DEPARTMENT OF CORRECTIONS

Policy Number: 106.114
Title: Hearings for Adult Offenders
Effective Date: 9/4/18

PURPOSE: To provide fair and consistent hearing procedures before the hearings and release unit (HRU) for offenders who have been charged with violating offender discipline rules or conditions of release.

APPLICABILITY: Facilities, community services division, and the hearings and release unit (HRU); and all agents supervising adult offenders in the community

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

Corrections representative – a supervision agent or designee supervising adult offenders (state, Community Corrections Act (CCA), or county) or facility staff member who presents evidence supporting an alleged violation of offender discipline rules or conditions of release.

Detention hearing – a hearing for an offender who has been charged with a crime while being supervised in the community to determine whether there is probable cause to believe the offender violated the conditions of release and whether the offender should be placed on custodial or non-custodial detention.

Discipline hearing – a hearing for an offender who is alleged to have violated the offender discipline rules.

Hearsay evidence – testimony offered in a hearing about statements originally made outside of the hearing to prove the truth of what was said in the earlier statements.

Interstate probable cause hearing – a hearing for an offender who was sentenced in another state but was being supervised in Minnesota to determine whether there is probable cause to believe the offender violated a condition of probation or supervised release.

Motion – a request made by either the offender, offender's representative or the corrections representative for a decision or action by a hearing officer.

Offender's representative – a licensed attorney who represents an offender in a violation hearing or a staff representative who assists the offender in a discipline hearing.

Preponderance of the evidence – the greater weight of the evidence or the more convincing evidence and its probable truth, not the amount of evidence.

Probable cause – a reasonable belief or enough to cause a reasonable person to believe the alleged conduct or violation occurred or the charge is true.

Violation hearing – a hearing to determine whether an offender violated a condition of release and the appropriate sanction for the violation.

PROCEDURES:

A. General Requirements

1. Hearing participants

a) The hearing officer; the corrections representative, the offender and, if requested, the offender's representative.

b) Witnesses are allowed to be present at the hearing at the discretion of the hearing officer if:

(1) The proposed testimony is relevant to the alleged violation and not duplicative; and

(2) The corrections representative or, in discipline hearings, the offender arranges for them to be present.

c) Confidential witnesses may be allowed at the discretion of the hearing officer if it is determined to be relevant and necessary.

d) Any other participants or observers must be approved in advance by the hearing officer.

2. Preparation

All parties are expected to be prepared and to have all evidence and witnesses available at the time at which the hearing is scheduled. Additional time to prepare or consult may be allowed at the discretion of the hearing officer.

B. Hearing Room Safety

1. Hearings at DOC facilities

Facility staff are responsible for ensuring safety in hearing rooms.

2. Hearings at non-DOC facilities

To ensure the safety of all hearing participants, the hearing officer determines whether and when to request additional or alternative arrangements for a hearing.

a) If the supervision agent or facility staff believe there is a risk an offender may be disruptive or assaultive at an upcoming hearing, they must notify the hearing officer prior to the hearing.

b) A hearing officer who becomes aware of potential security or behavioral concerns regarding an offender whose hearing is scheduled must review and evaluate information about the offender. If taking extra precautions is warranted, the hearing officer must:

(1) Work with staff at the facility where the hearing is to be held to arrange for additional or alternative security for the hearing; or

(2) Reschedule the hearing if sufficient security measures are not possible.

c) On the day of the hearing, the hearing officer:

(1) Sets up the room as necessary with placement of each participant based upon safety, security, physical layout, and staff availability; and

(2) Ensures the offender is handcuffed for the hearing.

C. Hearing Procedures

1. Announcement of the case

   The hearing officer:

   a) Explains the type and purpose of the hearing;

   b) Identifies the persons who are participating in or observing the hearing;

   c) Reviews the offender's rights before the hearing begins;

   d) Reads the alleged violation(s) and asks the offender or the offender's representative to admit or deny each alleged violation; and

   e) Explains the rules of the hearing as necessary:

      (1) Some, but not all of the rules of evidence and civil procedure are applicable;

      (2) The parties may make objections and motions and the hearing officer may rule on them at the hearing or later;

      (3) The hearing officer has the discretion to continue or adjourn the hearing; and

      (4) The hearing officer has the discretion to limit the number of witnesses based on the relevance of the proposed testimony and whether the proposed testimony is duplicative.

2. Presentation of evidence

   If the offender denies the allegations:

   a) The corrections representative presents the alleged violation, subject to cross-examination;

   b) The corrections representative may present documentary evidence and witness testimony about the alleged violation subject to questions from the hearing officer and cross-examination;

   c) The offender or the offender's representative presents evidence supporting the offender's denial; and

   d) If approved by the hearing officer, the offender may provide relevant witness testimony, subject to cross-examination or questioning from the hearing officer.

3. Final statements

   When all of the evidence has been presented, the hearing officer gives the corrections representative and the offender, or the offender's representative, the opportunity to make final statements.

4. Fact finding decision

   After the final statements and considering the evidence, the hearing officer:

   a) Decides, with or without taking a recess, whether the evidence presented meets the standard of proof required, based on the type of hearing:

      (1) In a violation hearing, the standard of proof is preponderance of the evidence.

      (2) In detention and interstate probable cause hearings, the standard of proof is probable cause.

b) Announces the decision as to whether the evidence supports the conclusion that the offender violated either the discipline rules or conditions of release.

c) If the hearing officer finds the offender did not commit the alleged violation:
   (1) In a violation hearing, the offender is continued on release status and the hearing officer may modify the conditions of release in order to best serve the interest of public safety.
   (2) In an offender discipline hearing, the violation is dismissed.

5. Disposition
   a) If the hearing officer finds the offender did commit the alleged violation:
      (1) The corrections representative offers a recommendation regarding disposition.
      (2) The offender or the offender's representative may challenge the recommendation or propose an alternative disposition.
      (3) The corrections representative may question the offender regarding the recommended disposition.

   b) The hearing officer, after considering the recommendations of both parties, may assign any disposition allowed under relevant rules and policy (see attachments) and announce it at the end of the hearing, or continue the hearing to a later date.

D. Hearing Report

The hearing officer prepares a hearing report and hearings and release unit (HRU) staff upload an electronic copy of the report to the offender's electronic file and provide copies to the offender's representative and the corrections representative. Depending on the disposition, the offender receives a copy of the hearing report through the corrections representative or facility staff.

E. Appeal

1. Offender discipline

   The warden/superintendent or designee, responds to appeals of offender discipline decisions in accordance with DOC Policy 303.010, "Offender Discipline," Procedure J. Appeals.

2. Release violation
   a) The offender or the offender's representative, not both, may appeal a hearing officer's decision by mailing a letter to the executive officer of the HRU within 30 days of the hearing.
      (1) A request for an extension is considered if it is received before the 30 days have passed.
      (2) If more than one appeal is received, the executive officer of the HRU responds to the first appeal received as determined by the postmark on the envelope.

   b) The letter must identify the decision being appealed and the specific reasons for the appeal.

c) The executive officer of the HRU, or a designee, reviews and responds to the appeal by either affirming, amending, or reversing the hearing officer's decision. The executive officer's decision is final. HRU staff send copies of the executive officer's decision to all parties, and scan and retain the appeal and appeal response in the offender's electronic file.

INTERNAL CONTROLS:

A. Hearing Reports are uploaded and retained in the offender's electronic file.

B. Appeal responses are scanned and saved in the offender's electronic file.

ACA STANDARDS: 4-4241, 4-4242, 4-4243, and 4-4245

REFERENCES: Minn. Stat. §§ 241.01, subd. 3a(h); 243.05; 244.04, subd. 2; 244.05, subds. 1b, 1c, 2, 3; Minn. R. 2940
Policy 303.010, "Offender Discipline"

REPLACES: Policy 106.140, "Hearings for Adult Offenders," 3/21/17.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: HRU Guidelines for 90-Day Cap on Incarceration (106.114B)
Hearings and Release Dispositional Guide (106.114C)

APPROVALS:
Deputy Commissioner, Facility Services
Deputy Commissioner, Community Services
Assistant Commissioner, Facility Services
Assistant Commissioner, Operations Support