DEPARTMENT OF CORRECTIONS

Policy Number:	**303.010**
Title:	**Incarcerated Individual Discipline**
Effective Date:	**8/20/24**

PURPOSE: To provide procedures, responsibilities, prohibitions, and penalties that govern incarcerated individual conduct.

APPLICABILITY: All adult incarcerated individuals and department staff

DEFINITIONS:

Aggravating considerations – factors used to determine the amount of disciplinary segregation and extended incarceration for violations of discipline rules within the specified ranges. Depending on the nature of the violation, aggravating considerations include whether (1) the violation was committed while the incarcerated individual was in a restrictive housing unit; (2) the violation was committed in a high-risk setting; (3) the violation was committed for the benefit of a security threat group; (4) the incarcerated individual was found guilty of the same or similar violation on at least three prior occasions; (5) the incarcerated individual acted with premeditation or lethal intent, or specifically targeted the victim; and (6) the incarcerated individual acted in concert with multiple participants.

Confidential testimony – information of a sensitive nature, which, if given openly, would jeopardize the security of the facility or the safety of an individual.

Confiscation of contraband – seizure of unauthorized money or property according to Policy 301.030, "Contraband."

Disciplinary segregation – a specified number of days of confinement in a room/cell with fewer privileges and amenities for violations of discipline rules.

Discipline staff – staff persons at each facility assigned to investigate and process allegations of incarcerated individual misconduct.

Evidence – any item or information that would assist in resolving whether an incarcerated individual has violated a discipline rule.

Extended incarceration – a disciplinary penalty that affects the length of time an incarcerated individual is incarcerated. For incarcerated individuals whose crimes were committed on or after August 1, 1993, the penalty extends the term of imprisonment, and shortens the supervised release term, by the specified amount. For incarcerated individuals whose crimes were committed before August 1, 1993, the penalty prevents them from earning additional good time towards their term of imprisonment or maximum sentence in an amount equal to the extended incarceration penalty imposed.

Hearing officer – an impartial department employee who makes findings and determines penalties in discipline cases. The hearing officer must not be a staff member who was directly involved in the incident. Major discipline hearings are conducted by hearing officers with the department's hearings and release unit (HRU). Minor discipline hearings are conducted by designated facility staff.

Incarcerated individual – a person committed to or in the physical custody of the Commissioner of Corrections.

Incarcerated individual discipline rules – the written rules of incarcerated individual conduct specifying acts that are prohibited within the facility and the penalties that can be imposed.

Loss of privileges – the loss of recreation and some social activities, as well as other possible restrictions such as confinement to the incarcerated individual's cell/room/bunk during non-working hours. This may differ among facilities or among units within a facility due to programming variances.

Major discipline hearing – an informal, administrative, fact-finding examination convened for the purpose of establishing whether an incarcerated individual has violated incarcerated individual discipline rules for which extended incarceration, or restitution is being sought by discipline staff. A major discipline hearing is conducted by an HRU hearing officer.

Major penalty –extended incarceration (EI), or restitution, which may be imposed at a major discipline hearing or through waiver of a major discipline hearing.

Minor discipline hearing – an informal, administrative, fact-finding examination convened for the purpose of establishing whether an incarcerated individual has violated discipline rules for which restitution or extended incarceration are not being sought by discipline staff. A minor discipline hearing is conducted by designated facility staff.

Minor penalty – loss of privileges, disciplinary segregation, or restrictive disciplinary segregation, which may be imposed at either a major or minor discipline hearing or through waiver of a discipline hearing.

Pre-hearing detention – see Policy 301.085, "Administrative Segregation."

Preponderance standard – evidence satisfying the hearing officer that a fact is more reasonable, more probable, and more credible than not.

Representative – an attorney or a designated department employee who assists incarcerated individuals at major discipline hearings. A representative must be knowledgeable about the facility rules and incarcerated individual disciplinary procedures. An incarcerated individual is not allowed to be a representative for another incarcerated individual.

Restitution – payment for damage to or theft/loss of property under state supervision, including repair, replacement, clean up, and labor costs resulting from an incarcerated individual's actions.

Restrictive disciplinary segregation – a more restrictive form of disciplinary segregation limited to a maximum of ten days in any 15-day period.

Serious mental illness (SMI) – see Policy 500.300, "Mental Health Observation."

Working days – Monday through Friday, excluding state-recognized holidays.

PROCEDURES:

A. Incident Reports and Investigations
   1. Consistent with the department's incident reporting procedures, all staff with significant involvement in an incident that could result in incarcerated individual discipline must write

an incident report (see Policy 300.300, "Incident Reports"). The incident report must contain sufficient detail to identify:

a) Which discipline rules were allegedly violated;
b) Where evidence is located; and
c) Witnesses to the incident.

2. An investigation into an alleged discipline rule violation must begin within 24 hours of when the violation is reported to discipline staff. The investigation must be completed without unreasonable delay absent exceptional circumstances.

B. Notice of Violation and Notice of Rights

1. An incarcerated individual who is not on pre-hearing detention status must be served with a Notice of Violation (attached) and a Notice of Rights (attached) within five working days of the decision to charge.

2. An incarcerated individual who is on pre-hearing detention status must be served with a Notice of Violation and a Notice of Rights on the first working day following placement on that status.

3. The Notice of Violation must contain:

a) The location, date, time, and name of the staff reporting the alleged rule violations;
b) The specific discipline rules allegedly violated and the maximum penalties that could be imposed;
c) A brief written summary of the facts surrounding the incident and any aggravating considerations;
d) A list of witnesses who may provide testimony at a major violation hearing;
e) A list of evidence; and
f) The tentative date of the discipline hearing.

4. If discipline staff wish to charge an incarcerated individual with a severity level 4 or 5 rule violation, the associate warden of administration (AWA)/designee must review the charge to ensure that facility executive teams have knowledge of the charge. If discipline unit staff are unable to make contact with the AWA/designee by e-mail within 24 hours, discipline unit staff must attempt to contact the AWA/designee by other means as established by the AWA/designee and the discipline unit.

5. A staff person must personally deliver the Notice of Violation and must request the incarcerated individual to acknowledge receipt by signing and dating the notice. If an incarcerated individual refuses to sign the Notice of Violation, the staff serving the notice must record the refusal on the form.

6. The facility may amend the discipline charges or other information contained in the Notice of Violation, when appropriate. The incarcerated individual may request a continuance if an amendment is made on the day of the scheduled discipline hearing. The correction of clerical errors does not require an amendment to the notice of violation, but must be made part of the record at the discipline hearing.

C. Scheduling of Discipline Hearings

1. For incarcerated individuals who are not on pre-hearing detention status, a discipline hearing must be scheduled within seven working days of the decision to charge. The hearing may be postponed due to exceptional circumstances or unavoidable delays.

2. For incarcerated individuals on pre-hearing detention status, a discipline hearing must be scheduled within seven working days of the incarcerated individual's placement on pre-hearing detention or the date the violation became known. If the incarcerated individual is placed on pre-hearing detention on a working day, that day counts as day one. If the incarcerated individual is placed on pre-hearing detention on a non-working day, the first working day following the placement counts as day one. Failure to conduct a hearing within the prescribed time results in the incarcerated individual's release from detention unless a hearing officer has approved a continuance. It does not, however, result in a dismissal of the charges.

3. An incarcerated individual must be given at least 24 hours' notice of the hearing unless the incarcerated individual consents to a hearing within less time.

D. Incarcerated Individual Communication, Ability to Understand, and Mental Health

1. Incarcerated Individual communication ability

   a) The discipline process does not proceed until discipline staff have determined that the incarcerated individual is able to effectively communicate in written or spoken English. In making this determination, discipline staff must consider the incarcerated individual's demonstrated ability to communicate in English, available education testing data, and the incarcerated individual's request for interpretive services.

   b) Discipline staff arrange for interpreters for incarcerated individuals who do not adequately understand written or spoken English, including deaf individuals whose primary language is American Sign Language (ASL).

2. Incarcerated Individual ability to understand and participate in the discipline process

   a) Discipline staff must refer any incarcerated individual demonstrating behavior suggesting a lack of mental ability to understand or fully participate in the disciplinary process to facility mental health staff for an assessment.

   b) The assessment must address the incarcerated individual's ability to:
      (1) Tell their version of the incident;
      (2) Understand the proceedings; and
      (3) Understand the consequences of the proceedings.

   c) If the assessment indicates the incarcerated individual has sufficient understanding of the discipline process, the process continues. If the assessment indicates the incarcerated individual does not have sufficient understanding of the discipline process, the incarcerated individual is allowed to:
      (1) Meet with a representative prior to meeting with discipline staff to accept or reject a waiver offer; and
      (2) Have a representative present during the hearing process.

3. Incarcerated Individual mental health status at the time of the incident

a) If it is apparent that the incarcerated individual is exhibiting serious symptoms of a mental illness that prevents them from understanding or fully participating in the disciplinary process, a mental health professional must be consulted regarding appropriate treatment and placement. If mental health staff believe the incarcerated individual's behavior may be more appropriately treated through alternative interventions or programming, or determine that the incarcerated individual's actions were the result of mental illness, the information must be considered during the discipline process.

b) If discipline staff question whether the incarcerated individual's misconduct was affected by mental illness, they must request an assessment by mental health staff. The assessment must be documented on the Mental Health Discipline Assessment form (attached).

c) Mental health staff must monitor those incarcerated individuals with serious mental health conditions who may be pending disciplinary action through review of the daily captain's reports. If it is unclear whether the mental health conditions impacted the behavior, mental health staff must contact discipline staff to initiate completion of the Mental Health Discipline Assessment form.

d) The Mental Health Discipline Assessment is provided to the incarcerated individual's representative and must be considered in the hearing or the waiver meeting.

e) Incarcerated Individual whose behavior is judged to have not been volitional have their discipline waived.

E. Waiver of Hearing

1. An incarcerated individual may waive the right to a discipline hearing by admitting to the charged violations and accepting the penalty offered by discipline staff.

2. Waiver offers are made at the discretion of discipline staff and may be withdrawn at any time before the hearing.

3. When an incarcerated individual signs a waiver, the rights to a hearing and subsequent appeal are forfeited.

4. The original waiver is reviewed and signed by the warden/AWA/designee to ensure compliance with policy.

F. Continuance of the Hearing Date

1. For major and minor discipline hearings, either party may request that the hearing be continued for a reasonable amount of time for good cause. For minor hearings, the discipline coordinator may request the facility AWA/designee to approve a continuance. For major hearings, the Hearings and Release Unit (HRU) decides whether or not to approve a request for continuance.

2. Incarcerated Individual requests for a continuance must be in writing and submitted to discipline staff by noon one working day prior to the scheduled hearing. Discipline staff or the hearing officer are not required to grant continuances because criminal proceedings for

the same conduct are pending, the incarcerated individual refuses to participate in the hearing, or a representative cannot be present at the hearing.

3. The HRU hearing officer must review and decide facility requests for a continuance of a major discipline hearing. Discipline unit staff must review and decide incarcerated individual requests for a continuance of any hearing.

4. If needed, a hearing officer may continue a hearing in progress for a reasonable time to be concluded at a later date.

G. Minor Discipline Hearing Process

1. An incarcerated individual has the right to be present during the hearing and make a statement. The hearing proceeds even if the incarcerated individual chooses not to participate in the hearing. If the incarcerated individual engages in conduct during the hearing that is disruptive or poses a threat to the security of the facility, they may be removed from the hearing and the hearing will proceed in their absence. Reasons for an incarcerated individual'ss absence or removal must be documented in writing.

2. Incarcerated Individual cannot have representation for a minor hearing.

3. No witnesses present testimony at a minor hearing.

4. Physical evidence may be considered at the hearing when the hearing officer determines it is necessary, relevant, and not unduly repetitious. Photocopies and photographs of evidence may be considered at the hearing instead of physical evidence.

5. Minor hearings are not audio recorded. Any electronic security recording of the area where the minor hearing is conducted is not part of the hearing record.

H. Major Discipline Hearing Process

1. An incarcerated individual has the right to be present during the hearing and make a statement. The hearing proceeds even if the incarcerated individual chooses not to participate in the hearing. If any person engages in conduct during the hearing that is disruptive or poses a threat to the security of the facility, that person may be removed from the hearing and the hearing proceeds in their absence. Reasons for an incarcerated individual's absence or removal must be documented in writing.

2. Representatives
   An incarcerated individual may have a representative to assist in the preparation and presentation of the case. The incarcerated individual is given the opportunity to meet with the representative prior to the major discipline hearing.

3. Witnesses
   The facility and the incarcerated individual have the right to request the testimony of witnesses at a major discipline hearing.
   a) An incarcerated individual who wishes to call witnesses at a major discipline hearing must submit a witness request form to the facility discipline office within two working days of receipt of the Notice of Violation. Failure to timely submit a Witness Request Form waives the incarcerated individual's right to have witnesses appear at a major discipline hearing.

b) The hearing officer may limit the number of witnesses after determining whether the proposed testimony is relevant to the allegations and not redundant to other evidence/testimony. The hearing officer must document decisions regarding witness testimony in the hearing findings.

c) Witnesses for the incarcerated individual are not required to appear or testify against their will.

d) Witness testimony may be presented in person, by videoconference, telephone, written statement, or video/audio recording. Witness testimony in person must be the preferred method in hearings.

e) An incarcerated individual is allowed to cross-examine a witness if the witness is present in person or available by video conference, except witnesses providing confidential testimony. An incarcerated individual is not allowed to continue questioning when it appears that the questions are unduly repetitious or are designed to confuse, harass, or intimidate.

f) Witnesses providing confidential testimony may be used when discipline staff determine that disclosure presents a danger to the safety and security of an individual or to the security of the facility.

(1) The incarcerated individual is excluded from the hearing during confidential testimony.

(2) The incarcerated individual's representative may be present during confidential testimony at the discretion of the hearing officer and on the condition that the representative agrees to maintain the confidentiality of the witness and the testimony.

(3) Confidential testimony may be given in person, by videoconference, telephone, written statement, or video/audio recording.

4. Physical evidence may be presented at the hearing when the hearing officer determines it is necessary, relevant, and not unduly repetitious. Photocopies and photographs of evidence may be presented at the hearing instead of physical evidence. Evidence identified as confidential by the hearing officer (for example, video or audio recordings, documents, phone records, kites, e-mails, etc.) are not accessible to the incarcerated individual.

5. Documents from a conviction for a crime committed while incarcerated may be considered as evidence of a discipline rule violation.

6. Major discipline hearings are audio recorded and the recording is retained until the expiration of the appeal period.

I. Findings and Penalties

1. Incarcerated individuals are offered an accelerated return to the general population from a disciplinary segregation sanction through the following penalty options:

a) Conditional or suspended penalty of disciplinary segregation.

b) A waiver offer of a lesser amount of disciplinary segregation time than what would be allowed under the maximum sanction.
c) Restrictive disciplinary segregation time.

2. The hearing officer's findings must be based solely on information obtained in the hearing process, including staff reports, statements of charged incarcerated individuals, physical evidence, documents, evidence derived from witnesses (major discipline hearings only), and mental health assessments (if applicable). The hearing officer must use the preponderance standard for determining whether or not the incarcerated individual violated a disciplinary rule. The disposition of each charge must be entered in the hearing findings.

3. The hearing officer determines what penalty, if any, is imposed upon the completion of the hearing. The penalty is based on the seriousness of the violation, the presence of any aggravating circumstances, and the incarcerated individual's disciplinary record.

4. Penalties must fall within the specified ranges contained in the Incarcerated Individual Discipline Rules (attached).

5. For contraband violations, confiscation of the contraband may be ordered by the hearing officer or agreed to by waiver in addition to a discipline penalty.

6. Restitution must be ordered by the hearing officer or agreed to by waiver at a major discipline hearing.

7. The hearing officer (or discipline staff during the incarcerated individual's acceptance of a waiver offer) may suspend, partially or entirely, any combination of penalties.. If a penalty is partially or entirely suspended, the length and conditions of suspension must be specified in writing on the findings or waiver form. If the conditions of suspension are not specified, the condition is no new formal violations during the suspension period.

8. The findings and penalty imposed are announced to the incarcerated individual at the conclusion of the hearing on the record and a hearing findings report is sent to the incarcerated individual no later than two working days following the hearing.

9. The hearing officer must create a hearing findings report that includes the following:
a) Whether or not the incarcerated individual attended the hearing and, if applicable, why not;
b) Decisions regarding evidence or witness testimony;
c) All aggravating considerations, if applicable;
d) Findings and supporting rationale; and
e) Penalties and supporting rationale.

10. A hearing findings report detailing the proceedings must be retained for at least six months.

11. The warden/designee must review and sign the hearing findings report to ensure compliance with policy.

J. Implementation of Penalties

1. Penalties imposed for separate rule violations, including prior violations, are to run concurrently. If an incarcerated individual receives a new segregation penalty for a rule violation committed while in disciplinary segregation or pre-hearing detention, the new segregation penalty commences on the date of the violation.

2. All time served on pre-hearing detention status is credited against a segregation penalty.

3. Administrative segregation time is not credited against a segregation penalty.

4. Release violators receive a one-day extension of their projected release dates (PRD) for every three days of disciplinary segregation imposed for each notice of violation report.

5. An incarcerated individual's initial supervised release date (SRD) is only extended to the segregation release date for disciplinary segregation penalties imposed at a major discipline hearing or through waiver of major discipline hearing. Disciplinary segregation imposed at a minor discipline hearing or through waiver of a minor discipline hearing does not extend an incarcerated individual's SRD, but does extend a release violator's PRD as noted above.

6. Penalties are not delayed pending an appeal.

K. Appeals

1. The incarcerated individual may appeal the hearing officer's decision to the warden/designee within 15 working days of receiving the hearing findings report.

2. All appeals must be submitted to the discipline unit on the appeal form. All documents used in the disciplinary hearing process are available to the warden/designee and the incarcerated individual may reference those documents in the appeal.

3. For the purpose of preparing an appeal from a major discipline hearing, the incarcerated individual may request access to the audio recording of the hearing, excluding any confidential testimony and evidence. Once the appeal has been filed or the time period to file an appeal has expired, the incarcerated individual no longer has access to the hearing audio recording.

4. The warden/AWO/designee must respond within ten working days from the receipt of the appeal from the discipline office. Failure to respond within ten working days results in the reversal of the disciplinary conviction.
   a) The original appeal response is forwarded to the incarcerated individual.
   b) A copy of the appeal response is placed in the incarcerated individual'ss electronic file.

5. The warden/designee may affirm or reduce the penalty.

6. If the incarcerated individual refused to attend the discipline hearing, the warden/designee need not address arguments that could have been raised during the hearing.

7. The warden/designee may remand the case for a new hearing for the following reasons:
   a) The hearing officer or the discipline staff did not substantially comply with the department's incarcerated individual discipline policy and procedure.

b) The decision of the hearing officer was based on insufficient evidence.

c) The penalty was not proportionate to the violation.

L. Records Retention

1. The original notice of violation and hearing findings report are retained in the incarcerated individual's electronic file, unless a hearing officer dismisses all charges (in which case neither the notice nor findings report are placed in the electronic file). Copies must be retained in the incarcerated individual's discipline unit file whether the charges are dismissed or not.

2. All notices of violation and dispositions, even if withdrawn or dismissed, are entered into the correctional operations management system (COMS) for statistical purposes.

M. Declaration of Emergency

The warden/designee may suspend the provisions of this policy if there is a facility emergency. The warden/designee determines the length of the suspension and whether all or a portion of the incarcerated individuals are affected by the suspension.

N. By January 15, 2020, and by January 15 each year thereafter, the commissioner of corrections must report to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over public safety and judiciary on the status of the implementation of the provisions in Minn. Stat. § 243.521. The commissioner's office must retain these reports according to retention schedules. This report must include but not be limited to data regarding disciplinary sanctions by infraction.

INTERNAL CONTROLS:

A. The notice of violation and hearing findings report are retained in the incarcerated individual's electronic file and discipline unit file, unless the hearing officer dismisses all charges. If the hearing officer dismisses all charges, the notice of violation and hearing findings are retained only in the incarcerated individual's discipline unit file, and are not placed in the electronic file.

B. The hearing findings report must be retained for at least six months.

C. All notices of violation and dispositions are maintained in COMS for statistical purposes.

D. Reports to the legislature are retained by the commissioner's office according to retention schedules.

REFERENCES: Minn. Stat. §§ 241.01, 244.03, 244.04, 244.05, 243.23, and 243.521 (2019 1st Special Session Chapter 5, Article 3, Section 10)
Policy 300.100, "Incarcerated Person/Resident Accounts"
Policy 300.300, "Incident Reports"
Policy 301.030, "Contraband"
Policy 301.035, "Evidence Management"
Policy 301.083, "Restrictive Housing Unit Management"
Policy 301.085, "Administrative Segregation"
Policy 500.300, "Mental Health Observation"

REPLACES: Policy 303.010, "Offender Discipline," 1/5/21.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS:
Notice of Violation (303.010A) (public pdf – 303.010A)
Notice of Violation (Spanish) (303.010A(Spanish) – public pdf)
Notice of Rights and Witness Request (303.010B) (public pdf – 303.010B)
Notice of Rights and Witness Request (Spanish) (303.010B(Spanish) – public pdf)
Notice of Hearing Date (303.010C) (public pdf – 303.010C)
Notice of Hearing Date (Spanish) (303.010C(Spanish) – public pdf)
Mental Health Discipline Assessment form (303.010D) (public pdf – 303.010D)
Notice of Postponement (303.010E) (public pdf – 303.010E)
Request for Continuance of Discipline Hearing (303.010F) (public pdf – 303.010F)
Request for Continuance of Discipline Hearing (Spanish) (303.010F(Spanish) – public pdf)
Request to Appear as a Witness (303.010G) (public pdf – 303.010G)
Discipline Appeal (303.010H) (public pdf – 303.010H)
Discipline Appeal (Spanish) (303.010H(Spanish)) (public pdf – 303.010H(Spanish))
Incarcerated Individual Discipline Rules (English) (303.010I) (public pdf - 303.010I)
Incarcerated Individual Discipline Rules (Spanish) (303.010I(Spanish)) (public pdf – 303.010I(Spanish))
Incarcerated Individual Discipline Rules Receipt (English) (303.010J) (public pdf – 303.010J)
Incarcerated Individual Discipline Rules Receipt (Spanish) (303.010J(Spanish))
Incarcerated Individual Discipline Level 4/5 Sanction and Extended Incarceration Review Request (303.010K) (public pdf – 303.010K)

APPROVALS:
Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Community Services and Reentry
Assistant Commissioner, Health, Recovery, and Programming