, or determines that the AIC is likely to escape or abscond.

(a) If disciplinary segregation status is ordered, the Officer-in-Charge must document specifying the reason(s) why immediate disciplinary segregation of the AIC was deemed necessary.

(b) A completed copy of the Department of Corrections misconduct report will be forwarded to the functional unit manager or designee who will review the AIC's pre-hearing disciplinary segregation placement within 72 hours of the AIC's placement on disciplinary segregation status. If approved, the functional unit manager or designee will initial the report. If the AIC is temporarily confined in a local jail while on Short-Term Transitional Leave, Non-Prison Leave, or Emergency Leave, the functional unit manager or designee will be notified for review of the AIC's status, within 72 hours of the AIC's confinement or as soon as practicable after the AIC's confinement.

(4) Scheduling a Hearing:

(a) An AIC charged with a rule violation through a misconduct report shall be scheduled for a hearing as soon as practicable.

(b) If the AIC is transferred to another facility before the hearing is complete, the misconduct report shall be forwarded to the other facility for processing.

(5) Initiating a Hearing: A hearing will be considered initiated when the misconduct report has been received by the Hearings Unit, numbered, and scheduled.

(a) A hearing shall be initiated and conducted within ten calendar days if the AIC is placed on disciplinary segregation status pending a formal hearing. For significant delays, the reasons for the delay shall be made part of the hearing record.

(b) All other hearings shall be initiated and conducted as soon as practicable. For significant delays, reasons for longer timeframes shall be made part of the hearing record.

(c) When an AIC charged with violating any level I rule, Escape II, Short-Term Transitional Leave, or Non-Prison Leave is released from custody prior to a hearing being held, a hearing will be initiated as soon as practicable upon return to DOC custody.

(d) The hearing may be postponed or continued for a reasonable period for good cause as provided in OAR 291-105-0064. The reason(s) for the postponement or continuance shall be made part of the record.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & ef. 10-2-87

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

Hearings Officers Responsibilities

(1) Unless waived by the AIC, a formal hearing shall be conducted by the Hearings Officer on all misconduct reports charging a major rule violation(s), and included minor violation(s), and on all misconduct reports charging a minor rule violation(s) for which an AIC requests a formal hearing. Requests for a formal hearing for a misconduct report charging a minor rule violation(s) should be submitted to the adjudicator in writing in advance of the informal hearing or made verbally prior to the start of the informal hearing at the latest.

(2) Prior to the formal hearing, the Hearings Officer shall review the misconduct report alleging major rule violation(s). If there is no prima facie case for a major rule violation, the Hearings Officer may dismiss the major violation(s) and refer the minor violations back to the adjudicator for an informal hearing. The Hearings Officer may substitute minor violations as lesser-included violations.

(3) The Hearings Officer shall not have been a witness to the event or alleged conduct that gives rise to the misconduct report or have participated in the case as a charging or investigating officer.

(4) The Hearings Officer will conduct the hearing and shall decide, based upon the evidence, whether the AIC has violated the rule(s) as charged in the misconduct report. The Hearings Officer may not add or change the violation(s) in the misconduct report. The Hearings Officer may find for a lesser-included violation or refer for less formal disciplinary action.

(5) The Hearings Officer may dismiss any alleged rule violation at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. Any alleged rule violation dismissed without prejudice or due to insufficient evidence may be resubmitted in another misconduct report utilizing the same process as provided in OAR 291-105-0021(2).

(6) The Hearings Officer or other employees as requested by the Hearings Officer shall report disciplinary actions which involve security threat activity to the facility's Officer-in-Charge or security threat manager and a Suspected Security Threat Intelligence Report (SSTIR) shall be completed.

(7) Behavioral Health Services will be notified when an AIC receives a misconduct report or is placed in disciplinary segregation if that AIC has a mental health concern or intellectual disability that makes the AIC eligible to receive services (coded as MH2, MH3, DD2, or DD3) or if that AIC has engaged in self-harm activity or a suicide attempt.

(a) Behavioral Health Services will then determine whether an evaluation shall be submitted to the Hearings Unit in the institution housing the AIC.

(b) If an evaluation is to be provided, Behavioral Health Services will submit the evaluation to the Hearings Unit within two working days of receiving notification or submit a postponement request to complete the evaluation. Behavioral Health Services will include the timeline for submission of the postponed evaluation.

(c) The Hearings Officer will postpone the hearing, as requested, to ensure that such an evaluation is considered in the case at issue.

(d) The evaluation shall address the following questions:

(A) Did this AIC's actions constitute an act of self-harm?

(B) Does this AIC have a Serious Mental Illness? and

(C) Does the AIC have significant functional impairments?

(8) If an evaluation is not provided by Behavioral Health Services prior to the AIC's hearing, the Hearings Officer may request an evaluation be completed on the AIC prior to disposition of the hearing.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

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CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92
CD 5-1989, f. & cert. ef. 4-21-89
CD 29-1987, f. & ef. 8-20-86
CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86
CD 30-1985, f. & ef. 8-16-85
CD 8-1985(Temp), f. & ef. 6-19-85
CD 25-1982, f. & ef. 11-19-82
CD 13-1980, f. & ef. 4-15-80
CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0028

Conduct of Formal Hearings

- (1) Unless waived by the AIC, a formal hearing shall be conducted by the Hearings Officer on all misconduct reports charging any major rule violation (and any included minor violation), on all misconduct reports charging a minor rule violation(s) for which an AIC requests a formal hearing, and on all misconduct reports referred by the adjudicator for a formal hearing in accordance with OAR 291-105-0041(6).
- (2) The findings must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report should not be grounds for dismissal, unless there is substantial prejudice to the AIC.
- (3) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of evidence, not necessarily established by the amount of evidence or number of witnesses, but by that evidence that has the most convincing force.
- (4) The Hearings Officer shall consider such evidence as would be considered by a reasonable person in the conduct of their serious affairs.
- (5) Once the formal hearing has begun, if the Hearings Officer determines that the violations are not supported by the facts as written in the misconduct report, the Hearings Officer may substitute a lesser included violation or refer back to the author for less formalized discipline.
- (6) At the hearing, the AIC will be allowed to exercise rights as allowed in OAR 291-105-0056.
- (7) The Hearings Officer may pose questions during the hearing.
- (8) An investigation shall be conducted in a formal hearing upon the AIC's request if the information sought, when viewed in a light most favorable to the AIC, and with all reasonable inferences drawn in the favor of the AIC, would constitute a defense to the charge or substantially mitigate the violation. The information sought must be within the ability of the facility to procure. If a request for investigation is denied, the reason(s) for denial shall be made a part of the record.
- (9) Testimony of Witnesses:
- (a) The Hearings Officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include AICs, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.
- (b) The AIC may request that the Hearings Officer schedule witnesses to present testimony at the hearing. The request should be submitted to the Hearings Officer in writing in advance of the hearing and include a list of all persons the AIC requests be called to testify, and the questions sought to be posed to each person. Requests for witnesses must minimally be made to the Hearings Officer at the time of the hearing. The AIC must provide sufficient evidence for the Hearings Officer to conclude that the results of the testimony provided by witnesses will either constitute a defense to the alleged violation(s) or substantially lessen the severity of the violation(s). The Hearings Officer shall arrange for the taking of testimony from such witnesses as properly requested by the AIC, subject to the exclusions and restrictions provided in these rules. Requests for witnesses made or received after a hearing is decided will not be considered.
- (c) The AIC shall not directly pose questions to any witness.
- (d) The Hearings Officer may limit testimony when it is cumulative or irrelevant.
- (e) The Hearings Officer may exclude a specific witness upon finding that the witness' testimony, together with all reasonable inferences to be drawn from that testimony, would not constitute a defense to the charge, would not substantially mitigate the violation, or would not assist the Hearings Officer in the resolution of the disciplinary action. The Hearings Officer may exclude a specific witness upon finding that the appearance of the witness at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of employees and AICs. If a witness is excluded, the reason(s) shall be made a part of the record.

(f) The Hearings Officer may call witnesses to testify as deemed necessary.

(g) Persons requested as witnesses, other than employees, may refuse to testify.

(h) All questions that may assist in eliciting evidence that would constitute a defense to the alleged rule violation(s) or substantially mitigate the violation(s) shall be posed. The reason for not posing a question will be made part of the record.

(i) Confidential Informants:

(A) When confidential informant testimony is submitted to the Hearings Officer, the identity of the informant and the verbatim statement of the informant shall be submitted to the Hearings Officer in writing using an approved Department of Corrections form but shall remain confidential in accordance with OAR 291-105-0036(3).

(B) Information must be submitted supporting the informant is a person who can be believed or that the information provided is believable in order for the Hearings Officer to rely on the testimony of the confidential informant.

(10) Documents and Physical Evidence:

(a) An AIC participating in a formal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules. Any evidence submitted by the AIC will be added to the record and will not be returned or photocopied for the AIC by the Hearings Officer. In instances where the AIC does not have the ability to procure the evidence (for example, obtaining surveillance video footage), the Hearings Officer may assist.

(b) Any person who is knowledgeable of any rule violation charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The Hearings Officer may exclude documents and physical evidence upon finding that such evidence would not assist the Hearings Officer in the resolution of the disciplinary action or that such evidence would present an undue risk to the safe, secure, or orderly operation of a facility, specifically including the safety and security of employees and AICs. The reason(s) for exclusion shall be made a part of the record.

(d) The Hearings Officer shall classify documents and physical evidence as confidential upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of any facility, specifically including the safety and security of employees and AICs, or that disclosure would interfere with an ongoing official investigation. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record. Documents and physical evidence classified as confidential by the Hearings Officer shall not be shown or otherwise provided to the AIC.

(e) The Hearings Officer may show to the AIC or read into the record any evidence submitted. However, the Hearings Officer will not provide copies of the evidence to the AIC. AICs may request and obtain copies of nonexempt records in accordance with the Department's rule on Release of Public Records (OAR 291-037).

(11) The Hearings Officer shall determine whether any rule violations occurred.

(a) The Hearings Officer may postpone the rendering of a decision for a reasonable period of time, not to exceed seven working days, for the purpose of reviewing the evidence to determine if there is a violation(s). The decision will be based solely upon information obtained in the hearings process, including employee reports, the statements of the AIC charged, and evidence derived from witnesses and documents.

(b) Attempt and Conspiracy: An AIC who attempts or conspires to commit a rule violation shall be found in violation of the rule and shall be subject to appropriate sanctions on the same basis as if the AIC had committed the rule violation.

(12) At the formal hearing the Hearings Officer shall decide:

(a) No Violation: The Hearings Officer may find that the AIC did not commit the violation(s) charged, in which case the AIC may be restored to similar status and privileges as before being charged, as allowed by other rules, policies, etc.

(b) Violation: The Hearings Officer may find that the AIC committed the violation(s) charged, in which case, the Hearings Officer will so inform the AIC.

(c) Dismissal: The Hearings Officer may dismiss the alleged rule violation(s) if:

(A) There is insufficient evidence to support the alleged violation(s); or

(B) Corrective action using less formalized procedures would be more appropriate. The Hearings Officer may refer back to the author for less formalized discipline; or

(C) The AIC is released from custody.

(d) Violation Not Responsible: An AIC is deemed not to be responsible for their actions.

(e) Violation of Leave: When conduct constitutes a violation of the AIC's condition(s) of Short-Term Transitional Leave or Non-Prison Leave, the Hearings Officer may also recommend retraction of earned time, statutory good time, or extra good time credits in accordance with the rule on Prison Term Modification (OAR 291-097).

(13) If no violation is found or all of the alleged rule violation(s) are dismissed on the misconduct report(s), the report(s) shall not be placed in the AIC's institution file but may be retained for statistical or litigation purposes in the Hearings records.

(14) Upon the finding of violation(s) by the Hearings Officer, the Hearings Officer:

(a) Shall determine the location of the violation(s) on the major or minor grids (Exhibits 1 and 2).

(b) Shall determine the AIC's prior misconduct history as recorded on the Disciplinary Misconduct System. Evidence of the AIC's prior misconduct history shall be placed in the record either orally or in writing.

(d) Shall impose appropriate sanctions in accordance with the major or minor grids (Exhibits 1 and 2).

(e) Determine if a deviation (upward or downward) is appropriate. The Hearings Officer shall document in writing the substantial reasons for the deviation in accordance with OAR 291-105-0072.

(f) Determine if consecutive sanctions are appropriate for separate rule violations arising from a single misconduct report. The Hearings Officer must document in writing the substantial reasons for consecutive sanctions, in accordance with OAR 291-105-0066(4)(b).

(15) The Hearings Officer may also consider imposing the additional sanctions that are available. (OAR 291-105-0069).

(16) The Hearings Officer may suspend imposition of any or all of the imposed disciplinary sanctions, informing the AIC of expected conduct to avoid imposition and the length of time for which the sanction will be suspended.

(17) The Hearings Officer may impose any or all sanctions previously suspended after finding that the AIC has failed to comply with the conditions of the suspension.

(18) At the conclusion of the hearing, the AIC shall be informed of the rule violations the Hearings Officer found the AIC committed and any sanctions imposed.

(19) A verbatim record of the hearing shall be made. A written record will be made of the decision and the supporting reasons.

[ED. NOTE: To view attachments referenced in rule text, [click here to view rule.](#)]

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

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DOC 14-2008, f. & cert. ef. 6-2-08

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 19-2001(Temp), f. & cert. ef. 12-3-01 thru 6-1-02

DOC 16-2000, f. & cert. ef. 6-19-00

DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & cert. ef. 10-2-87

CD 29-1986, f. cert. ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, cert. ef. 4-15-86

CD 30-1985, f. & cert. ef. 8-16-85

CD 8-1985(Temp), f. & cert. ef. 6-19-85

CD 25-1982, f. & cert. ef. 11-19-82

Formerly Exhibit 2 to OAR 291-105-026

[291-105-0031](#)

Processing of the Formal Record

- (1) Within ten working days following the conclusion of the hearing, the Hearings Officer shall prepare and deliver to the functional unit manager or designee a preliminary order containing the Hearings Officer's finding of fact and conclusions of law and recommendations for review.
- (2) The Hearings Officer may issue an amended order for restitution purposes. In all such instances, the Hearings Officer shall convene or reconvene a hearing with the AIC regarding the restitution issue(s), in accordance with the provision of OAR 291-105-0028 and 291-105-0056. In such cases the AIC shall be provided a Notice of Hearing in accordance with OAR 291-105-0056(3), a brief written description of what the restitution is for, and the amount of restitution to be ordered.
- (3) Upon receipt of the preliminary order, the functional unit manager or designee shall note the date received on the order. Within five working days after receipt of the preliminary order, the functional unit manager or designee shall do one of the following:
 - (a) Approve and sign the preliminary order without amendment, upon which the preliminary order becomes the Final Order; or
 - (b) Issue an amended order dismissing the misconduct report(s) or changing the disciplinary sanction(s) (or their imposition) in the preliminary order, for one or more of the reasons specified in OAR 291-105-0031(5), upon which the amended order becomes the Final Order; or
 - (c) Order the Hearings Officer to reopen the hearing to receive and consider additional evidence not submitted in the original hearing, and to issue an amended preliminary order after consideration of the additional evidence.
- (4) If the functional unit manager or designee fails to act on the preliminary order within seven working days following its receipt, the preliminary order shall become the Final Order.
- (5) Grounds for Issuance of Amended Orders: The functional unit manager or designee may issue an amended order for one or more of the following reasons:
 - (a) The evidence in the record is insufficient to support the violation(s) found, in which case the functional unit manager or designee may find a violation of a lesser included violation or order the dismissal of the misconduct report(s);
 - (b) The sanction(s) imposed by the Hearings Officer was not within the range of sanction(s) in the correct box on the grid, in which case the functional unit manager or designee may impose appropriate sanction(s) from the correct grid box;
 - (c) The deviation ordered by the Hearings Officer was not supported by written substantial reasons, in which case the functional unit manager or designee may impose the appropriate sanctions without the deviation or order the deviation upon written substantial reasons found by the functional unit manager or designee;
 - (d) The deviation ordered by the Hearings Officer included a segregation sanction in excess of 50%, in which case the functional unit manager or designee shall impose a sanction that does not exceed 50%;
 - (e) The consecutive segregation sanctions imposed by the Hearings Officer for multiple rule violations from the same misconduct report were not supported by written reasons, in which case the functional unit manager or designee may impose the segregation sanctions served concurrently or order the segregation sanctions served consecutively upon written reasons;
 - (f) To order a deviation not ordered by the Hearings Officer upon written substantial reasons found by the functional unit manager or designee;
 - (g) To impose mandatory consecutive sanction(s) not imposed by the Hearings Officer for multiple rule violations from two or more misconduct reports;
 - (h) To impose consecutive sanctions not imposed by the Hearings Officer for multiple rule violations from the same misconduct report, upon written reasons;
 - (i) To suspend imposition of any or all sanction(s) imposed by the Hearings Officer, informing the AIC of expected conduct to avoid imposition of the sanction(s);
 - (j) To impose any or all sanctions ordered suspended by the Hearings Officer. The reasons for imposing the previously suspended sanctions shall be explained in writing in the order.
 - (k) To amend sanction(s) imposed or to impose sanction(s) not imposed by the Hearings Officer, within the range of sanctions listed in the appropriate grid box and OAR 291-105-0066(2), OAR 291-105-0069 or OAR 291-105-0071.
- (6) Within seven working days after the Final Order is signed by the functional unit manager or designee or after a preliminary order becomes the Final Order under OAR 291-105-0031(3) and (4), a copy of the Final Order shall be sent to the AIC.

(7) Clerical errors on the written Finding of Fact, Conclusion, and Order may be rectified by correcting that document to accurately reflect the results of the hearing, without actually reconvening the hearing. The AIC shall be notified in writing of such corrections.

(8) The record of the hearing and all supporting documents shall be maintained in the Hearings Unit's records as per retention schedules. A copy of the misconduct report(s) and the Final Order (Findings of Fact, Conclusions, and Order) shall be permanently retained in the AIC's institution file, except in those instances where all major charges have been reduced to minor violations or dismissed by the Hearings Officer.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 29-1986, f. & ef. 8-20-86

CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0036

Preparation of the Formal Record

(1) The record of the formal hearing shall include:

(a) The misconduct report(s);

(b) The Notice of Hearing/Rights;

(c) Supporting material;

(d) The Final Order (Findings of Fact, Conclusions, and Order) issued by the Hearings Officer and the functional unit manager or designee.

(2) A recording of the hearing shall not be a part of the record; however, it shall be prepared and provided to the Inspector General, Attorney General, or their designees or to the court, upon request. A copy of the recording of the hearing shall not be provided directly to the AIC by the Hearings Office.

(3) Information received that is determined to be confidential shall be clearly labeled "confidential" and shall not be shared with or provided to AICs.

(a) Confidential information may be summarized for the AIC at the time of the hearing, without releasing the confidential information verbatim or the name of a confidential informant.

(b) Confidential information may be shared with the functional unit manager or designee. Confidential information may also be shared with Department employees, the Attorney General, or the courts with approval of the Inspector General or the Assistant Inspector General(s). Employee requests for confidential information shall be approved by the functional unit manager prior to being forwarded to the Inspector General or the Assistant Inspector General(s).

(c) Such confidential information shall be archived in a secure area as determined by the Inspector General or Assistant Inspector General(s).

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075

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DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02
CD 16-1996, f. 11-13-96, cert. ef. 11-15-96
CD 8-1992, f. 3-27-92, cert. ef. 4-15-92
CD 5-1989, f. & cert. ef. 4-21-89
CD 11-1988, f. & cert. ef. 8-19-88
CD 38-1987, f. & cert. ef. 10-2-87
CD 32-1987(Temp), f. & cert. ef. 8-5-87
CD 29-1986, f. & cert. cert. ef. 8-20-86
CD 6-1986(Temp), f. 3-14-86, cert. ef. 4-15-86
CD 30-1985, f. & cert. ef. 8-16-85
CD 25-1982, f. & cert. ef. 11-19-82
CD 13-1980, f. & cert. ef. 4-15-80
CD 19-1979(Temp), f. & cert. ef. 10-19-79

291-105-0041

Adjudicator Responsibilities

- (1) An adjudicator shall be appointed by the functional unit manager in each Department of Corrections facility.
- (2) The adjudicator will receive all minor misconduct reports, once they have been entered into the disciplinary system and assigned a case number. The adjudicator shall conduct an informal hearing on minor misconduct reports in accordance with OAR 291-105-0046.
- (3) The adjudicator shall not have been a witness of or participated in the event in any manner.
- (4) The adjudicator shall conduct the informal hearing and decide whether the AIC has violated the rule(s) as charged. The adjudicator may not add or change the violations in the misconduct report.
- (5) The adjudicator may dismiss the misconduct report(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. A new misconduct report may be resubmitted utilizing the same process as provided in OAR 291-105-0021(2) if dismissed without prejudice or dismissed for insufficient evidence.
- (6) The adjudicator may decline to conduct an informal hearing and refer the case to the Hearings Officer for a formal hearing when the AIC's mental competency is an issue.
- (7) Requests for a formal hearing for a misconduct report charging a minor rule violation(s) should be submitted to the adjudicator in writing in advance of the informal hearing or made verbally prior to the start of the informal hearing at the latest.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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DOC 16-2000, f. & cert. ef. 6-19-00
CD 16-1996, f. 11-13-96, cert. ef. 11-15-96
CD 9-1995, f. 5-23-95, cert. ef. 6-1-95
CD 6-1993, f. 3-10-93, cert. ef. 4-1-93
CD 8-1992, f. 3-27-92, cert. ef. 4-15-92
CD 5-1989, f. & cert. ef. 4-21-89
CD 29-1986, f. & ef. 8-20-86
CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86
CD 30-1985, f. & ef. 8-16-85
CD 8-1985(Temp), f. & ef. 6-19-85
CD 25-1982, f. & ef. 11-19-82
CD 13-1980, f. & ef. 4-15-80
CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0046

Conduct of the Informal Hearings

- (1) An informal hearing shall be conducted by the adjudicator on all misconduct report(s) that do not charge a major violation(s), unless the AIC requests a formal hearing in writing on the Notice of Hearing/Rights form or verbally prior to

the start of the informal hearing.

(2) Findings by the adjudicator must be on the merits. Technical and clerical errors in the writing or processing of the misconduct report shall not be grounds for dismissal.

(3) The adjudicator shall consider such evidence as would be considered by a reasonable person in the conduct of their serious affairs.

(4) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence, not necessarily established by the amount of evidence or number of witnesses, but by that evidence that has the most convincing force.

(5) The AIC shall be given the opportunity to provide testimony, to submit evidence, or to waive the right to participate in the hearing as set forth in OAR 291-105-0056. AICs shall not be permitted to call witnesses in an informal hearing.

(6) Assistance by an employee, AIC, or other person approved by the adjudicator will be utilized in cases where it is found that assistance is necessary based upon language barriers or capacity of the AIC.

(7) The adjudicator may pose questions during the hearing.

(8) Documents and Physical Evidence:

(a) An AIC participating in an informal disciplinary hearing may present documents and physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) Any person who is knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents and physical evidence in advance of or during the hearing.

(c) The adjudicator may exclude documents and physical evidence upon finding that such evidence would not assist in the resolution of the disciplinary action or that such evidence would present an undue risk to the safe, secure, or orderly operation of a facility, specifically including the safety and security of employees and AICs. The reason(s) for exclusion shall be made a part of the record.

(d) The adjudicator may classify documents and physical evidence as confidential (and not disclose such evidence to the AIC) upon finding that disclosure would present an undue risk to the safe, secure, or orderly operation of a facility, specifically including the safety and security of employees and AICs or that disclosure would interfere with an ongoing official investigation or criminal prosecution. The reason(s) for classifying documents and physical evidence as confidential shall be made a part of the record.

(9) At the informal hearing the adjudicator shall decide:

(a) No Violation: The adjudicator may find that the AIC did not commit the violation charged, in which case the AIC may be restored to the same status and privileges as before being charged as allowed by other rules, policies, etc.

(b) Violation: The adjudicator may find that the AIC did commit the violation charged, in which case, the adjudicator will so inform the AIC.

(c) Dismissal: The adjudicator may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s); or

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The AIC is released from custody.

(10) At the conclusion of the hearing the AIC shall be informed of the finding and any sanctions imposed.

(11) If the AIC is found in violation, the record of the decision shall be retained in the Hearings Unit records as per retention schedules.

(12) Upon finding that a violation occurred as charged, the adjudicator shall impose sanctions within the appropriate range of the minor disciplinary grid (Exhibit 2).

(13) The adjudicator may also consider imposing the additional sanctions that are available per OAR 291-105-0071.

(14) The adjudicator may suspend imposition of any or all of the ordered disciplinary sanctions, informing the AIC of expected future conduct to avoid imposition and the length of time for which the sanction will be suspended.

(15) The adjudicator may impose any or all sanctions previously suspended after finding that the rule violation in question was also a violation of the conditions of the suspension.

(16) The adjudicator may give a verbal warning and reprimand in lieu of sanctions on the minor grid, informing the AIC of expected future conduct.

(17) No verbatim recording of the hearing shall be made.

[ED. NOTE: To view attachments referenced in rule text, click here to view rule.]

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075

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DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 16-2000, f. & cert. ef. 6-19-00

DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 30-1985, f. & ef. 8-16-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0056

AIC Rights in Formal and Informal Hearings

(1) Hearing: The AIC shall be entitled to a hearing whenever a misconduct report has been filed. An AIC receiving a minor misconduct report shall not receive a formal hearing, unless specifically requested.

(2) Waiver of Hearing:

(a) The AIC may waive the right to a hearing. Waiver of the right must be made in writing, verbally, or through behavior and must be documented on the record. An AIC's refusal to attend the hearing will constitute a waiver.

(b) If the AIC waives the right to a hearing, the case will be reviewed on its merits by the Hearings Officer or adjudicator in accordance with the procedures outlined in these rules.

(3) Notice of Hearing:

(a) The AIC shall be given written notice of the hearing no less than 24 hours prior to the hearing, unless the AIC consents to holding the hearing sooner.

(b) The notice shall include a statement of the AIC's rights with respect to the hearing.

(4) Representation:

(a) In all cases, the AIC shall be entitled to:

(A) Provide a defense through written or oral testimony.

(B) Be present at all evidentiary stages of the hearing process, except when the Hearings Officer or adjudicator finds that to have the charged AIC present would constitute an immediate threat to facility security or the AIC's behavior during the hearing warrants exclusion. The reason(s) for the finding shall be part of the record.

(C) AICs shall be excluded during the testimony of any witness whose testimony must be given in confidence. The reasons for the AIC's absence or exclusion shall be made part of the record.

(b) Assistance by an employee, AIC, or other person approved by the Hearings Officer or adjudicator will be ordered in cases where it is found that assistance is necessary based upon language barriers or capacity to prepare a defense, to understand the charge, or surrounding facts, and rights available to the AIC.

(5) AICs shall be allowed to submit evidence, except when the Hearings Officer or adjudicator finds that to have the evidence present would constitute an immediate threat to a facility or not assist in the resolution of the hearing, as provided in OAR 291-105-0028 or OAR 291-105-0046.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Statutes/Other Implemented: 421.180, 423.020, 423.030, 423.075, ORS 179.040 & 421.068

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CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0058

Investigations in Formal and Informal Hearings

- (1) The Hearings Officer or adjudicator may order an investigation.
- (2) The investigator shall not have been a witness to the event or have participated in the case as a charging officer.
- (3) The Hearings Officer or adjudicator shall disclose the results of the investigation to the AIC unless disclosure of the investigative results would constitute a threat to the safety, security, or orderly operation of a facility. The reason(s) for nondisclosure shall be made a part of the record. The Hearings Officer or adjudicator shall not provide the AIC with copies of supplemental documents that comprise the case against the AIC.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

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CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & cert. ef. 10-2-87

CD 30-1985, f. & cert. ef. 8-16-85

CD 8-1985(Temp), f. & cert. ef. 6-19-85

CD 25-1982, f. & cert. ef. 11-19-82

CD 13-1980, f. & cert. ef. 4-15-80

CD 19-1979(Temp), f. & cert. ef. 10-19-79

291-105-0064

Postponements and Continuances of Hearings

- (1) A hearing may be postponed or continued by the Hearings Officer or the adjudicator for a reasonable period of time for good cause.
- (2) "Good cause" includes, but is not limited to:
 - (a) Preparation of defense; or
 - (b) Illness or unavailability of the AIC charged; or
 - (c) Gathering of additional evidence (for example, calling of witnesses, gathering of witness statements, investigation, acquisition of physical evidence); or
 - (d) Avoiding interference with an ongoing police investigation or pending prosecution; or
 - (e) Determination of appropriate sanctions.
- (3) The reason for the postponement in a formal hearing shall be made part of the record.
- (4) If an AIC has been placed on disciplinary segregation status pending a hearing and a continuance or postponement is ordered on the motion of the Hearings Officer, the Hearings Officer shall consider retention of the AIC on disciplinary segregation status and:

(a) Determine that the AIC no longer presents a threat to security and recommend to the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status, that the AIC be released from disciplinary segregation status pending conclusion of the hearing; or

(b) Determine that the rule violation(s) alleged is so serious that, if proven, the AIC would present an immediate and continuing threat to the safety, security, or orderly operation of the facility. The Hearings Officer will recommend to the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status that the AIC be retained on disciplinary segregation status. The written approval of the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status shall be made a part of the record. The AIC may be retained on disciplinary segregation status for a period no longer than allowed for the alleged rule violation(s). In no case shall an AIC be retained on disciplinary segregation status for a period in excess of 180 consecutive days.

(5) If an AIC has been placed on disciplinary segregation status pending a hearing and a continuance or postponement is requested by the AIC, the Hearings Officer shall not consider retention of the AIC on disciplinary segregation status; the AIC will be retained on disciplinary segregation status. The AIC will be retained on disciplinary segregation status for a period no longer than allowed for the alleged rule violation(s). The AIC may not be retained on disciplinary segregation status under this provision for more than 180 days.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

[DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020](#)

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89

CD 38-1987, f. & ef. 10-2-87

CD 29-1986, f. & ef. 8-20-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0066

Principles of Application of Disciplinary Sanctions

(1) A single act of misconduct may violate more than one misconduct rule.

(2) Loss of Privilege: If the AIC's misconduct involves the abuse or misuse of a specific privilege (for example: recreation yard, canteen, etc.), the Hearings Officer or adjudicator may order a loss of that specific privilege and may increase the loss of that specific privilege sanction up to twice the amount listed in the appropriate grid box.

(3) If an AIC receives a conduct order and a misconduct report that results in a recommended loss of privileges sanction, the AIC will receive credit for the length of the conduct order toward the loss of privilege sanction.

(4) If an AIC is placed in disciplinary segregation pending a misconduct report and the formal hearing results in a recommended disciplinary segregation sanction, the AIC will receive credit for the length of time in disciplinary segregation awaiting the hearing toward the recommended disciplinary segregation sanction.

(5) For rule violations arising from separate misconduct reports, disciplinary segregation sanctions shall be served consecutively, up to 180 days.

(6) For rule violations arising from the same misconduct report:

(a) Concurrent disciplinary segregation sanctions may be imposed by the Hearings Officer or functional unit manager or designee, up to 180 days. The AIC shall be ordered to only serve the sanction for the most serious violation in the misconduct report.

(b) Consecutive sanctions may be imposed by the Hearings Officer or functional unit manager or designee. The reasons for consecutive sanctions shall be supported by written substantial reasons outlining the factor(s) supporting the consecutive sanctions. No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that factor is also used to impose discipline.

(7) The Department's rule on Prohibited Rules of Conduct and Processing Disciplinary Actions for Adults in Custody contains two disciplinary grids. One grid governs disciplinary action for major violations (Exhibit 1). The other grid

governs disciplinary action for minor violations (Exhibit 2).

(8) Each of the disciplinary grids shall outline the available sanctions within each box, which includes fines, disciplinary segregation time, and the loss of privileges.

(9) There are additional sanctions available to the Hearings Officers and adjudicators for major violation(s) and minor violations (OAR 291-105-0069 and 291-105-0071). These sanctions shall be applied in proportion to the violation, the AIC's prior misconduct, and institutional behavior.

(10) Merged and Consecutive Sanctions: In the case of multiple rule violations, a Hearings Officer or adjudicator shall impose any sanctions for only the single most severe or most applicable rule violation found as charged in a single misconduct report, except as specifically allowed by OAR 291-105-0066(5)(b). The applicable sanction(s) for the remaining rule violations shall be deemed to have merged with the sanction(s) imposed for the single rule violation, unless consecutive sanctions are imposed as authorized in OAR 291-105-0066(5)(b).

(11) The Hearings Officer may consider input regarding appropriate sanction(s) from stakeholders involved with the AIC (for example, Behavioral Health Services, housing unit employees, counselor(s), Security Threat Management, etc.).

(12) Limitations on the Length of Confinement in Disciplinary Segregation for Rule Violations:

(a) No AIC shall be confined in disciplinary segregation for more than 180 consecutive days. On the 180th consecutive day of confinement in disciplinary segregation, an AIC shall be reassigned and ordered to other housing. Once reassigned and ordered to other housing, the AIC shall be subject to additional confinement in disciplinary segregation (up to a maximum of another 180 days) as a sanction for a new rule violation(s).

(b) Once an AIC has received the maximum sanction of 180 consecutive days, the Hearings Officer is not required to impose any additional disciplinary segregation sanction. The Hearings Officer is also not required to order additional loss of privileges sanctions to an AIC who has already received the maximum 180 days disciplinary segregation sanction, if the Hearings Officer determines that the sanction would not be meaningful to the AIC. Such action shall be made a part of the written record of the hearing.

(c) New violations committed while assigned to disciplinary segregation: If an AIC is ordered to serve an additional disciplinary segregation sanction for committing a new rule violation(s) while assigned to disciplinary segregation, the additional disciplinary segregation sanction may be served consecutively or concurrent, to any prior disciplinary segregation sanction(s), up to a maximum of 180 days.

(d) New violations committed while assigned to Intensive Management Unit (IMU) Status or Behavioral Health Unit (BHU) Status: An AIC who commits a new rule violation(s) while assigned to IMU status or to the BHU under OAR 291-048-280, shall not be ordered to serve a disciplinary segregation sanction for the violation(s). The AIC shall be subject to the range of additional sanctions described in OAR 291-105-0069 & OAR 291-105-0071, including but not limited to fines and loss of privileges.

(13) When an AIC has been assigned to disciplinary segregation as part of a disciplinary sanction that is considered a Level I or Level II violation and the AIC is temporarily transferred to the custody of a jurisdiction other than the Department or is released from prison, the AIC shall not be given credit for time served in disciplinary segregation while out of Department custody unless it is determined that the other jurisdiction maintained the AIC in a similarly restrictive status, in such cases the AIC shall be credited with the number of days held in disciplinary segregation type status.

(a) If the AIC is returned to the Department's custody within three years, the case will be reviewed by the functional unit manager or designee of the institution where the behavior occurred. The review will consider the number of days already served of the disciplinary segregation sanction and will determine if the remaining disciplinary segregation sanction or any portion of it will be served.

(b) If the AIC is returned to the Department's custody after three years, the remaining disciplinary segregation sanction will be considered served.

(14) In those instances where the functional unit manager or designee under the authority of OAR 291-011-0030(3), determines it is appropriate, the AIC may be released from disciplinary segregation.

(a) At that point, the current disciplinary segregation sanction will be deemed to have been completed and the remaining disciplinary segregation sanction will not be served as loss of privileges while the AIC resides in the general population.

(b) Any loss of privileges sanction ordered to be served upon the AIC's release from disciplinary segregation, shall begin at the time the AIC is actually released from disciplinary segregation.

(c) Notification of an early release from disciplinary segregation will be provided to appropriate sections for necessary action, including the Hearings Unit, where the early release will be entered into the disciplinary system.

(15) AICs who commit a rule violation may be subject to classification review in accordance with the Department of Corrections rule on Classification (OAR 291-104).

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075

History:

DOC 13-2021, temporary amend filed 10/13/2021, effective 10/13/2021 through 04/10/2022

DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020

DOC 4-2018, amend filed 05/04/2018, effective 05/04/2018

DOC 1-2018, temporary amend filed 01/24/2018, effective 01/24/2018 through 07/22/2018

DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 29-1986, f. & ef. 8-20-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0069

Additional Sanctions for Major Violations

The additional sanctions available to the Hearings Officer for major violations include, but are not limited to:

(1) Restitution: AICs shall be responsible for making full restitution for any damage or loss of property. In addition, AICs shall be financially responsible for all costs associated with or resulting from the violation. These shall include the costs of any drug urinalysis testing and other costs incurred by the Department of Corrections as a result of the AIC's actions. There is no limit on the amount of restitution which can be imposed. There must always be a factual basis in the record to support the restitution amount. The Hearings Officer may recommend a freeze on the AIC's trust account for the sum of the restitution as per OAR 291-158.

(2) Confiscation of property or contraband: If the property or contraband confiscated is in the AIC's trust account, the Hearings Officer may recommend a freeze on the AIC's trust account for the sum of the contraband, or the balance of the AIC's account, whichever is lower as per OAR 291-158.

(3) Reduction to Basic Visiting Status (non-contact): For any major violation, basic visiting status may be imposed up to a maximum of 180 days for any one violation. Any AIC found in violation of Distribution I or Possession of an Electronic Device, including attempt or conspiracy, within the past two years may be restricted to basic visits for each violation as follows:

(a) First violation: up to 1 year (365 days)

(b) Second violation: up to 2 years (730 days)

(c) Third or more violation(s): up to 4 years (1,460 days)

(A) Basic visiting sanctions shall be served upon return to general population housing.

(B) Basic visiting sanctions shall be served consecutively up to 7 years (2,555 days). No AIC shall serve more than 7 years (2,555 days) of consecutive basic visiting sanctions at any one time.

(C) Once a basic visiting sanction starts, it runs to conclusion regardless of the AIC's housing or custody status.

(4) Extra Work Detail: For a major violation, the limit on extra work detail is a maximum of 80 hours, to be completed within 30 days after the Final Order has been signed.

(5) Recommendation for no Favorable Future Consideration of Parole Release Date.

(6) Recommendation for an extension of parole release date in accordance with the rule on Prison Term Modification (OAR 291-097).

(7) Recommendation for reduction in earned time, statutory good time, or extra good time credits in accordance with the rule on Prison Term Modification (OAR 291-097).

(8) Other sanctions as deemed appropriate by the Hearings Officer and approved by the functional unit manager or designee.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030 & 423.075

History:

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DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 38-1987, f. & ef. 10-2-87

CD 29-1986, f. & ef. 8-20-86

CD 30-1985, f. & ef. 8-16-85

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0071

Additional Sanctions for Minor Violations

The additional sanctions available to the Hearings Officer or adjudicator for minor violations include, but are not limited to:

(1) Restitution: AICs shall be responsible for making full restitution for any damage or loss of property. In addition, AICs shall be financially responsible for all costs with or resulting from the misconduct. There is no limit on the amount of restitution which can be ordered. There must always be a documented factual basis in the record to support the restitution amount.

(2) Confiscation of property or contraband.

(3) Reduction to basic visiting status (non-contact): For a minor violation, basic visiting status may be imposed up to a maximum of 28 days for any one violation.

(4) Extra work detail: For a minor violation, the limit on extra work detail is a maximum of 40 hours, to be completed within 30 days after the hearing.

(5) Other sanctions as deemed appropriate by the Hearings Officer or adjudicator and approved by the functional unit manager or designee.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

[DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020](#)

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 9-1995, f. 5-23-95, cert. ef. 6-1-95

CD 6-1993, f. 3-10-93, cert. ef. 4-1-93

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

Reverted to CD 25-1982, f. & ef. 11-19-82

CD 8-1985(Temp), f. & ef. 6-19-85

CD 25-1982, f. & ef. 11-19-82

CD 13-1980, f. & ef. 4-15-80

CD 19-1979(Temp), f. & ef. 10-19-79

Deviation Sanctions for Major Violations

(1) Once the level of discipline has been determined, according to the disciplinary grid, the Hearings Officer or functional unit manager or designee may deviate, either upward or downward on major violations in formal hearings. This deviation, under no circumstances, may exceed 50% of the segregation sanction in the appropriate box on the grid. All deviated sanctions shall be supported by written "substantial reasons" outlining the mitigating or aggravating factors which support the deviation. All deviations shall be subject to review by the functional unit manager or designee.

(2) There may be only one deviation ordered for each sanction imposed. The Hearings Officer and functional unit manager or designee may not both order a separate deviation for one sanction.

(3) Deviations may only be ordered for major violations.

(4) Substantial reasons will be separated into mitigating and aggravating factors.

(5) The following list of mitigating and aggravating factors may be considered when determining substantial reasons for a deviation. Other factors not listed may also constitute substantial reasons for mitigation or aggravation.

(a) Mitigating factors:

(A) The AIC acted under duress or compulsion (not sufficient as a complete defense).

(B) The AIC's mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).

(C) The misconduct was principally accomplished by another and the AIC exhibited extreme caution or concern for the victim.

(D) The victim (if any) was an aggressor or participant in the behavior associated with the misconduct.

(E) The AIC played a minor or passive role in the misconduct.

(F) The AIC cooperated with the Department with respect to the current misconduct or any other misconduct by the AIC or other AICs.

(G) The degree of harm or loss attributed to the current misconduct was significantly less than typical for such misconduct.

(b) Aggravating factors:

(A) Threat of or actual violence toward a witness or victim.

(B) Persistent involvement in similar misconduct or repetitive assaults.

(C) Use of a weapon in the commission of the misconduct.

(D) Deliberate cruelty to victim.

(E) The AIC knew, or had reason to know, of the victim's particular vulnerability, such as, the age, disability, or ill health of victim, which increased the harm or threat of harm caused by the misconduct.

(F) The misconduct involved multiple victims or incidents.

(G) The misconduct was part of an organized operation.

(H) The misconduct resulted in a permanent injury to the victim.

(I) The degree of harm or loss attributed to the current violation was significantly greater than typical for such misconduct.

(J) The misconduct was motivated entirely, or in part, by the race, sex, color, religion, ethnicity, or national origin of the victim.

(K) The timing and location of the misconduct directly threatened the safety, security, or orderly operation of the facility significantly more than typical for such misconduct.

(c) No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that aspect is also used to impose discipline.

Statutory/Other Authority: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

History:

DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05
DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02
CD 16-1996, f. 11-13-96, cert. ef. 11-15-96
CD 9-1995, f. 5-23-95, cert. ef. 6-1-95
CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

291-105-0081

Adjustments to Final Orders

(1) Adjustments to Final Orders shall be initiated by an employee and documented using the Adjustment to Final Order form. Adjustments to Final Orders must pertain to a specific disciplinary case.

(2) In recommending adjustments to Final Orders, the designated institution committee will consider each individual AIC's particular circumstances and significant positive behavior change. Recommendations will be made by the designated institution committee to the functional unit manager or designee to make adjustments to the Final Orders regarding fines, basic visiting, earned time, statutory good time, or extra good time credits.

(a) Generally, the AIC should have served/completed at least 50% of the sanction imposed and demonstrated a significant positive behavior change before an adjustment to that sanction would be considered. If the recommendation for the adjustment would be more than 50%, the recommendation to the functional unit manager or designee shall include factors that justify more than a 50% adjustment.

(b) Generally, a restoration of earned time, statutory good time, or extra good time credits should not cause an AIC's release date to move within 60 days of the date of adjustment. If the restoration of earned time, statutory good time, or extra good time credits should cause an AIC's release date to move within 60 days of the date of adjustment, the recommendation for restoration must also go through the Department's Release Services Manager, who must also approve the restoration of retracted time.

(3) The functional unit manager or designee will approve, deny, or amend the recommendations of the designated institution committee.

(4) Copies of the approved Adjustment to Final Order will be provided to appropriate sections for necessary action, including the Hearings section, where the amendment will be entered into the disciplinary system.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

[DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020](#)

[DOC 4-2018, amend filed 05/04/2018, effective 05/04/2018](#)

[DOC 1-2018, temporary amend filed 01/24/2018, effective 01/24/2018 through 07/22/2018](#)

DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0085

Administrative Review

(1) An AIC may direct concerns or issues regarding a hearing to the functional unit manager or designee as soon as possible after the conclusion of the hearing. Upon receipt of the Preliminary Order, the functional unit manager or designee will: approve the order, amend the order, dismiss the order, or reopen to consider new evidence not submitted in the original hearing.

(2) Disciplinary actions subject to review by the Inspector General or designee are:

(a) Level I or Level II rule violations; or

(b) Recommendations for extension of the AIC's parole release date, retraction of earned time, statutory good time, or extra good time credits; or

(c) Deviations from the disciplinary segregation sanction listed on the grid; or

(d) Any case deemed appropriate by the Inspector General or designee.

(3) Petitions for administrative review must be filed by the AIC and received by the Inspector General within 60 calendar days after the preliminary order becomes the Final Order under OAR 291-105-0031. Filing a petition for administrative review shall not stay the imposition of a sanction.

(4) An AIC shall request an administrative review by completing the Department approved Petition for Administrative Review form and submitting it to the Inspector General. Petition for Administrative Review forms shall minimally state the following:

(a) The date the hearing was completed and the case number (for example, 1503 EOCI 0001 EOCI 01).

(b) The rule violation(s) which the AIC was found in violation or sanction(s) which meets the review criteria listed in (2) above.

(c) Sufficient information to show why there was not substantial compliance with the OAR 291-105, that the finding was not based upon a preponderance of the evidence, or that the sanction(s) imposed was not in accordance with provisions set forth in OAR 291-105.

(d) An AIC who attempts to file for an administrative review by use of any written communication other than the approved Petition for Administrative Review form shall have the communication returned with instructions that the AIC resubmit the request on the proper form. The AIC will have 14 days from the date the communication is returned or 60 calendar days after the Final Order is signed, whichever is longer, to make the request on the approved form.

(e) Duplicate petitions for the same case will not be considered or responded to.

(f) A separate Petition for Administrative Review must be filed for each case number for which an administrative review is requested.

(5) Upon receipt of the Petition for Administrative Review, the Inspector General or designee shall review the case to determine:

(a) Was there substantial compliance with OAR 291-105?

(b) Was the finding based upon a preponderance of evidence? and

(c) Was the sanction imposed in accordance with the provisions set forth in OAR 291-105?

(6) If the Inspector General or designee determines there was substantial compliance with OAR 291-105, the finding was based on a preponderance of evidence, and the sanction(s) imposed were in accordance with the provisions set forth in OAR 291-105, the AIC will be informed. The Inspector General or designee may order the case reopened to address technical and clerical errors that do not substantially prejudice the AIC.

(7) If the Inspector General or designee determines there was not substantial compliance with OAR 291-105, the finding was not based on a preponderance of the evidence, or the sanction(s) imposed were not in accordance with provisions set forth in OAR 291-105, the case shall be reopened to address non-compliance. The order may be dismissed or vacated, in whole or in part, by the Inspector General or designee.

(8) Upon receipt of the order to reopen a case, the Hearings Officer shall reopen and complete the case and notify the Inspector General or designee of completion within 10 business days. If completing the case takes longer than 10 business days, the reason for delay shall be made part of the record.

(9) Upon completing the case, the Hearings Officer shall prepare and issue an updated preliminary order containing the Hearings Officer's finding of fact and conclusion(s) of law per OAR 291-105-0031.

(10) The Inspector General or designee shall provide the AIC with a written response to the Petition for Administrative Review within 60 days from the date it is received. Documentation submitted to the Inspector General shall not be returned to the AIC. Requests for updates during the 60-day period will not receive a response.

(11) Petitions that are outside the criteria listed in OAR 291-105-0085 shall be returned.

(12) Cases that are not eligible for review by the Inspector General or designee are subject to review by the functional unit manager or designee, if requested by the AIC. If the functional unit manager or designee determines the case was not in compliance with OAR 291-105, the Inspector General or designee will be contacted to request the case be reopened.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

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DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

CD 16-1996, f. 11-13-96, cert. ef. 11-15-96

CD 8-1992, f. 3-27-92, cert. ef. 4-15-92

CD 5-1989, f. & cert. ef. 4-21-89
CD 38-1987, f. & ef. 10-2-87
CD 32-1987(Temp), f. & ef. 8-5-87
CD 29-1986, f. & ef. 8-20-86
CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86
CD 30-1985, f. & ef. 8-16-85
CD 8-1985(Temp), f. & ef. 6-19-85
CD 25-1982, f. & ef. 11-19-82
CD 13-1980, f. & ef. 4-15-80
CD 19-1979(Temp), f. & ef. 10-19-79

291-105-0100

Vacating or Withdrawing the Final Order in the Interest of Justice

The Inspector General, Assistant Director for Operations, or their designees may, in the interest of justice, vacate all or part of a final disciplinary order or withdraw the order and direct that a disciplinary hearing be reopened for consideration of new evidence.

Statutory/Other Authority: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Statutes/Other Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

History:

[DOC 25-2020, amend filed 12/14/2020, effective 12/15/2020](#)

DOC 24-2011, f. 12-2-11, cert. ef. 12-7-11

DOC 11-2011(Temp), f. & cert. ef. 6-10-11 thru 12-7-11

DOC 14-2008, f. & cert. ef. 6-2-08

DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99

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**Exhibit 1
MAJOR VIOLATION GRID**

	#	Rule	
I	2.05 1.01 2.03 4.15 4.05 4.10 1.15 4.20 2.15 2.40 4.33 4.25 4.30 4.35 2.20 2.01 4.45	AIC Assault I Arson Assault of the Member of the Public Compromising an Employee Disturbance Distribution I Drug Possession Escape I Extortion I Hostage Taking Possession of an Electronic Device Possession of an Escape Device Possession of a Weapon Racketeering Sexual Assault/Abuse Staff Assault I Unauthorized Organization I	DSU: 120 days max LOP: 28 days max Fine: \$200 max
II	2.06 1.10 4.11 4.21 2.16 4.04 2.25 2.02	AIC Assault II Contraband I Distribution II Escape II Extortion II Leave Violation Sexual Harassment Staff Assault II	DSU: 60 days max LOP: 28 days max Fine: \$100 max
III	2.07 4.01 2.10 2.30 1.05 4.40 4.46 1.25	AIC Assault III Disobedience of an Order I Disrespect I Non-Assaultive Sexual Activity Property I Unauthorized Area I Unauthorized Organization II Unauthorized Use of Info Systems I	DSU: 28 days max LOP: 28 days max Fine: \$75 max
IV	2.45 1.11 4.02 2.11 3.01 3.05 3.15 3.10 1.20 1.26	Body Modification Contraband II Disobedience of an Order II Disrespect II False Information to Employees I Forgery Fraud Gambling Possession of Body Modification Par. Unauthorized Use of Info Systems II	DSU: 14 days max LOP: 14 days max Fine: \$50 max

**Exhibit 2
MINOR VIOLATION GRID**

	#	Rule	
V	4.03 2.12 1.06	Disobedience III Disrespect III Property II	LOP: 10 days max Fine: \$25 max
VI	1.12 3.02 4.41	Contraband III False Information to Employees II Unauthorized Area II	LOP: 7 days max Fine: \$15 max

CERTIFICATE OF FILING & SERVICE

I certify that on December 21, 2021, I filed this PETITION FOR JUDICIAL DETERMINATION OF VALIDITY OF RULES ADOPTED BY THE OREGON DEPARTMENT OF CORRECTIONS (“PETITION) with the State Court Administrator through the Court of Appeals’ eFiling system.

I further certify that on December 21, 2021, I caused true and correct copies of this PETITION to be served on the following parties at the following addresses via U.S. First-Class, Certified Mail:

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