

Sixth District Department of Correctional Services POLICY	Issue Date 11/01/91	Effective Date 08/15/17	Policy Number 2523-17
Subject <b>CLASSIFICATION ON VIOLATIONS, DISCIPLINARY PROCESS, APPEALS, &amp; CONFIDENTIAL INFORMATION</b>		Review Month December	Author 0135/0572/0655 (DGA/BMU/DRO)
Rescinds 1323-02; 1324-02; 1326-91; 1327-14; 1423-01; 1424-10; 1426-93; 1427-14; 1523-91; 1524-91; 1526-91; 1527-14		References 903A, Code of Iowa; WR/OWI-38	

**PURPOSE:**

To determine if facility regulations have been violated and to impose appropriate sanctions to hold residents accountable for violations of facility rules.

**POLICY:**

Residents who violate facility regulations are held accountable for such behavior, in accordance with applicable due process safeguards. Staff may consider documentary evidence or testimony not reviewed in the presence of the resident during disciplinary proceedings. Staff imposes appropriate disciplinary sanctions to hold residents accountable for violations of facility rules and promote communication of program expectations. Residents may appeal the findings, process or outcomes of the disciplinary process.

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**DEFINITION:**

1. Disciplinary Committee – May consist of one or more impartial decision maker(s).
2. Disciplinary Hearing - Formal administrative proceeding conducted by staff following the issuance of a disciplinary report.
3. Extra House Duty - Specified extra duty assigned by staff and performed by residents which occur on facility premises.
4. Restriction - Disciplinary action which prohibits a resident from certain privileges in the facility or in level system.
5. Warning - Reprimand imposed by staff for violations which are technical in nature and/or where no intent to violate the rule is indicated. Generally, issued to clarify facility rules.
6. Appeal - Written statement of resident disagreement with findings or procedures of the residential facility disciplinary hearing which occur during the course of the disciplinary process.
7. Administrative Law Judge- A person appointed by the Director of the IDOC in accordance with **Iowa Code 903A**. The Administrative Law Judge determines whether any earned time/good time days are to be forfeited as a result of a rule violation by an offender.
8. Earned Time/Good Time Loss - The terms earned time and good time refer to the reduction in time credits given to offenders under the Iowa Code, as amended, and any other current or prior section of the Iowa Code that specifies the reduction in time credits that apply to a particular offender's sentence. The use of one of those terms in this policy or in any disciplinary document includes one or both of those terms as appropriate.
9. Major violation – serious infraction of program regulations; the following are major violations:
  - A. Illegal behavior – When a resident plans, participates, assists, condones, or encourages others to violate a local, state, or federal law, whether the offense is committed inside or outside the facility and whether the offense actually occurs.
  - B. Verbal Abuse – When the resident subjects another person to abusive or defamatory insolent or disrespectful language, or remarks, whether written or oral, or abusive, defamatory, insolent or disrespectful gestures.
  - C. Threats/Intimidation: - When the resident communicates a determination or intent to injure another person or to commit a crime of violence or an unlawful act dangerous to human life, and the probable consequence of such threat or threats (whether or not such consequence, in fact, occurs) is:

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**DEFINITION:** (continued)

- 1) To place another person in fear of bodily injury; or
  - 2) To cause damage to property; or
  - 3) To take place in the future after released from confinement.
- D. Disobeying a Lawful Order/Directive – When a resident refuses to obey an order (written or verbal) given by a person in authority, that is reasonable in nature, or attempts to circumvent established procedures.
- E. False Statements – When the resident knowingly makes a false statement whether or not under oath or affirmation, including, but not limited to, dishonesty, deception, failure to disclose, cheating, etc.
- F. Unauthorized Possession/Exchange – When a resident has in possession on their person, in the resident’s living area, locker, or immediate place of work or other program assignment, or receives from, or gives to another resident, any item delineated as unauthorized or contraband by District policy.
- G. Possession of Dangerous Contraband – When the resident possesses, uses, or has under their control or custody, an item defined as dangerous contraband by District policy.
- H. Possession of Drugs/Intoxicants – When a resident is in possession or has been in possession of any unauthorized drug or intoxicant. This includes synthetic substances. It further includes paraphernalia that is used in relationship to drug/intoxicant use, sale, positive urinalysis, or positive blood test. The offender must provide a testable sample within two (2) hours of the request. Failure to do so constitutes a violation of this rule. A resident may also be found to be in possession of a drug or intoxicant for which there is no readily available urinalysis testing if the offender displays symptoms or actions that are consistent with intoxication and/or fails any field sobriety tests administered by the residential staff or law enforcement personnel.
- I. Possession/Use of Alcohol - When a resident is in possession of or any other has consumed alcohol or product containing alcohol. This includes results from any manner of testing but not limited to positive breath, alco-sensor test result or admission of use. Refusal to submit to a test for alcohol constitutes a violation of this rule. Residents are not allowed to enter establishments where alcohol is served without prior staff permission.
- J. Abuse of Medication – When a resident fails to follow the prescription or package directions of any medications. A resident is also considered in violation of this rule when they give their medication to another person. Medication is turned in to staff per District policy.

**DEFINITION:** (continued)

- K. Escape – When a resident is absent from the residential facility without proper authorization for over two (2) hours, or there is probable cause to believe the resident has taken flight or is involved in a criminal offense.
- L. Out of Place of Assignment – When a resident is not at their designated place of assignment (residential facility, work place, treatment program, furlough, or other authorized leave) and/or fails to use the most direct route or method of transportation. Offenders are responsible for promptly notifying the residential facility staff of any proposed changes in their work schedule or furlough plan must receive staff approval of all changes.
- M. Failing to Secure/Maintain Employment – When a resident fails to actively seek, secure and maintain full-time employment as approved by staff. When an offender jeopardizes employment, quits without staff approval, or is terminated from their job.
- N. Sexual Misconduct – When a resident proposes or engages in sexual contact with another person on residential facility property (or premises) or engages in sexual contact at any location with a person who is also a resident of a correctional residential facility. Indecent exposure also constitutes sexual misconduct. This includes, but is not limited to, offensive exposure of the genitals or pubic area in a manner to be seen by another person; gesture of a sexual nature to cause embarrassment or to be offensive to another person. Sexual misconduct may be written as well as verbal communication. Offenders are not allowed to have sexual contact with each other while participating in the program. This includes while on pass or furlough.
- O. Unauthorized Use of a Motor Vehicle – When a resident uses a motor vehicle as a means of transportation, whether as a driver or passenger, without staff permission.
- P. Unauthorized Possession of Money, Cashing Paycheck, Unauthorized Accounts, debit cards or Purchases – When a resident cashes a paycheck, fails to turn in all moneys to staff, obtains a checking account, savings account, credit card, charge account, debit card, pay in advance or any payroll deductions for personal use without staff approval or control. Residents are also in violation when they make purchases, or incur debts, without staff approval. All money, pay cards, debit cards are turned into residential facility staff and all expenditures must be done through the residential facility budgeting process and with prior staff approval.
- Q. Theft – When a resident takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the rightful owner of the use or benefit of the property.

**DEFINITION:** (continued)

- R. Bartering/Selling Goods – When a resident barters, loans, gives, accepts, sells or buys things of value, enters into financial agreements or contracts, engages in a business, including, but not limited to, clothing, personal items, furnishings, etc., transfers or attempts to transfer or accepts transfer of funds from one offender to another offender; or agrees to perform or receive services or gifts, for anything of value without staff approval.
- S. Gambling, Debts, etc. – When a resident plays any game for things of value or wagers anything on the outcome of an event or game; or incurs an unauthorized debt (i.e. cash advances, work debts, etc.).
- T. Safety/Sanitation Violation – When a resident engages in any practice contrary to written or verbal safety instructions; or is unsanitary/untidy in their personal hygiene, living quarters, common areas of the residential facility, or smokes in an unauthorized area.
- U. Failure to Comply with Special Conditions or Participate in Treatment – When a resident fails to be involved in a required educational or treatment program, which includes failure to follow through with any special condition imposed by staff or to fully participate in treatment or educational activities. This includes failure to comply with a case plan.
- V. Tampering with Locks or Security items – When a resident locks, unlocks or alters a locking device, fire alarm system, or security item without authorization. This includes any unauthorized possession of a key or key pattern and electronic monitoring devices.
- W. Damage to Property – When resident intentionally or negligently causes damage to property of another person, or of the state, such as tampering with electronic monitoring devices, mechanical, or plumbing devices or fixtures. This also includes damage to property resulting from other misconduct (i.e. fighting, horseplay, theft, disruptive conduct, etc.).
- X. Fighting – When a resident engages in a physical altercation including the exchange of blows, shoves, kicks, offensive physical contact, or, if horse playing, the physical contact need not be in anger.
- Y. Assault – When a resident intentionally causes or threatens to cause injury to another person or applies any physical force or offensive substance (such as feces, urine, saliva, mucous, or any other item) against any person regardless of whether injury occurs, to include sexual assault.
- Z. Violation of a Condition of Leave or Furlough – When a resident fails to comply with any condition of a leave or furlough from the residential facility.

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**DEFINITION:** (continued)

- AA. Unauthorized Group/Gang Conduct – When a resident displays or promotes involvement in an unauthorized group/gang through any of the following means: writing, words, physical appearance, hand signs, symbols, photographs, possession of group/gang-related materials or association with others known to be affiliated with an unauthorized group/gang.
  - BB. Obstructive/Disruptive Conduct – When a resident interferes with staff duties, or conducts themselves in a manner that disrupts or interferes with the secure and orderly running of the facility.
  - CC. Habitual Minor Resident – When a resident is repeatedly found in violation of minor/medium violations. The number and types of offenses, and prescribed time frames may be reflected in District policy.
  - DD. Attempt or Complicity – When a resident attempts to commit any of the listed offenses or is involved with others who are committing or attempting to commit any of the listed offenses.
2. Medium or Minor Violations - Less serious violations of facility regulations or infractions where there is no apparent intent to violate a rule and/or the scope of the violation is less serious. Unless determined as Major, the violation is classified as Medium or Minor.

**PROCEDURE:**

- 1. Disciplinary Report Procedure:
  - A. Staff takes action after becoming aware that a violation may have occurred by completing a Disciplinary Report in ICON.
  - B. If the violations are Major violations the Residential Discipline-Formal Report is completed.
  - C. If the violation(s) are Minor violation(s) the Residential Discipline-Informal Report is completed.
  - D. The report is completed by the staff who observes/becomes aware of the incident.
  - E. Information to be included in Section I and II of the Residential Discipline-Formal Report is as follows.
    - 1) Report Date;
    - 2) Name of the resident(s) involved;
    - 3) Alleged rules or laws violated;
    - 4) Date(s) and time(s) the incidents allegedly occurred;

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**PROCEDURE:** (continued)

- 5) Location(s) where the incidents allegedly occurred;
- 6) A complete description of the incidents providing a summary of all pertinent details which includes a factual account - using the formula of: who, what, when, where, and how;
- 7) Any immediate action taken;
- 8) Any indication if confidential information is involved;
- 9) The name(s), if available, of any witnesses to the incidents;
- 10) The disposition of any evidence involved (chain of evidence, where the evidence is being held, etc.);
- 11) Name of the reporting staff/staff recording the incident;
- 12) Name of the staff serving notice (do not enter until notice has been served on the resident).

NOTE: When the information could jeopardize the revealing source of confidential information, it is excluded from the report. The Confidential Information form (2523A) is to be utilized.

2. One Disciplinary Report is written for each incident, unless there is a reasonable break in time between the acts of violation.
3. Staff provides official notice of the report by completing Section II, Residential Discipline-Formal Report and provides a copy to the resident within twenty-four (24) hours of the report being written. For residents who have escaped and are not available, notice is provided after the resident's return to local custody.
4. The resident may waive, in writing the mandatory twenty-four hour notice in Section III of the Residential Discipline-Formal Report. The resident signs the waiver. The waiver is scanned, time and date included, in the Residential Attachment in the ICON Discipline module.
5. The Resident may waive, in writing, the right to be present at the hearing and by doing so they waive their right to appeal, in Section III, of the Residential Discipline-Formal Report. Scan signed waiver, with date, time, and formal report, under Residential Attachment, the ICON discipline module.
6. Staff explains resident hearing entitlements/rights and legal consequences of information in the hearing, indicated on the form (Section III).
7. Investigation:
  - A. Staff ensures that investigations are conducted as soon as practicable after the disciplinary notice has been served. The investigation is done by staff not involved in the incident as either a witness or reporting staff and documented in Section IV, as follows:

**PROCEDURE:** (continued)

- 1) Written statements may be obtained from witnesses:
    - a. If the investigator determines the number of witnesses given by the resident substantially burdens the investigatory process and that certain witness statements are cumulative or irrelevant, the investigator may limit the number interviewed provided that a written record states the reason for same. The investigator encourages the resident to prioritize witnesses in these situations.
    - b. Failure by the resident to name witnesses to the investigator results in no further opportunity to have the witness interviewed unless the hearing committee agrees of a legitimate need.
  - 2) The investigator interviews and documents the preceding in Section IV, Resident Discipline-Formal Report.
  - 3) If the resident refuses to be interviewed, the investigator documents this in Section IV;
  - 4) If legal charges are pending, the investigator reiterates the right to remain silent.
  - 5) The investigator also reviews all information in the report and from other sources to ensure the Hearing Committee has all necessary information to conduct the hearing. This typically occurs in cases of Escape when details pertaining to apprehension are obtained after the report incident and prior to the investigation. Staff conducting the disciplinary report investigations often need to interview other parties to the incident. This often includes taking statements from community members, employers, service providers, etc.
  - 6) The Disciplinary Hearing Committee attempts to hear the report with the resident after twenty-four (24) hours of the investigation. If there is no written waiver of the resident's presence at the hearing.
8. Disciplinary Hearing:
- A. Hearings are conducted within seven (7) days (M-F, exclude holidays) of the resident receiving notice unless:
    - 1) The resident can show cause or need for further investigation;
    - 2) The disciplinary authority continues the hearing for further investigation or other causes, including workload issues.
    - 3) The resident is not available for the hearing.

**PROCEDURE:** (continued)

- B. When the hearing is continued the resident is advised in writing of the reason(s) for the continuance within seven (7) working days.
  - C. The hearing is conducted by one (1) or two (2) staff who have not been directly involved in the incident as a witness, investigator or reporting staff.
  - D. The hearing process ensures the following standards are enforced regarding witness testimony during the hearing:
    - 1) The resident has no right to confront or cross-examine witnesses;
    - 2) Staff is not obligated to interview a witness or consider a witness statement unless the investigator was previously notified by the resident in the allotted time frame. The resident is entitled to at least twenty-four (24) hours from the time the report is served to provide the names of witnesses to the investigator. Seeing a witness in person is a decision of the Disciplinary Hearing Committee. If it is determined there is a no need, the reason is documented.
    - 3) If a witness is approved, staff may interview the witness or consider a witness statement;
    - 4) If calling a witness threatens the safety of other residents or order of the facility, be detrimental to correctional goals, or if the resident attempts to call more than one (1) witness in person and additional witnesses unduly burdens the hearing process without significantly promoting the resident's defense, staff may refuse to allow the calling of the witnesses.
    - 5) Reasons for refusing to allow a witness or accept a witness statement are documented in Section V of the Residential Discipline-Formal Report.
  - E. Resident does not have the right to legal counsel. Staff assistance is allowed to residents when the complexity of the issue makes it unlikely the resident is able to collect and present evidence necessary for an adequate comprehension of the case.
9. Hearing Procedures:
- A. Staff conducts the hearing as follows:
    - 1) Resident is called (unless appearance waived), read charges and rule(s) cited;
    - 2) All sections are reviewed to ensure due process compliance. If not, the hearing is suspended, the report is remanded to the Residential Supervisor for correction and the resident notified.

**PROCEDURE:** (continued)

- 3) Determine if continuance for good cause is necessary;
  - 4) Review, with the resident, the evidence available. Confidential information is not reviewed with the resident. If the resident previously gave a statement to the investigating officer, the statement is reviewed.
  - 5) The resident is excused if deliberation is needed to determine whether or not the alleged rule violations occurred.
  - 6) Review all pertinent evidence. The committee may draw an adverse inference if the resident chooses to remain silent.
  - 7) Staff apply standard program rules regarding resident conduct during the hearing. If the resident becomes unruly during the hearing and the hearing cannot be continued, hearing staff treats such conduct as a refusal to appear. Staff completes the hearing without the resident present.
  - 8) If staff determines due process or procedural errors during any aspect of the disciplinary process (writing, investigating, hearing), the process is stopped and correction made. If the disciplinary notice (Section I) is not accurate, complete or concise, the notice is corrected and reissued by the reporting staff.
- B. Following the hearing, staff completes Section V, which includes where applicable:
- 1) Rule(s) not violated;
  - 2) Rules violated and type of violation (non-major or major);
  - 3) A statement of facts found to support the determination of the rule violation (who, what, when and how of the offense);
  - 4) An indication of what the findings are based upon (staff report, resident statement of guilt, etc.);
  - 5) Sanctions imposed;
  - 6) If resident is found not guilty of all alleged violation(s), the incident is inactivated from the resident's record.
  - 7) Dismissal of alleged individual rule violations constituting only part of the entire incident does not require inactivation.

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**PROCEDURE:** (continued)

- 8) Hearing Committee notifies the resident of the right to appeal. If the resident wishes to appeal the sanction is imposed and not delayed because of the appeal process. Resident is provided with a written notification of time loss (in the case of work release or OWI 321J) and an opportunity to appeal the decision of the Administrative Law Judge to the OSO.
  - 9) In cases where personal or facility safety may be jeopardized by including certain elements of evidence in the statement to the resident, these items are deleted. Staff documents that certain omissions have been made. Refer to Confidential Information section, procedure 14.
- C. Sanctions are applied progressively and include, but are not limited to:
- 1) Warning/Reprimand;
  - 2) Written assignment;
  - 3) Special conditions added to case plan, Work Release plan (alcohol treatment, drug treatment, marital counseling, etc.);
  - 4) Placement in any phase of the level system;
  - 5) Extra house duty;
  - 6) Loss of privileges;
  - 7) Referral to prosecuting attorney for violation of the law;
  - 8) Recommend work release be terminated;
  - 9) Furlough restriction;
  - 10) Room Curfew.
- D. Staff may suspend all/part of the sanction as follows:
- 1) Time frames are specified not to exceed sixty (60) days;
  - 2) Conditions of the suspension (duration and reasons for invoking penalty) are documented;
  - 3) The suspension may be invoked when the terms of the suspension are violated.
  - 4) Residents (work release or OWI 321J) do not lose earned time/good time. However the Administrative Law Judge may enter a suspended amount of earned time/good time.
- E. Following the hearing, staff informs the resident of the decision. Sanctions are implemented regardless of whether an appeal is filed.

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**PROCEDURE:** (continued)

- F. The Residential Supervisor reviews the disciplinary action. Corrections are made of any policy or due process error. A re-hearing may be ordered.
10. Confidential Information:
- A. Confidential information may be used only after staff has determined it is reliable.
  - B. Information is considered confidential when disclosure to the resident would create a substantial risk of harm to the informant or another person, or would jeopardize the security of a residential facility.
  - C. Information remains confidential when provided by a community agency or law enforcement (police reports, County Attorney's True Information, etc.) when the release of information would be in violation of the agencies policy.
  - D. Whenever confidential information is used, the staff prepares a summary of the confidential information on Confidential Information form (2523A), including:
    - 1) Name of the informant and relationship to the incident;
    - 2) The reason the information is believed credible;
    - 3) If possible, any information that corroborates the confidential information;
    - 4) An indication why the information is being kept from the offender.
  - E. Where confidential information is excluded from the Disciplinary Report in ICON, said notice includes:
    - 1) A general description of the incident and the rule(s) violated;
    - 2) The general time and place of the incident;
    - 3) The individual(s) involved in the incident, if not confidential;
  - F. When the above procedures are followed the information is documented on the Confidential Information form.
11. Minor Violation:
- A. Staff takes the following steps after discovering the resident has committed a non-major violation:

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**PROCEDURE:** (continued)

- 1) Reviews the Residential Disciplinary Sanction Report in ICON and determines if previous violations of the same nature have occurred. A Residential Formal Disciplinary Report may be written if previous minor violations have been cited.
- 2) Completes section I and II in the Residential Discipline-Informal as outlined in SECTION 3-E.
- 3) Imposes the appropriate sanction commensurate with the violation up to a maximum of two (2) day restriction (or equivalent) and documents in Residential Discipline-Informal.
- 4) Verbally informs the resident of the sanction imposed and reason for same. If the resident is unavailable, document this in the Generic Notes allowing the next shift to inform the resident.

12. Appeals:

- A. The resident completes the Appeal form (116A - GRHC/LANC; HH) furnished by staff.
- B. The resident submits the completed Appeal to staff, in writing, within twenty-four (24) hours of the time the disciplinary hearing ended. If a resident fails to meet the time deadline, just cause needs to be shown for the delay and why the appeal should not be denied.
- C. The staff member who receives the Appeal, initials, dates, and times the form and routes to the Residential Supervisor who supervises Residential Officers.
- D. The Residential Supervisor provides a written response to the resident within ten (10) working days of receipt of the Appeal. If further investigation is needed the resident is notified. selecting from the following options:
  - 1) Affirm the Appeal;
  - 2) Deny the Appeal;
  - 3) Order a re-hearing;
  - 4) Modify the hearing decision;
  - 5) Defer a response pending further investigation;
  - 6) Impose sanctions that the Disciplinary Committee failed to do, that are clearly spelled out in policy for a particular violation.

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**PROCEDURE:** (continued)

13. If not satisfied, the resident may further Appeal to the Residential Division Manager. The Appeal must be in writing and submitted within twenty-four (24) hours of receiving the first Appeal response.
14. If the nature of the appeal involves the Residential Supervisor or Residential Division Manager, the Appeal may be forwarded to the Assistant Director.
15. In addition to, or after having exhausted all Facility/Departmental or State Appeal/Grievance procedures, residents may contact the Ombudsman's Office for assistance in resolving problems and complaints at:

Office of Ombudsman  
1112 E. Grand Avenue  
Des Moines, IA 50319  
515-281-3592 or toll-free at 1-888-426-6283

BY ORDER OF:

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Bruce Vander Sanden, District Director