



MONTANA STATE PRISON POLICY AND PROCEDURES

Policy No.: MSP 3.4.1	Subject: INMATE DISCIPLINE
Chapter 3: Institutional Operations	Page 1 of 12, plus 11 attachments
Section 4: Rules and Discipline	Revision Date: November 7, 2005
Signature: /s/ Mike Mahoney	Effective Date: February 14, 1997

I. POLICY:

It is the policy of MSP to have in place an inmate disciplinary system that serves to protect the public, inmates, and staff, and maintains order in the facility through the impartial applications of a fully developed, well-understood set of rules and regulations and hearing procedures that incorporate all applicable due process requirements.

II. IMPLEMENTATION:

This policy will become operational on February 1, 2006.

III. AUTHORITY:

53-1-203 MCA
DOC 3.4.1

*Powers and Duties of Department of Corrections
Adult Offender Secure Facility Discipline*

IV. DEFINITIONS:

As used in this policy, the following definitions apply:

Cell/Cube/Block Confinement/Restriction: a disciplinary sanction that confines an inmate to a designated area except for attendance at work, school assignment, scheduled medical appointment, treatment appointments, visits, and meals. The inmate will be allowed emergency phone calls per *MSP 5.4.3, Inmate Access to Telephones*.

Contraband: any item not approved or authorized by law, policy, or rule. For the purpose of this policy contraband includes but is not limited to:

1. Any item in the possession of an inmate that is not authorized for his retention.
2. Item(s) in excess of authorized quantities.
3. Any item in the possession of an inmate or found in his cell that has been altered from its original condition.
4. Any item being used by an inmate for a purpose other than what it was intended.

Detention: a disciplinary sanction that places an inmate in a secure unit or locked cell as a result of being found guilty of a major infraction.

Disciplinary Hearing Investigator (DHI): the staff member designated to conduct investigations into a reported rule infraction after processing the Disciplinary Report as a major or minor violation as outlined in the *Disciplinary Rule Infractions (attachment A)*.

Disciplinary Hearing Officer (DHO): an impartial staff member designated to conduct disciplinary hearings. (4-4240)

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Evidence: The standard of proof for a finding of guilt is a preponderance of evidence and is based on evidence presented at the hearing. That is, evidence which, as a whole, shows that the inmate more likely than not committed the infraction. Evidence may consist of one or more of the following: (4-4244)

- a) The disciplinary report. The disciplinary report alone may serve as the basis for the decision.
- b) Oral testimony, eyewitness accounts or other personal knowledge.
- c) Physical evidence.
- d) Inmate's statement or testimony.
- e) Witness or document evidence.
- f) Hearsay evidence if it appears reliable and relevant to the alleged infraction.

Housing Unit Disciplinary Team (HUDT): a one or two member team of unit staff appointed by the Unit Manager to conduct minor infraction disciplinary hearings or Waiver of a Hearing/Agreement.

Major Infraction: a misconduct violation that, in the judgment of the investigating staff member is considered more serious than a minor infraction. Major infractions may be violations of state or federal criminal law.

Minor Infraction: a misconduct violation that does not have serious inmate and institutional management implications.

Waiver of a Hearing/Agreement: a disciplinary hearing procedure that provides an inmate the opportunity to plead guilty to a major or minor infraction, as written, accept an offered sanction determined by the DHO or HUDT, and waive the right to a hearing on that incident.

Pre-Hearing Confinement (PHC): placement of an inmate who constitutes a threat to himself, or facility security, in a designated cell pending a disciplinary hearing or classification review.

Sanction: a penalty given as a result of being found guilty of a rule infraction.

Summary Action: the lowest form of disciplinary action used for inmate contraband with mutual agreement between the staff member who discovers the contraband and the inmate. If this action is not mutual staff shall cite the inmate on an infraction report and a disciplinary hearing will be conducted.

V. PROCEDURES:

A. Pre-hearing Procedures (4-4227)

1. A staff member must implement progressive discipline whenever they have a reasonable belief that an inmate has violated an institutional rule or law.
Progressive discipline may include:
 - a. Informal resolution (verbal warning/reprimand, counseling). When verbal communication achieves the desired corrective action a written citation of the infraction is unnecessary.
 - b. Rule Infraction Citations
 - 1) *Summary Action citation (attachment E)* – the staff member who discovers contraband enters into a mutual written agreement with the inmate to dispose of the contraband. Absent mutual agreement staff shall cite the

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inmate for a rule infraction on a *Disciplinary Infraction report*, and a disciplinary hearing will be conducted.

2) *Disciplinary Infraction Report (attachment B)* citations:

There are two levels of infractions that staff may cite an inmate on due to him violating an institutional rule. Attachment A outlines the rules and numerical codes for the following infraction levels. (4-4226)

- a) Minor - may be resolved through an informal or formal process, and includes providing the inmate with a written statement of the violation and a decision by an uninvolved individual. An inmate will not be placed in disciplinary detention for a minor infraction.
- b) Major - may be resolved through a hearing or Waiver of a Hearing/Agreement and includes providing the inmate with a written statement of the violation and a decision by an uninvolved individual. An inmate may be placed in disciplinary detention for a major infraction, it may be a felony, and may be prosecuted in a district court or any court of greater authority. (4-4231)

Staff are encouraged to attempt informal resolution for minor incidents, however, if a staff member believes an offense cannot be handled by informal resolution they shall file a written Disciplinary Infraction Report that at a minimum includes the following information: (4-4233)

- Specific rule(s) alleged to have been violated and its corresponding numerical code from attachment A. (4-4226)
- A statement of the charges.
- Name(s) of inmate and his identification number.
- Names of staff and inmate witnesses to the incident (staff witnesses must submit a completed incident report).
- Unusual behavior exhibited by the inmate.
- Facts surrounding the incident, sufficient to answer the questions of who, what, why, where, when and how.
- Disposition of any evidence involved.
- Any action taken, including pre-hearing confinement (must include specific location), confiscation of property or contraband.
- Signature, printed name of reporting staff member.
- Date and time (if known)
- Supplementary reports by witnesses and/or involved staff.

Absent extraordinary circumstances, staff must fill out and submit Disciplinary Infraction Reports within 24 hours of the rule violation taking place, or within 24 hours of the discovery of the rule infraction.

2. Seizure of evidence and alleged contraband:

a. Crime Related Physical Evidence:

When an item is seized from an inmate or his cell that may be utilized in criminal prosecution, the following procedure shall be implemented. This is done to maintain a clear chain for evidence:

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- 1) Staff must correctly and completely fill out an evidence receipt/card/tag and attach it to the evidence. The time and date of when evidence passed from the control of one person to another must be documented.
- 2) Once staff have completed tagging all physical evidence they shall bring it to the Shift Commander who will ensure it is securely placed in the Investigator's Evidence Locker. The Shift Commander will forward a copy of the infraction report to the DHI for notification purposes.
- 3) When evidence is no longer needed, it shall be disposed of in accordance with *DOC 3.1.16, Contraband Control*.
- 4) Investigators/designees are responsible for conducting periodic audits of evidence storage areas to ensure evidence has been processed in compliance with policy and appropriate evidentiary procedures.

Whenever possible the person who fills out the evidence receipt shall place the items in the evidence locker.

- b. *MSP 3.1.16, Contraband Control* outlines how to dispose of all other seized contraband.

3. Pre-Hearing Confinement (PHC): (4-4235)

- a. An inmate who is reasonably believed to be a security risk, in serious danger from others, or poses a danger to himself or others may, upon written statement of reasons, be placed in PHC prior to receiving a disciplinary hearing or classification review. PHC procedures and the approval process are outlined in *MSP 3.4.100, Pre-Hearing Confinement*.
- b. The Warden or designee must review each inmate move to PHC within one working day after confinement, excluding weekends and holidays. (4-4235)
- c. Staff may not place an inmate in PHC based solely on information obtained from a single confidential informant without first determining that informants reliability.
- d. When an inmate is placed in PHC for a disciplinary infraction, the DHO must conduct a disciplinary hearing within 72 hours, excluding weekends and holidays, unless additional investigation is needed. The 72 hours commences upon the inmate's placement in PHC.
- e. Most privileges afforded locked housing unit inmates will not be afforded to inmates in PHC (*see MSP policies 3.4.100, Pre-Hearing Confinement, and 3.5.1, Locked Housing Unit Operations*).
- f. The DHO may credit the inmate with any time spent in PHC/DD against any subsequent term of disciplinary detention imposed, based upon the inmate's attitude and behavior while in PHC status.

4. Investigations: (4-4234)

The DHI shall initiate an objective investigation of the charge and process for each major infraction report, and complete a *Disciplinary Investigation Report form (attachment G)*.

These investigations shall be completed without unreasonable delay. The DHI shall ensure that any delay at any stage is explained in writing in the respective section of the disciplinary infraction report. As part of the investigation, the DHI may interview the inmate and any other parties who may have information regarding the incident as soon as

is practical, and must maintain written records of the interviews for further review. The investigation is to determine:

- a. That all necessary information is contained in the infraction report.
- b. That the information is accurate. In determining whether the information is accurate, the DHI may question any witnesses and review any documents to determine the cause of the violation, staff and inmate involvement, and any mitigating factors.
- c. That the information doesn't include opinions concerning the innocence or guilt of the inmate charged in the report.
- d. That the appropriate offense is assigned to the violation per *Attachment A*.
- e. That an *Informant Information Report (attachment K)*, that is used to determine proven reliability in specific past instances or independent corroboration on specific material points, is completed for information from inmate informants.
- f. Whether original evidence is missing and if there are other evidence or corroborating statements available to support the infraction report.

5. Notice of the Offense and Rights:

The DHI shall ensure that a copy of the infraction report is provided to the inmate within five working days of the date it was written, excluding weekends and holidays. The five-day limit is waived if exceptional circumstances arise, in which case the DHI must provide the inmate with the report at the earliest possible time.

6. Inmate Conduct Away From a Correctional Facility:

Any staff member responsible for transporting an inmate may submit an infraction report when the inmate's behavior violates institutional rules.

7. Waiver of a Hearing/Agreements:

- a. A Waiver of a Hearing/Agreement allows an inmate to plead guilty to the infraction(s) he was cited for, and accept a sanction(s) pre-determined by the DHO or HUDT.
- b. The staff conducting the hearing shall research the inmate's disciplinary history as well as the nature and seriousness of the incident before considering offering the inmate a Waiver of a Hearing/Agreement. If the staff person decides to offer the inmate a Waiver of a Hearing/Agreement they must pre-determine what sanction(s) they are going to offer. The sanction(s) must be within policy guidelines for the infraction(s).
- c. The offer is not negotiable and subject to alteration. The inmate can only accept or decline.
 - 1) If the inmate accepts, the staff member shall fill out a *Waiver of a Hearing/Agreement form (attachment D)*. When signed by the inmate and the DHO, or HUDT, a Waiver of a Hearing/Agreement concludes the disciplinary process for the infraction(s). By signing the agreement the inmate waives his right to a regular hearing and appeal. The staff member(s) shall impose the sanction(s) and distribute copies of the Waiver of a Hearing/Agreement and the infraction report, with attachments, to appropriate staff including the DHO.

- 2) If the inmate declines, the case will be handled through the regular for a major or minor infraction disciplinary hearing process.

B. Disciplinary Hearing Procedures (4-4227)

1. Minor Infractions: (4-4230)

a. General Provisions:

- 1) Minor rule infraction reports shall be forwarded to the respective Unit Manager or designee who shall review the report for legibility, completeness, and correctness of charge (*see attachment A*). The Unit Manager or designee may request that the reporting staff member make corrections, additions or deletions that more accurately reflect the circumstances surrounding the alleged infraction. (4-4232)
- 2) Within 7 days (excluding weekends and holidays) of receipt of a minor disciplinary report the HUDT must review the report and take one of the following actions: (4-4230)
 - Take no further action, at which time the case may be dismissed and the report destroyed.
 - Offer the inmate a Waiver of a Hearing/Agreement.
 - Conduct a hearing as outlined in this policy and impose the appropriate sanctions.

In all cases, the inmate shall be notified of actions taken by the HUDT. If the person who wrote the infraction wants to know the disposition of the hearing he or she must either check with the HUDT or the electronic or posted hard copy of the HUDT disposition sheets.

b. Minor Infraction Hearing Procedures:

- 1) Hearings are to be conducted in the respective housing unit by the HUDT.
- 2) A member of the HUDT shall serve the Infraction Report (with attachments) to the inmate at least 24 hours prior to a hearing, ensuring that the *Notice of Hearing section* of the infraction form is completed. If the inmate refuses to sign the designated staff member shall note on the form that the inmate refused to sign, and have another employee witness and sign that a copy of the report was given to the inmate. (4-4236)
- 3) In the event that a member of the HUDT wrote the infraction, the Unit Manager or designee shall appoint another staff member to replace the reporting member on the HUDT. (4-4230; 4-4240)
- 4) The inmate is to be provided with an opportunity to appear at the hearing and to provide evidence to support his case. (4-4230; 4-4241)
- 5) The HUDT must complete a *Disciplinary Hearing Decision form (attachment C)* noting the evidence that was relied upon to make their finding, the reasons for the finding, and the sanctions imposed.

2. Major Infractions:

- a. Staff who cite inmates for Major rule infractions shall forward the completed reports to their immediate supervisor for review. These reports will then be routed to the Shift Commander as soon as possible, but no later than the end of the supervisors shift. Poorly written infraction reports should be returned to the

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- staff person for correction. (4-4232) Timely submission of the infraction report is critical. If a supervisor is not on shift then the infraction report should be turned in directly to the Shift Commander who will advise the staff member of any deficiencies noted in the infraction report.
- b. The Shift Commander shall review each report for legibility, completeness, and correctness of charge (*see attachment A*) and forward it to the DHI. If the infraction necessitates the inmate being placed in PHC the Shift Commander shall ensure that the citation (with attachments) is served to the inmate within 24 hours. If the report is not complete or correct it will be returned to the staff member who wrote the infraction report for correction in a timely manner.
 - c. Upon receipt of a completed Major infraction report, the DHI shall ensure that the *Notice of Hearing section* of the infraction form is completed, and that the citation (with attachments) is served to the inmate at least 24 hours prior to the hearing. (4-4236; 4-4238)
 - 1) The DOC Investigator shall address the inmates Miranda rights if it is determined that criminal charges may be filed in district court. (4-4231)
 - 2) Staff shall not provide an inmate with confidential information that may jeopardize the safety of others or the security of the facility.
 - 3) The inmate may waive the 24 hours notice at the time the citation is served. (4-4236)
 - 4) The inmate shall sign the *Notice of Hearing section*, acknowledging receipt of a copy. If the inmate refuses to sign, or his recent behavior indicates he may destroy the report, the designated staff member shall note on the form that the inmate refused or didn't sign it, and have another employee witness and sign that a copy of the notice and report were given to the inmate. (4-4238)
 - 5) The inmate must be informed that:
 - a) If he intends to provide names of witnesses he must fill out and forward a *Disciplinary Witness Request form (attachment H)* to the DHI.
 - b) If he wants additional time to gather witnesses or prepare a case he must write to the DHI asking for, and explaining his reason for, a continuance. If the DHI determines the information provided warrants a continuance, he/she shall grant the request in writing, notifying the inmate of the new hearing date and time.
 - 6) When the inmate is in PHC the DHI shall collect the witness statements.
 - 7) The DHI may reschedule a hearing if he/she determines additional time is required to investigate. (4-4239)
3. Conducting Hearings for Major Infractions:
- a. Unless exceptional circumstances warrant a postponement, the DHO must complete major infraction hearings within seven working days, excluding weekends and holidays, of the date that the infraction report was filed. (4-4238)
 - b. The inmate must be present throughout the disciplinary hearing except during the period of deliberation, when confidential information is presented, or if the

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- inmate's behavior justifies removal by order of the DHO. The inmate may waive his presence at the hearing. (4-4237; 4-4241)
- c. The DHO must ensure that the inmate understands the charges filed and take appropriate actions to ensure the fairness and orderliness of the hearing.
- d. If the DHO determines an inmate is incompetent or unable to prepare and present a defense, or the inmate requests an advisor or interpreter, the DHO must appoint a staff advisor or interpreter to assist in presenting the case. (4-4243)
- e. If an inmate fails (or refuses) to appear at a disciplinary hearing, or is removed due to disruptive behavior, the DHO may proceed with the hearing and make a decision based on the Disciplinary Infraction Report and any other available report and/or evidence. The DHO must document a failure to appear on the infraction report and have another staff member witness and sign the report. If the inmate refuses to attend the DHO must complete a *Refusal to Attend Disciplinary Hearing form (attachment I)*. (4-4237; 4-4241)
- f. The inmate must be provided an opportunity to present documented evidence unless doing so would be unduly hazardous to the institution or jeopardize the safety of witnesses. The DHO must document any reasons for denial in writing and provide a copy to the inmate. (4-4242) The DHO has an obligation to investigate any new evidence that he or she feels is relevant to the alleged infraction that is presented by the inmate at the hearing.
- g. Evidence, testimony, questions, and examination is to be limited to facts relevant to the alleged infraction(s).
- h. Inmate or staff witness testimony may be presented in writing.
- i. The inmate shall be permitted to call witnesses on his behalf unless: (4-4242)
- Permitting the witness to testify poses a threat to institutional safety, the safety of the witness, or the safety of third persons.
 - The witness' testimony would not be relevant to the hearing, redundant or immaterial.
 - The witness' testimony concerns the general character of the inmate.
 - The inmate does not appear at the hearing.
 - The inmate's actions are inappropriate during the hearing.
- If a witness is not permitted to testify, the DHO must document the reason for excluding the witness from the hearing.
- j. An inmate may be found guilty of an infraction on the basis of verified confidential information from a reliable source whose identity is not disclosed to the accused inmate. Such information may be presented to the DHO verbally or in writing, subject to the following conditions:
- 1) When the DHO considers such information, the name of the source and details will only be given to the DHO when the inmate is not present.
 - 2) The details of such information will only be disclosed to the accused inmate if doing so will not create a substantial risk to the safety of the source.

In all cases in which the DHO considers information from a source who wishes to remain anonymous, a confidential record must be maintained containing the details of such information, and if possible, the identity of the informant and the degree of staff familiarity with the informant's reliability.

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The DHO shall make a finding as to the reliability of the confidential source by reviewing the *Informant Information Report (attachment K)* that has been completed by the reporting staff member. The reliability of the informant shall be based on the informant having provided reliable information in the past, the information being offered is based on first hand observations, or there is corroboration either from another source or through physical or other evidence showing the reliability of the informant's data.

After the hearing the DHO shall forward these records to the DOC Investigator's office for filing. Such records will be available only as authorized by the Warden (or designee) and the DOC Investigators.

- k. The DHO may make a finding of guilty if he/she is persuaded by the evidence that an infraction occurred. (4-4244)
- l. The DHO may recess the hearing to collect additional information; however, the DHO's decision must be made solely on the evidence presented. (4-4239; 4-4244)
- m. The DHO must ensure the inmate receives, orally and in writing, a statement of the findings, evidence relied upon, sanction(s) imposed, and the reasons for the sanction(s). (4-4245)
- n. The DHO may suspend imposed sanctions for a specified period of time not to exceed 90 days. The DHO must document the terms of the suspension on the findings decision form. If the inmate violates these terms the DHO may revoke the suspended sanction(s) and impose new sanctions. The initial sanctions that were suspended shall run consecutive to the new sanctions. The DHO may not use the revoked suspension as one of the sanctions for the new offense.
- o. When the DHO removes an inmate from a hearing for unacceptable/disruptive behavior he/she must document the removal on the decision report. (4-4241)
- p. The DHO may postpone the hearing if an inmate is unavailable (on escape status, is hospitalized, or is On Leave To Custody) or under direct mental health care. The hearing may also be postponed pending arrival of necessary evidence (UA results, etc.). (4-4239)
- q. The DHO may find an inmate guilty of a more appropriate offense based upon additional information provided from the investigation.
- r. Correctional staff may be allowed to sit in on major infraction hearings. Staff will not participate in the hearings unless so directed by the DHO. At no time will an inmate be allowed to interrogate or cross-examine a correctional staff member.

C. Sanctions

1. The DHO or HUDT shall impose an appropriate sanction(s) from the *Inmate Disciplinary Sanction Grid (attachment F)* when a charge is substantiated. (4-4226)
2. Any portion of a sanction may be delayed for a specified period of time. Inmates will be informed in writing of the conditions under which the suspended sanction may be invoked in the future.
3. The DHO or HUDT may not impose, nor shall the grid contain, any of the following sanctions:
 - Any form of dietary restriction or the use of food or meals as punishment.
 - Any form of corporal punishment.
 - Any form of discipline imposed by one inmate on another inmate.

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- Detention in excess of 30 consecutive days, unless there is a finding of fact on a new, subsequent violation of a facility rule or regulation.
- Deprivation or denial of clothes, bedding and personal hygiene items. This does not apply to those inmates who engage in the practice of destroying such items. In such instances, the Warden or designee will be notified, and the decision to deprive must be reviewed by the DHO or HUDT at intervals not to exceed 24 hours.
- The use of a “padded or isolation cell” or restraints as punishment. Restraints may only be used for otherwise uncontrollable inmates in accordance with *DOC 3.1.8, Use of Force and Restraints*.
- Deprivation of general correspondence, visiting, or telephone privileges when the offense is unrelated to a violation of facility rules relating to that activity. In no case shall special mail privileges or attorney visits be suspended. This also applies to inmates sanctioned to cell restriction.

D. Records (4-4240)

The DHO and HUDT must ensure that a copy of each disciplinary document (infraction reports, notifications, witness report, etc.) are forwarded to: (4-4245)

- The MSP Records Department for placement in the Main File on the inmate.
- The inmate’s housing unit for placement in the six-part Mini File on the inmate.
- The inmate.

If an inmate is found not guilty of an alleged infraction (major or minor) all references to the infraction shall be removed from these files if reasonably possible. Otherwise, the file must clearly indicate that the inmate was found not guilty of the alleged infraction. (4-4246)

The DHO or designee will post the results of hearings on a Hearings Report that is available to staff that notes the disposition of the disciplinary hearing. Findings of not guilty or a change in infraction will have a clear explanation as to the reason. Unit Sergeants will print the results form and post it in the Sergeant’s office. If staff have questions concerning the disposition they are to contact the DHO.

E. Administrative Review**1. Major Infractions**

- a. The Warden or designee shall review the infraction report and disciplinary findings form of each major infraction within 15 working days of the date of the hearing to ensure the infraction was handled in accordance with policy, regardless of whether or not the inmate has filed an appeal. (4-4247)
- b. The Warden or designee may:
 - Uphold the decision and the sanction(s) imposed.
 - Reverse the decision (must provide written justification for that action).
 - Remand the decision back to the DHO (must provide written justification for that action).
 - Uphold the decision but modify the sanction(s) imposed when such action is warranted based on the record.

* **NOTE:** The Warden or designee may not increase the sanction imposed.

- c. The Warden or designee shall return the infraction reports to the DHO, who shall

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take remedial action to implement the reviewer's decision.

2. Minor Infractions

The DHO or DHI or designee shall review the infraction report and disciplinary findings form of each minor infraction within 15 working days of the date of the hearing to ensure the infraction was handled in accordance with policy. The DHO or DHI will consult with the Warden or designee concerning any discrepancies. The DHO or DHI will take any necessary remedial action.

F. Appeals (4-4248)

1. Inmates may appeal their major disciplinary hearing decisions to the Warden or designee.

2. The DHO must advise the inmate of his right to appeal the decision to the Warden or designee at the conclusion of a hearing, and shall document the inmate's choice in the appropriate section of the findings form. If the inmate chooses to appeal the decision the DHO must provide him with a *Disciplinary Appeal form (see attachment J)* and explain the appeal process outlined below. The sanction(s) may be imposed prior to the Warden or designee's decision concerning the appeal.

3. Appeal Process:

a) Within fifteen days of receiving the written hearing results the inmate must document one, two, or all three of the following in the sections provided on the appeal form, and submit it to the DHO or DHI. (4-4248)

- There was no evidence or documentation to support the decision.
- Required disciplinary procedures were not followed.
- The sanction(s) is excessive.

b) The DHO or DHI shall forward all related disciplinary documents and the completed appeal form to the Warden or designee who must act on the appeal within fifteen days (excluding weekends and holidays) of receipt of the appeal, considering the following factors: (4-4248)

- Whether or not there is evidence and documentation to support the findings.
- Whether there was substantial compliance with applicable disciplinary procedures.
- Whether the sanctions imposed are proportionate to the rule violation(s).

c) The Warden or designee may take one of the following actions:

- Affirm: uphold the decision of the DHO and the sanction(s) imposed.
- Dismiss: disagree with the decision of the DHO and dismiss the infraction.
- Modify: uphold the decision of the DHO, but reduce or suspend the sanction(s).

The Warden or designee must provide written justification for the action taken on the appeal form, and return the infraction report and completed appeal form to the DHO who shall take remedial action to implement the decision.

G. Emergency Procedures

1. Any or all portions of this policy may be temporarily suspended without notice in the event of an institutional disruption that requires emergency action.

2. Any inmate involved in the emergency may be detained without a hearing throughout the

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course of an officially declared emergency.

3. On rare occasions an incident is so widespread as to have involved, in some general way, virtually all staff eligible to serve as a DHO or as a member of a HUDDT. Under these circumstances the Warden or designee may form one or more committees to conduct disciplinary hearings. No staff member who was personally involved in a substantial manner in an incident shall be selected to be a member of one of these committees.

H. Training, Orientation, and Advisement

1. Due to the importance of this area, the Training Officer, DHI, or DHO shall include a session on these procedures in pre-service and annual refresher staff training, including familiarity with the policy, inmate rules/infractions, prohibited acts, the rationale for the rules, and the available sanctions. (4-4228; 4-4229)
2. All inmates shall receive and sign for a copy of an MSP Disciplinary Handbook. (4-4228)
 - a. Admissions staff shall ensure each reception inmate receives a copy of the handbook.
 - b. The DHO and /or DHI shall ensure all other inmates at MSP receive a copy of the handbook whenever it is revised.
 - c. MSP Disciplinary Handbook and policy will be available in the facility library.
 - d. The housing units will have a general posting in place regarding the mechanisms for inmates to receive or review information regarding disciplinary handling.

I. Effect of Conviction/Dismissal

Subsequent administrative action by the Housing Unit Management Team (HUMT) or other authority does not constitute additional punishment and should not be construed as such. If the conviction for an offense affects the inmate's security level, the inmate may be considered by the HUMT for appropriate reclassification. Dismissal or modification of a conviction does not deprive the HUMT of the opportunity to consider the inmate's conduct for purposes other than discipline, including but not limited to security and classification decisions

J. Distribution of Findings

The DHI and DHO shall ensure that the findings from all disciplinary hearings and Waiver of a Hearing/Agreements are posted in ACIS, and distributed to the Board of Pardons and Parole, Records, housing unit Case Managers (for placement in the Mini File), and Institutional Parole and Probation Office.

VI. CLOSING: Questions concerning this policy shall be directed to the Warden/designee.

**STATE OF MONTANA DEPARTMENT OF CORRECTIONS
INMATE DISCIPLINARY RULE INFRACTIONS**

Highlighted infractions - placement in pre-hearing confinement is **mandatory**.

Placement in pre-hearing confinement for all other rule infractions is discretionary.

MAJOR RULE INFRACTIONS	
4100	Homicide.
4101	Escape, attempting to escape, planning to escape, or absconding.
4102	Possession or introduction of any firearm, weapon, ammunition, knife, sharpened instrument, items such as razor blades when they are not used as intended, Class-1 tool, to include keys and security equipment or key patterns
4103	Rioting or encouraging others to riot.
4104	Assaulting any person to include spitting on or throwing liquids (urine, feces, etc.) on staff.
4105	Extortion, blackmail.
4106	Seizing another person as a hostage.
4107	Possessing, introducing, or using any narcotic, narcotic paraphernalia, or illegal/unauthorized drug.
4108	Encouraging, facilitating, or otherwise conspiring with others to commit any 4100 series infraction (4100 – 4110).
4109	Flagrant Disobedience: disobeying a clearly stated order in a way that conveys a deliberate challenge to authority and jeopardizes the safety, security and orderly operation of the facility.
4110	Rape or sexual assault.
4200	Setting a fire.
4201	Fighting with another person.
4202	Threatening another with bodily harm. Verbal or written statements or engaging in physical conduct causing fear in another person.
4203	Engaging in sexual acts.
4204	Making sexual proposals, threats, or harassing remarks.
4205	Indecent exposure.
4206	Refusing to provide any type of specimen or sample (urine, breath, DNA, or other). Attempt to contaminate, pollute, alter, substitute, or destroy any specimen or sample.
4207	Participating in or encouraging others to participate in an unauthorized meeting, gathering, or activity such as a strike or a work stoppage.
4208	Insolence: Words, actions, or other behaviors that harass or cause alarm in an employee, including but not limited to direct disrespect in the form of profane, obscene or abusive language or gestures.
4209	Giving or offering any official or staff member a bribe or anything of value. Attempting to engage in a personal relationship with a staff member, volunteer, contractor, etc. whether it be verbally, physically, or in writing.
4210	Destroying, altering, or damaging facility property or the property of another person, including flooding.
4211	Stealing (theft).
4212	Willfully tampering with, damaging or blocking a locking device, fence, door, gate, window or other security safety device.
4213	Refusing to immediately obey a verbal “direct” order/command from any staff member.
4214	Counterfeiting, forging, alteration destruction, or unauthorized reproduction of any document, article of identification, money, security, or official papers.
4215	Possession of money or currency, unless specifically authorized.
4216	Interfering with the taking of a count or failing to stand for count.
4217	Lying or providing a false statement to a staff member.
4218	Making, possessing, or using intoxicants.
4219	Smoking/possession of any amount of tobacco or tobacco paraphernalia.
4220	Obstructing, hindering, or impeding staff.
4221	Possession of unauthorized clothing or identification.
4222	Tattooing and/or possession of tattoo paraphernalia, including needles.
4223	Smuggling/introduction of unauthorized items into the institution.

MAJOR RULE INFRACTIONS

4224	Deliberate misuse of an authorized medication , including unauthorized possession of other individual's medication.
4225	Forming a Security Threat Group (STG) or participating in STG activities. This includes possessing or displaying any materials, symbols, colors or pictures of any identified STG or behaviors uniquely or clearly associated with a STG.
4226	Excessive Minor rule violations. (five or more minor offense convictions in a six month period).
4227	Failure to abide by condition of a disciplinary disposition.
4228	Failure to obey written policy (staff must note the policy name, number, page, and section violated on the Infraction Report. Attaching a copy of the page(s) from the policy is acceptable).
4229	Encouraging, facilitating, or otherwise conspiring with others to commit any 4200 series infraction (4200 –4234).
4230	Self-harm/mutilation or attempted suicide for the purpose of manipulation.(this is only used when directed by Mental Health Staff).
4231	Conspiring or assisting in another inmate's self-harm/suicide behavior.
4232	Inappropriate conduct w/a visitor that presents a threat to the security or orderly operation of the facility.
4233	Unauthorized communication (mail, telephone) that presents a threat to the security of the facility.
4234	Being in an unauthorized area that presents a threat to the security or orderly operation of the facility.

MINOR RULE INFRACTIONS

4300	Refusing to work, report to work, or accept a program assignment. Contract violation.
4301	Unexcused absence from work/school assignment or other program activity.
4302	Possession or displaying any material of an offensive nature including, but not limited to, sexually suggestive pictures, jokes, and posters.
4303	Insolence: indirect words, actions, or other behaviors that harass an employee, including indirect disrespect in the form of profane, obscene or abusive language or gestures.
4304	Possession of expired blister pack.
4305	Possession of property belonging to another person or the state government.
4306	Failure to abide by any posted or unit rule.
4307	Participating in an unauthorized meeting or gathering.
4308	Being in an unauthorized area. Failing to report as directed or follow check-in/check-out procedures. Late return from an authorized area.
4309	Failure to follow safety or sanitation regulations.
4310	Gambling or possession of gambling paraphernalia.
4311	Being unsanitary or untidy; failing to keep ones person or quarters in accordance with facility standards.
4312	Taking items or food from the Food Service.
4313	Malingering or feigning an illness.
4314	Failing to perform work or verbal instructions as directed by a staff member.
4315	Horseplay: any physical contact, or attempted physical contact, done in a prankish or playful manner, without anger or intent to injure.
4316	Barter or trade; loan or borrow; solicit or engage in any business activity.
4317	Violation of a visiting rule (excessive noise, failure to control children, etc.).
4318	Unauthorized communication: misuse or use without authorization, the telephone or mail.
4319	Possession of excessive property or items altered from their original approved condition; and accumulation of garbage (nuisance contraband).
4320	Encouraging, facilitating or otherwise conspiring w/others to commit any Minor offense.

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP 3.4.1
Attachment C
8/20/04

MSP MWP CONTRACT FACILITY: _____

DISCIPLINARY HEARING DECISION

MAJOR

MINOR

Inmate's Name: _____ ID # _____ Date: _____

Infraction Number(s) & Name(s) _____

I DO UNDERSTAND THE VIOLATION

I DO NOT UNDERSTAND THE VIOLATION

Continuance granted to Date: ___ / ___ / ___ By: _____

Reason: _____

Plea: Guilty Not Guilty Other: _____

Inmate's Statement: _____

Evidence Provided: _____

Findings: Guilty Not Guilty

Evidence Relied On: _____

Sanction(s): _____

Reason(s): _____

ADMINISTRATIVE REVIEW / DATE

DISCIPLINARY HEARINGS OFFICER / UNIT DISCIPLINARY TEAM

I understand, that I may appeal the decision of the Disciplinary Hearings Officer to the Warden. In order to file an appeal, I must submit a completed appeal form to the Disciplinary Hearings Officer within 15 days from today.

I DO WISH TO APPEAL because (1) there is insufficient evidence and documentation to support the finding; (2) applicable disciplinary procedures were not followed; (3) the sanction(s) imposed are not proportionate to the rule violation(s).

I DO NOT WISH TO APPEAL

Inmate's Signature / ID#: _____

Copies to: 1. Records 2. Parole Board (Major) 3. Housing Unit 4. Inmate

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP MWP CONTRACT FACILITY: _____

Inmate Disciplinary Sanction Grid

Level	Infraction Code	1st & Subsequent Offense		
Major	4100 4101 4102 4103 4104 4105 4106 4107 4108 4109 4110 4200 4201 4202 4206 4207 4212 4216 4218 4219 4225 4232	1-30 days cell restriction. 1-30 days detention. 1-30 days detention for aggregated offenses arising out of the same episode. *Restriction of any activity. Loss of good time. Fine: \$1 to \$30. 1-80 hours extra duty/special work detail. **See other sanctions available		
		1st Offense	2nd Offense	3rd & Subsequent Offense
Major	4203 4204 4205 4208 4209 4210 4211 4213 4214 4215 4217 4220 4221 4222 4223 4224 4226 4227 4228 4229 4230 4231 4233 4234	1-5 days cell restriction. 1-5 days detention. 30-days detention for aggregated offenses arising out of the same episode. *1-30 days restriction of any activity. 1-40 hours extra duty/special work detail Recommend reclassification. Loss of good time. Fine \$1-\$5. Refer to appropriate program for assessment. Letter of apology. Warning. **See other sanctions available.	6-10 days cell restriction. 6-10 days detention. 30-days detention for aggregated offenses arising out of the same episode. *15-30 days restriction of any activity. 10-60 hours extra duty/special work detail. Recommend reclassification. Loss of good time. Fine \$6-\$10. Refer to appropriate program for assessment. Letter of apology. Warning. **See other sanctions available	11-15 days cell restriction. 11-15 days detention. 30-days detention for aggregated offenses arising out of the same episode. *30 days restriction of any activity. 20-80 hours extra duty/special work detail. Recommend reclassification. Loss of good time. Fine \$11-\$15. Refer to appropriate program for assessment. Letter of apology. Warning. **See other sanctions available
Minor	4300 4301 4302 4303 4304 4305 4306 4307 4308 4309 4310 4311 4312 4313 4314 4315 4316 4317 4318 4319 4320	1-2 days cell restriction. *1-3 days restriction of any activity. 1-4 hours extra duty. Apology. Written assignment. Warning. Confiscate & dispose of contraband. Restitution.	3-4 days cell restriction. *3-4 days restriction of any activity. 4-7 hours extra duty. Apology. Written assignment. Warning. Confiscate & dispose of contraband. Restitution.	5 days cell restriction. *4-5 days restriction of any activity. 7-10 hours extra duty. Apology. Written assignment. Warning. Confiscate & dispose of contraband. Restitution.
<p>*Activity: includes but is not limited to visits, correspondence, hobby, gym/yard, telephone, photos/pictures, family day, offender facilitated group (AA/NAA), volunteer group activities. Generally an activity may only be restricted when the violation involves that activity or the rules regulating it. However when an offender is sanctioned to cell restriction he/she is restricted from all activities but work, school, scheduled medical appointments, treatment, meals, and visits.</p>				
<p>**Other sanctions available for Major categories: confiscate & dispose of property/contraband; forced labor 1-40 hours; recommend reclassification; recommend referral for criminal charges, restitution; terminate work/program assignment.</p>				

HOW TO USE THE DISCIPLINARY SANCTIONS GRID

STEP 1: LOCATE THE OFFENSE NUMBER ON THE GRID

Find the offense number in the second column of the grid and look in the left hand column to determine if it is in a Major or Minor level offense row.

Example: Doe was written up for a 4202, which is in a Major offense level row.

STEP 2: DETERMINE THE PRIOR DISCIPLINARY RECORD

1. Review the inmate's disciplinary history for the three years prior to the date on the infraction.
3. Identify the number of convictions during this time frame for infractions in the same level (i.e., major) as the current infraction to determine the sanction box.

STEP 3: DETERMINE THE SANCTION

1. The Inmate may receive one or two sanctions from a box for a Minor offense.
2. The Inmate may receive one, two, or three sanctions from a box for a Major offense.

EXAMPLE: Inmate Doe is sanctioned with 15 days detention, 30 days of loss of visitation, and is recommended for reclassification.

The sanctions contained in the appropriate box are the only sanctions that may be handed out, unless there is an exception. Exceptions are available only for unusual circumstances and must be requested and approved by the Deputy Warden or designee.

EXAMPLE: Inmate Doe has a history of serious mental illness, and was clearly delusional when he committed the rule violation.

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP MWP CONTRACT FACILITY: _____

Disciplinary Investigation Report

This report will be completed by the Disciplinary Hearing Investigator for the purpose of determining the quality and correctness of the infraction report.

Checklist:

Infraction report and attachments complete.

Is there a need for further investigation? YES NO

If yes complete an investigation and attach it to the infraction report.

Is the infraction number appropriate for the circumstances of the incident? YES NO

If no modify the level and infraction number on the infraction report.

Infraction report and attachments incomplete.

Report incomplete because of missing/incorrect information on the report:

- Incident reports
- Witness reports
- Infirmary reports
- Physical evidence/photos
- Other _____

Incomplete reports will be returned to the staff member who signed the report. This staff member will be responsible to complete the report and return it to the Hearing Investigator within three working days.

Disciplinary Hearing Investigator Signature and Date

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP 3.4.1
Attachment H

MSP MWP CONTRACT FACILITY: _____

DISCIPLINARY WITNESS REQUEST

This form must be submitted to the Disciplinary Hearings Office at least _____ hours prior to your disciplinary hearing. Failure to submit this form on time and properly completed may result in the Disciplinary Hearings Officer refusing to call or get statements from the witnesses you request.

Instead of witnesses being called to be physically present at the hearing, they may be asked to submit a written statement. If you are unable to collect these statements yourself, you may ask the Disciplinary Hearings Officer or Investigator to collect them for you.

1. Witness Printed Name and Signature: _____ / _____

Date _____

Testimony: _____

2. Witness Printed Name and Signature: _____ / _____

Date _____

Testimony: _____

3. Witness Printed Name and Signature: _____ / _____

Date _____

Testimony: _____

Date

Printed Name and Signature of Defendant

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP 3.4.1
Attachment I

MSP MWP CONTRACT FACILITY: _____

REFUSAL TO ATTEND DISCIPLINARY HEARING

Date: _____

Time: _____

Inmate: _____

ID #: _____

On the above date and time I attempted to bring the above-named inmate to a scheduled disciplinary hearing. The inmate refused to come to the hearing. I advised the inmate that should he refuse to attend the hearing, the hearing would proceed in his absence and that, depending on the evidence presented at the hearing, he may be found guilty of the charges and a sanction(s) may be imposed. Upon being advised, the inmate still refused to attend the hearing. The inmate gave the following statement or reasons for refusing.

Date

Officer Signature

Witness Signature

STATE OF MONTANA DEPARTMENT OF CORRECTIONS

MSP MWP CONTRACT FACILITY: _____

INFORMANT INFORMATION REPORT

Name and ID# of charged inmate: _____

Date of hearing when information was considered: _____

Staff member presenting informant information: _____

Informant is found: reliable not reliable

If reliable, the basis of finding was (*place a check in all appropriate sections*):

- Source has previously provided information that was proven to be true.
- Source successfully took and passed the polygraph examination.
- Informant's information was corroborated by other information (specify): _____

- Source incriminated himself/herself in a rule infraction when providing the information.
- Portions of the information provided by the informant have already been proven to be true.
- Other (explain): _____

Informant's information is: credible not credible

If credible, indicate reason(s) (*place a check in all appropriate sections*):

- Eyewitness.
- Information is detailed.
- Reasons checked above for reliability (specify): _____

Note: providing prior reliable information is not grounds for supporting the credibility of the current information.

Other (specify) _____

Summary of informant information [attach additional sheet if necessary]:

Name of informant and location of documentation where name and other details of informant information providing the basis for findings regarding reliability and credibility may be obtained:

(Date)

(Printed Name)

(Signature)