	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: FEB 04 2010	POLICY NO.: COR.13.03
	CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): COR.13.03 & 10/01/02	
	SUBJECT: ADJUSTMENT PROCEDURES GOVERNING SERIOUS MISCONDUCT VIOLATIONS AND THE ADJUSTMENT OF MINOR MISCONDUCT VIOLATIONS		Page 1 of 18

1.0 PURPOSE

To provide guidelines and standard of procedures for adjustment of misconducts and rule/directive violations.

2.0 REFERENCES AND DEFINITIONS

.1 References

- a. Section 26-14.6 Department of Public Safety (PSD); and Section 353C-2 of Hawaii Revised Statutes (HRS), Director of Public Safety, Powers and Duties.
- b. Standards for Adult Correctional Institutions (4th Edition), American Correctional Association (ACA), Part 3, Section C, Rules and Discipline,
- c. Department Policies and Procedures, COR.10.1E.09, Segregated Inmates.

.2 Definitions

- a. Adjustment Committee: A committee composed of three staff members who are not biased against the inmate/detainee. Facilities with less than four hundred (400) inmates/detainees (small facility) may designate one person to act in the capacity of the adjustment committee.
- b. Administrative Segregation: A non-punitive form of segregation from the general population authorized by the Warden or his designee, when the continued presence of the inmate in the general population would pose a serious threat to property, self, staff, other inmates, the security or orderly running of the facility or the community.
- c. Counsel Substitute: A staff member who did not actively participate in the process by which the inmate was brought before the committee. Counsel substitute is necessary when it is apparent that an inmate is not capable (i.e. mentally deficient, unable to read or write, deaf, blind, etc.) of collecting and presenting evidence effectively on his or her behalf. Pursuant to departmental policy COR.12.08.
- d. Directives: Departmental, facility, and residency unit policies, procedures, orders, memoranda, and other administrative directions for conduct and process. Often informally called "rules." Rules are more correctly defined in 2.2.f below.

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m. Violation or Misconduct: Breaking, or failing to follow, laws, rules, policies and procedures, or other directives, whether willfully or unintentionally, knowingly or unknowingly.

3.0 POLICY

- .1 Behavior, which is, or appears to be a violation or misconduct, must be brought to the attention of the appropriate authorities. Any employee who witnesses, or has a reasonable belief of, an occurrence of a violation or misconduct shall prepare an Incident Report Form, PSD 8214 (see attachment).
- .2 Nothing in this policy and procedure relieves staff members of their responsibility to direct and correct day-to-day behavior of inmate/detainee in the attempt to prevent the occurrence of misconduct.
- .3 The Department shall have a system of inmate discipline that serves to protect the public, inmates, and staff, and maintains order in the facility, through the impartial application of a set of rules and regulations and a hearing procedure the incorporates due process requirements.
- .4 The adjustment process tailors sanctions for a specific rule violation to the inmate's institutional adjustment and recommended program needs. The goal is to maintain facility order and ensure respect for the rules and the rights of others.
- .5 To ensure the integrity of the adjustment process and the constitutional right of due process, offenders charged with rule violations shall receive a hearing within a reasonable frame time.

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

- .1 The following is a list of misconduct violations. The violations can be categorized as serious misconducts and minor violations. In the event that an inmate is charged with a minor violation concurrently with a serious misconduct, then the serious misconduct adjustment procedures shall be initiated.
- .2 Greatest Misconduct Violations (6).
 - a. 6 (1) Sexual Assault.
 - 6 (2) Killing.
 - 6 (3) Assaulting any person, with or without a dangerous instrument, causing bodily injury.

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- 1) Disciplinary segregation up to thirty days.
- 2) Any other sanctions other than disciplinary segregation.

.4 Moderate Misconduct Violations (8).

- a. 8 (1) Engaging in sexual acts.
- 8 (2) Making sexual proposals or threats to another.
- 8 (3) Indecent exposure.
- 8 (4) Wearing a disguise or mask.
- 8 (5) Destroying, altering or damaging government property or the property of another person resulting in damages between \$50-\$499.99.
- 8 (6) Theft.
- 8 (7) Misuse of authorized medication.
- 8 (8) Possession of unauthorized money or currency.
- 8 (9) Loaning of property or anything of value for profit or increased return.
- 8 (10) Possession of anything not authorized for retention or receipt by the inmate/detainee and not issued to the inmate/detainee through regular institutional channels.
- 8 (11) Refusing to obey an order of any staff member, which may include violations in the low moderate category.
- 8 (12) Failing to perform work as instructed by a staff member.
- 8 (13) Lying or providing false statements, information, or documents to a staff member, government official, or member of the public.
- 8 (14) Counterfeiting, or unauthorized reproduction of any document, article, or identification, money, security, or official paper.
- 8 (15) Participating in an unauthorized meeting or gathering.
- 8 (16) Being in an unauthorized area.
- 8 (17) Failing to stand count or interfering with the taking of count.
- 8 (18) Gambling, preparing or conducting a gambling pool, or possession of gambling paraphernalia.
- 8 (19) Unauthorized contacts with the public or other inmates.
- 8 (20) Giving money or anything of value to or accepting money or anything of value from an inmate/detainee, a member of the inmate's/detainee's family or friend.
- 8 (21) Smoking where prohibited.
- 8 (22) Tattooing or self-mutilation or possession of tattooing tool/implements.
- 8 (23) Harassment of employees.
- 8 (24) Any lesser and reasonably included offense of paragraphs (1) to (23).
- 8 (25) Any other criminal acts which the Hawaii Penal Code classifies as a class C felony and misdemeanor.

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- 2) The committee may deny confrontation and cross examination and identification of adverse witnesses if in its judgment such a confrontation would:
 - (A) Subject the witness to potential reprisal;
 - (B) Jeopardize the security or good government of the facility;
 - (C) Be unduly hazardous to the facility's safety or correctional goals; or
 - (D) Otherwise reasonably appear to be impractical or unwarranted.

- 3) If confrontation and cross-examination and identification of adverse witnesses are denied, the committee shall enter it in their written disposition and provide an explanation for the denial to the inmate.

- 4) The inmate may be given an oral or written summary of the confidential evidence against the inmate and provided an opportunity to respond.

- g. The inmate shall be given an opportunity to respond to evidence against the inmate, explain the alleged misconduct or offer evidence of mitigation.
 - 1) The inmate should be permitted to call witnesses and present evidence of defense as long as it will not be unduly hazardous to institutional safety or correctional goals.
 - 2) The committee may deny the inmate's calling of certain witnesses or presentation of certain evidence, after being given an offer of proof as to the nature of the evidence, for reason such as:
 - a) Irrelevance
 - b) Lack of necessity;
 - c) The hazards presented in inmate cases; or
 - d) Any other justifiable reason

The adjustment committee shall notate the justification for denying the inmate's request for witnesses in their disposition.
 - 3) The committee may keep the hearing within reasonable limits and refuse the presentation of evidence or the calling of witnesses, keeping in mind the right of the inmate to be heard. The committee shall state the reason for the refusal in their disposition.

- h. An inmate shall be permitted to employ counsel substitute as defined by COR.12.08, by submitting a written request to the Warden. An inmate, who is not

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.8 Punishment

- a. The adjustment committee may render sanctions commensurate with the gravity of the rule, the severity of the violation, and based on the inmate's needs. Corporal punishment is prohibited. The adjustment committee may render the following types of punishment:
 - 1) Temporary loss of privileges.
 - 2) Segregation or confinement is not to exceed sixty days; however, a longer period may be imposed with the expressed written approval of the Institutions Division Administrator. The Warden or his designee shall review the inmate's confinement at least every thirty days and initiate a referral to the facility mental health unit team to conduct an evaluation of the inmate's adjustment to segregation confinement.
 - a) Inmates under Mental Health observation shall be placed on disciplinary lockdown, when sanctioned to segregation or confinement. Mental Health professionals on a daily basis shall monitor them until such time they are rendered mentally fit for general population and at such time they shall finish segregation in the facilities segregation unit. Segregation time in Mental Health disciplinary lockdown shall be counted towards sanction time.
 - b) If Medical or Mental Health staff recommend to the facility administrator that an inmate be removed from segregation if his/her health or mental stability deteriorates or segregation becomes detrimental to inmate's health, segregation shall discontinue until such time inmate's mental health has improved and inmate can continue with the sanction imposed by the Facility Adjustment Committee.
 - 3) Any other punishment deemed necessary by the adjustment committee.
- b. The committee may also refer the matter to the program committee for further action. A description of the basic living levels of disciplinary confinement shall be provided in section COR.11.01.

.9 Review

- a. An inmate has the right to seek administrative review of the decision of the adjustment committee and the adjustment process (inclusive of incident reports, investigations, and relevant staff members, etc.) through the grievance process.

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The inmate shall initiate a review on the prescribed form within fourteen calendar days of the date of receipt of the committee's decision (refer to COR.12.03).

- b. The Warden/designee may also initiate review of any adjustment committee decision and it shall be within the Warden's discretion to modify any committee findings or decisions. The Warden may remand any matter to the Adjustment Committee for further hearing or rehearing, if the Warden believes it to be in the interest of justice.

6.0 PROCEDURES FOR MINOR MISCONDUCTS

- .1 For those facilities that do not operate under the unit management team concept, the Warden, or designee, shall be responsible for carrying out the functions of the Residency Unit Manager as prescribed in these procedures.
- .2 Hearings Officers
 - a. Residency Unit Managers, Captains or Lieutenants shall appoint a staff member from the Second and Third Watches to act as a Hearings Officer for adjustment of minor rule or directive violations.
 - b. The Hearings Officer cannot also be an originating reporter. If a Hearings Officer is the originating reporter, the Unit Manager, Captain or Lieutenant or in his/her absence the Hearings Officer, shall designate another staff member to act as Hearings Officer.
- .3 Upon receipt of the Misconduct report (PSD 8210), the Unit Manager, Captain, or Lieutenant or the Hearings Officer shall determine the category of the alleged misconduct by referring to the appropriate Departmental Rules of Departmental Policies & Procedures. For low moderate or minor category misconduct, the Hearings Officer shall:
 - a. Meet with the inmate/detainee as soon as possible.
 - b. Inform the inmate/detainee that he is accused of committing the minor infraction.
 - c. Provide the inmate/detainee with a brief opportunity to respond, to admit he is guilty, to offer an explanation or defense in his behalf, or otherwise show that he is not guilty of the alleged misconduct or that there are mitigating factors.
 - d. If necessary, conduct brief interviews of staff/inmate/detainee/witness (es).

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- a) Note on the misconduct report that the inmate/detainee does not accept the findings and/or sanction(s);
 - b) Impose or arrange the imposition of the sanction(s);
 - c) Submit the misconduct report to the Unit Manager, Captains or Lieutenants who shall:
 - (1) Review the report to assure the findings and the sanction(s) are appropriate;
 - (2) Take corrective action, if required;
 - (3) Sign or initial the report;
 - (4) Have a copy of the report placed in the detainee's or inmate's institutional file and residency file;
 - (5) Give the Hearings Officer a copy of the report.
 - d) Inform the inmate/detainee that they may request an administrative review via the grievance procedure, and give the copy of the report signed by the Unit Manager, Captain or Lieutenant to the inmate/detainee.
- .5 Separation or Segregation (Reference DOC Policy on Inmate/Ward Segregation, No. COR.11.01).
- a. Any resolution/disposition, which includes disciplinary segregation, must be reported through channels to the facility Warden or the appropriate designee.
 - b. If pre-hearing detention or administrative segregation was ordered as an immediate response to the incident, the inmate/detainee shall be given credit for such time when the disposition/sanction is imposed.
- .6 Whenever sanctions are imposed that affect units or programs other than the living unit, copy (copies) shall be made, or a Memorandum shall be typed, and distributed to the affected parties. Examples:
- a. Loss of store order: Inmate Store and Business Office.
 - b. Loss if Visit: Visiting Officer

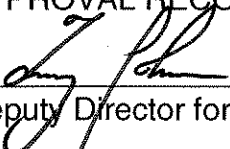
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c. Restricted from program: Section Administrator, school, work line, supervisor, etc.

7.0 SCOPE

This policy shall apply to all correctional facilities of the Department.

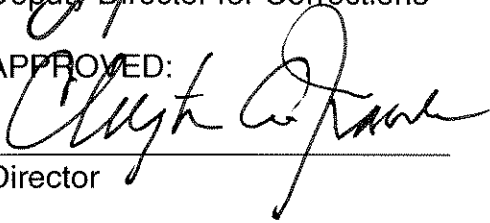
APPROVAL RECOMMENDED:



 Deputy Director for Corrections

2/3/2010

 Date

APPROVED:


 Director

2/4/10

 Date

**STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
MISCONDUCT REPORT**

Facility: _____

Prepared On: _____

TO: _____ FROM: _____
(SUPERVISOR/HEARING OFFICER) (NAME, TITLE OF REPORTING OFFICER)

RE: _____ SSN: _____
(NAME OF VIOLATOR) (ID NO)

FACTS CONCERNING THE MISCONDUCT: (Give time occurred/discovered, rule(s) violated, location, what happened and time the incident ceased or was corrected.)

(SIGNATURE OF REPORTER)

INVESTIGATION: (by Supervisor - statements of violator, witness(es))

FINDINGS:	CHARGE(S)	RULE #
<input type="checkbox"/> Guilty		
<input type="checkbox"/> Not Guilty		
<input type="checkbox"/> Referred to Facility/ Unit Adjustment Committee		

FORMAL ADJUSTMENT BY SUPERVISOR/HEARING OFFICER:

- Withdrawal of: _____
- Extra work assigned
- Confinement

PERIOD OF CORRECTIVE ACTION:

Beginning _____
(Time/Date)
and ending _____
(Time/Date)

BY: _____ DATE: _____
(INVESTIGATOR /HEARING OFFICER) (TITLE)

Acceptance of findings and disposition:

Receipt witnessed by:

(INMATE) (DATE) (NAME) (TITLE) (DATE)

Reviewed by: _____
(NAME, SUPERVISOR) (TITLE) (DATE)

Original: Inmate Active File
Copy: Adjuster; Inmate

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

INCIDENT REPORT

Facility: _____

Prepared on: _____

TO: _____ THRU: _____
(Administrator/Section Supervisor) (Watch Supervisor)

DATE	TIME	NARRATIVE (Specify inmate name & ID and location if related to misconduct)

By: _____
Reporting Officer/Employee Title

ORIG - FACILITY ADMINISTRATOR
CANARY - CONTROL OFFICER
PINK - ATTACH TO MISCONDUCT REPORT