

103 CMR 431.00: OBSERVATION OF BEHAVIOR REPORTS

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431.01: Purpose

It is a basic tenet of sex offender treatment that sex offenders are responsible for their behavior and that they are responsible for knowing and conforming to laws set down by society. To further the goals of a cognitive behavioral treatment program while ensuring fairness to all residents, 103 CMR 431.00 institutes a clear set of rules linked to a clear set of sanctions, which could be modified according to mitigating or aggravating circumstances.

431.02: Statutory Authorization

103 CMR 431.00 is issued pursuant to M.G.L. c. 124, § 1(b), (i) and (q), M.G.L. c. 127, § 33 and M.G.L. c. 123A, § 2. 103 CMR 431.00 is not intended to confer any procedural or substantive rights not otherwise granted by state or federal law.

431.03: Cancellation

103 CMR 431.00 cancels and supersedes all previous policies governing the observation of behavior review proceedings at the Treatment Center.

431.04: Applicability

103 CMR 431.00 is applicable to all residents committed under M.G.L. c. 123A confined at the Massachusetts Treatment Center, including residents residing in the transition house or participating in a community access program, and to all employees. The discipline of prisoners (*i.e.*, persons not committed under M.G.L. c. 123A) admitted to the Treatment Center or any modular extension of the Treatment Center will be governed by the provisions of 103 CMR 430.00.

431.05: Access to Policy

103 CMR 431.00 shall be maintained in the Superintendent's policy file, institutional policy file the resident library, and on each housing unit, the Crisis Unit and the Minimum Privilege Unit.

431.06: Definitions

Behavior Review Committee (B.R.C.) - A three member board, appointed by the Superintendent, to conduct hearings for all observation of behavior reports processed.

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Chairperson - The person appointed by the Superintendent to facilitate the observation of behavior process and sit as the Chairperson for all observation of behavior hearings. The person should have knowledge and experience in the conduct of B.R.C proceedings.

Observation of Behavior Report (O.B.R.) - A report written by a staff member, on the appropriate form concerning inappropriate behavior of a resident.

Superintendent - The Chief Administrative Officer of the Massachusetts Treatment Center.

Resident - A person committed to the Treatment Center pursuant to M.G.L. c. 123A as a Sexually Dangerous Person.

Working Day - Monday through Friday, excluding holidays.

431.07: Detection and Reporting

(1) Any employee may report a violation of the code of offenses and initiate the observation of behavior process in accordance with the procedures set forth in 103 CMR 431.07. The O.B.R. shall include a description of the incident, the specific rules(s) violated, any unusual resident behavior, any staff witnesses, any physical evidence and its disposition, any immediate action including the use of force, the reporting staff member's signature, and the date and time of the report.

(2) Informal Handling. Informal handling of minor behavioral infractions is encouraged where appropriate. Initiation of informal handling does not require a written O.B.R. When an employee reasonably believes that formal handling of inappropriate behavior is not necessary, the employee may issue a warning or take other appropriate action and handle the matter informally. Informal handling generally focuses on the immediate correction of an inappropriate behavior (*e.g.* clean up a messy room, address a hygiene problem, return to the unit if outside the unit without permission, *etc.*) Informal handling does not include the imposition of room restriction. The employee may refer the matter to the resident's unit team for resolution.

(3) Formal Handling.

(a) Where informal handling is not appropriate, or where the resident has refused to cooperate with informal handling, the employee shall write an O.B.R. and forward it to the Shift Commander prior to the end of the employee's shift. The O.B.R. shall conform with the requirements of 103 CMR 431.07(1).

(b) The Shift Commander shall review the report and if necessary, refer the report back to the reporting staff person for clarification. The Shift Commander may make further investigation if deemed necessary. Any further investigation shall be commenced within 24 hours of the time the violation is reported and in the absence of exceptional circumstances, shall be completed without unreasonable delay. No further investigation should be conducted by the employee who reported the incident. The Shift Commander may:

1. Handle the matter informally in consultation with the reporting staff person; or
2. Have the O.B.R. processed and forwarded to the Behavior Review Committee.

(c) The Shift Commander may institute pre-hearing restrictions as provided by 103 CMR 431.08.

(d) Once the O.B.R. has been processed, the resident shall be provided with a copy of the O.B.R. within two working days of the observed behavior or two working days after the completion of an investigation that reveals the observation of behavior violation. The staff person serving the O.B.R. on the resident shall indicate service and the resident's acknowledgement or refusal of service. With the O.B.R., the resident shall be provided the appropriate form for requesting representation, witnesses, evidence and tape recording. The O.B.R. shall be forwarded to the B.R.C. at the same time it is provided to the resident.

(e) In any case in which restitution or compensation may be an appropriate sanction, the Superintendent or designee shall provide the resident with an itemized list of damages or costs associated with or resulting from the resident's misconduct. The itemized list of damages shall be provided to the resident within a reasonable time, but not less than 24 hours before the proceeding before the B.R.C.

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(f) The unit officer shall note in the unit log the number of the O.B.R., the resident's name, the behavior observed, the reporting officer, and any restrictions which were imposed. Any modifications to a restriction shall also be noted in the unit log book.

431.08: Restrictions Prior to Hearing

(1) Where necessary to maintain the good order of the institution or to protect the safety of residents or staff, the resident may be restricted pursuant to the provision of 103 CMR 431.08, either pending investigation of an incident or after the issuance of an O.B.R.

(2) Placement of the resident in the Minimum Privilege Unit pending investigation shall be in accordance with the provisions of Massachusetts Treatment Center 423.08(2)(b) and prior to a B.R.C hearing shall be in accordance with the provisions of Massachusetts Treatment Center 423.08(2)(a).

(3) The Shift Commander may authorize placing a resident on restriction (room, unit, program, *etc.*) pending investigation or after the issuance of an O.B.R. Any restrictions imposed on the resident shall be noted on the O.B.R., or if pending investigation, upon an incident report. The Superintendent or designee will review daily each resident so restricted and remove or modify such restrictions as appropriate.

431.09: Behavior Review Committee Procedures

(1) Composition and General Powers of the B.R.C.

(a) The B.R.C. shall consist of three persons appointed by the Superintendent; one security staff member, one clinician and one program staff member.

(b) The Superintendent or designee shall appoint one of the three members of the B.R.C. as Chairperson. The Chairperson shall govern the conduct of every phase of the hearing including, but not limited to, the interpretation and construction of 103 CMR 431.00 and the conduct of all parties. The Chairperson may call an executive session at any time to consider procedures.

(c) The B.R.C. shall be impartial. The resident may challenge the impartiality of a member of the B.R.C. If the resident challenges the impartiality of a member of the B.R.C., the Chairperson shall determine if the resident has stated substantial reasons to support the claim. For example, a witness to the event at issue should not sit as a member of the B.R.C. If the Chairperson determines that a member of the B.R.C. should be removed, the Superintendent or designee shall designate a replacement as soon as practicable.

(d) The B.R.C. shall not be bound by the rules of evidence observed by the courts of the Commonwealth.

(e) All parties, counsel, witnesses or other persons present at a B.R.C. hearing shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. The Chairperson may take whatever appropriate actions are necessary to conduct a hearing when confronted with the improper conduct of any participant.

(f) The B.R.C. shall make findings of fact, determine guilt or innocence, and impose sanctions and recommendations.

(2) Scheduling.

(a) Residents charged with rules violations shall be scheduled for a hearing by the B.R.C. within seven days (excluding weekends and holidays) after the alleged violation or the completion of any investigation. The resident will receive at least 24 hours notice of the date, time and location of the hearing.

(b) If, for good cause, either the B.R.C. or the resident is unable to meet on the prearranged date, a new hearing will be scheduled. In the event that the resident does not report to a scheduled hearing, and he has provided no reasonable explanation for this absence, the B.R.C. is authorized to proceed without the resident being present.

(c) The resident may waive the right to a hearing. The waiver shall be on the appropriate form. The resident shall forward the form to the B.R.C., which shall provide a copy to the Deputy Superintendent of Operations, who will review the waiver. A waiver shall be deemed an admission that the O.B.R. is accurate. In this case, the B.R.C. will meet for the purpose of considering and imposing sanctions.

431.09: continued

(3) Witnesses.

(a) At the request of the resident, the reporting staff person shall be present at the scheduled hearing except when the B.R.C. Chairperson determines that the reporting person is unavailable for a prolonged period of time or other good cause. If the resident does not request the presence of the reporting staff person, the Chairperson may, at his discretion, accept the reporting staff person's statements in his report as true, provided that the report is based on the staff person's eyewitness account or personal knowledge. Further, such statements in the report may be considered by the B.R.C. in making its findings. Any determination of unavailability shall be in writing and shall be reviewed by the Superintendent or designee prior to the commencement of the hearing. The Superintendent or designee may approve the determination or disapprove it and require scheduling of the hearing at a time when the staff person will be available.

(b) The resident, within 48 hours of receiving the O.B.R., may, in writing, inform the B.R.C. Chairperson of the individual(s) (staff and residents) he is requesting appear at the Behavior Review Committee proceeding. The resident shall provide a brief summary of the anticipated testimony of each witness requested. At the hearing, the Chairperson shall rule on the request to call witnesses as provided by 103 CMR 431.09(5)(d).

(4) Representation of Residents and Recording of Proceedings.

(a) The resident may be represented by an attorney or law student at the hearing. It is the resident's responsibility to secure such representation and the Chairperson shall afford him the opportunity to do so. It shall be the resident's responsibility to inform his representative of the scheduled time of the hearing. The Chairperson will reschedule the hearing once at the request of the attorney or law student. The Chairperson may, but is under no obligation to, reschedule a hearing a second time to accommodate the legal representative's schedule.

The resident may be represented by another resident only under the following circumstances:

1. In matters involving a greatest severity or high category offense as set forth in 103 CMR 431.11, the resident demonstrates that he has made reasonable efforts to secure representation by an attorney or law student and that he has been unable to secure such representation; and
2. The proposed resident advocate holds a privilege level above the lowest privilege level; and
3. The Chairperson determines, after consultation with appropriate clinical staff, that there would be no clinical contraindications to permitting the proposed resident advocate access to any records to be considered by the B.R.C; and
4. The Chairperson determines, after consultation with appropriate security staff, that there are no security concerns that would preclude appointment of the proposed resident advocate; and
5. The resident advocate shall not receive any compensation in any form for such services; and
6. The resident advocate shall conduct himself in a manner consistent with standards of decorum commonly observed in the courts of the Commonwealth. If the resident fails to conduct himself in such manner during the course of his representation, the Chairperson may disqualify him from continuing the representation.

(b) Where the resident is illiterate or not capable of collecting and presenting evidence on his own behalf, and where the resident has been unable to secure representation as set forth in 103 CMR 431.09(4)(a), the Superintendent will designate a staff member to assist the resident. In this instance, the resident will not be allowed to cross-examine witnesses, but the designated staff person may cross-examine witnesses identified by the resident.

(c) Either the Chairperson or the resident may elect to record the hearing by use of a tape recorder. A resident requesting recording must follow the provisions of the Treatment Center Audio Taping Procedure.

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(5) Conduct of the Hearing.

(a) At the beginning of a hearing on an offense which has been or may be referred to the district attorney for prosecution, the Chairperson shall advise the resident that he has the right to remain silent and that anything he says during the hearing may be used against him in a court of law. The Chairperson shall then read the charges to the resident and ask the resident if he wishes to admit or deny the charges. If the resident admits the charges, the Chairperson may immediately consider evidence of mitigating or aggravating circumstances, then close the proceeding for deliberation.

(b) If the resident does not admit the charges, the Chairperson shall conduct a fact finding hearing at which the B.R.C. may consider written, oral and physical evidence. All evidence shall be presented in the presence of the resident, except informant information which shall be presented in accordance with the provisions of 103 CMR 431.09(6).

(c) The resident shall be allowed, but shall not be compelled, to make an oral statement or to present a written statement in his own defense or in mitigation of sanction. A resident's silence may be used to draw an adverse inference against him, but his silence shall not be the sole basis for a guilty finding.

(d) The Chairperson shall allow the resident to call, question and cross-examine witnesses in his defense or to present other evidence, when permitting him to do so will not be unduly hazardous to personal or institutional safety. The factors that the Chairperson may consider when ruling on a resident's request to call witnesses, question witnesses, cross-examine witnesses or offer other documentary or physical evidence shall include, but not be limited to, the following:

1. Relevance;
2. Whether the evidence is cumulative or repetitive;
3. Hazards presented by an individual case;
4. Unavailability of the reporting staff person or other staff person for a prolonged period of time due to illness, vacation or other authorized absence, or for other good cause;
5. Failure of the resident to provide a summary of the expected testimony of a proposed witness.

The reasons for denying a resident's request to call witnesses, or offer documentary or physical evidence shall be stated in writing in the B.R.C. Hearing Report.

The resident may submit a written statement from any witness requested by the resident who is not permitted to attend the hearing.

(e) The B.R.C., at its discretion, may call and question witnesses on its own motion. The Chairperson may continue a hearing at his discretion.

(f) The B.R.C. may exclude any person from the hearing who fails to conduct himself in a manner consistent with standards of decorum commonly observed in the courts of the Commonwealth. The reasons for excluding any person from the hearing shall be stated in writing in the B.R.C. Hearing Report.

(6) Procedures for the Use of Informant Information. In cases involving informant information, the Chairperson may consider documentary evidence and/or testimony which is not presented in the presence of the resident or his representative only if, after viewing and/or hearing such documentary evidence or testimony, the Chairperson has:

(a) Made a finding that the informant is reliable and the information is credible. This finding shall be included in the record and should contain the following information:

1. the facts upon which the Chairperson based his conclusion that the informant was reliable and that the information was credible;
2. a statement of the information provided by the informant as specific as is possible without creating a substantial risk of disclosing the identity of the informant. The statement should demonstrate that the informant had personal knowledge of the information he provided;

(b) Made a finding that the disclosure of the documentary evidence or testimony provided by the informant to the resident or his representative would create a substantial risk of harm to the informant, to any other person, or to the security of the institution;

The Chairperson shall present a summary of the informant information to the resident at the hearing. Such a presentation may, however, be foregone in cases where disclosure of the information in any greater detail than that which is contained in the O.B.R. itself would create a substantial risk of disclosing the identity of the informant.

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The Chairperson may consider informant information and base the findings in 103 CMR 431.09(5)(a) on information which is limited to oral or written hearsay evidence. The B.R.C. shall not be required to interview the informant in person.

(7) Deliberation and Decision.

(a) At the close of the presentation of the evidence, the resident shall be excused from the room. The members of the B.R.C. shall confer to determine on the basis solely of information obtained in the hearing process, including staff reports, the statements of the resident charged, and evidence derived from the witnesses and documents, whether it is more likely than not that the incident occurred as reported and shall make a determination. The determination will be made by majority vote of the B.R.C.

(b) If the resident is found guilty, the B.R.C. may impose one or more of the sanctions listed in 103 CMR 431.12. The B.R.C. shall not utilize the resident's prior record of behavior in determining whether or not the incident occurred as reported, however, the resident's prior record of inappropriate behavior may be considered by the B.R.C. in determining what measures shall be taken to preclude a re-occurrence of that behavior. The Chairperson may, in his discretion, recall the resident after finding that the incident occurred as reported, but prior to the B.R.C. imposing a sanction to discuss issues related to the decision on a sanction. Upon a rehearing, the B.R.C. may increase or decrease the sanction previously imposed without regard to a previous B.R.C. decision.

(c) The disposition of the B.R.C. shall be read to the resident at the conclusion of the hearing. In addition, the resident shall be verbally informed of his right to submit a written appeal of the B.R.C.'s decision to the Superintendent or his designee within five days of the resident's receipt of the B.R.C. written decision. The staff person providing this information shall indicate so on the B.R.C. Hearing Report.

(d) In addition to having the disposition read to him, the resident shall, within three working days of the hearing be provided with a copy of the results of the B.R.C. Hearing Report. If a guilty finding is reached, the written decision shall contain the following:

1. A description of the evidence relied upon in reaching the finding that the incident occurred as reported;
2. A statement of the reason(s) for the sanction(s) imposed;
3. An explanation for the exclusion of evidence and witnesses;
4. A notice of the right of appeal.
5. Where informant information was used, a statement of the evidence in accordance with 103 CMR 431.09(5).

The evidence relied upon for the guilty finding and the reasons for the sanction shall be set out in specific terms.

(e) Where it has been found that the incident occurred as reported, a copy of the O.B.R., notice of hearing, request for representation/witnesses, waivers (if any), the written decision of the B.R.C. and appeal forms shall be maintained in the resident's institutional and central records. Copies shall be distributed to the B.R.C. Chairperson, the Superintendent or designee, the Unit Director and the Work Program Coordinator.

(f) Where it has been found that the resident is not guilty of an offense, the O.B.R., the Behavior Committee Hearing Report and the related attachments described in 103 CMR 431.00 shall be removed from the resident's file, unless the O.B.R. also includes offenses on which the resident was found guilty by the B.R.C. Dismissed and not guilty reports, as well as B.R.C. decisions which are expunged from the resident's file pursuant to court order or settlement agreement may be maintained by the Deputy Superintendent for Operations for the specific and exclusive purposes of and may be only used for research, staff training and statistical data.

431.10 Appeal of Dispositions

(1) All residents may appeal the finding or sanction(s) of the B.R.C. to the Superintendent or designee. If the resident chooses to appeal, the disposition shall be suspended until such time as the Superintendent or designee reviews the case and makes a final disposition. The B.R.C. may order that any restrictions imposed pursuant to 103 CMR 431.08 remain in effect pending disposition of the appeal. In such event, the pre-hearing restrictions will be subject to the review requirements of 103 CMR 431.08(3). The B.R.C. may also refer the resident to the Superintendent for placement on separate housing as provided by Massachusetts Treatment Center 423.08(2)(e).

(2) All residents may appeal the finding or sanction(s) of the BRC to the Superintendent within five working days following the resident receipt of the BRC's decision. The Superintendent, for the cause shown, may consider an appeal filed after the expiration of the five day period but no later than 15 days after the resident has received the BRC's decision.

(3) The Superintendent or designee reviewing the appeal shall normally act on it within 30 days of receipt and forward a written disposition to the resident and B.R.C. Chairperson.

431.11: Code of Offenses

(1) Observation of Behavior offenses shall include the following acts:

A. Greatest Severity

- A-1 Killing.
- A-2 Rape.
- A-3 Assaulting and causing physical injury to another person.
- A-4 Escape.
- A-5 Starting a fire or causing an explosion.
- A-6 Possession of a weapon or ammunition.
- A-7 Rioting or encouraging others to riot (must be concrete and specific).
- A-8 Taking hostages.
- A-9 Committing any act deemed to be a violent felony under the laws of the Commonwealth of Massachusetts or the federal government.
- A-10 Tampering with or blocking any locking device.
- A-11 Conduct which disrupts or interferes with the security or orderly running of the institution when this poses a threat to life or a threat of serious bodily harm or furthers a prohibited act of the Greatest Severity category.

B. High Category

- B-1 Assaulting another person including spitting.
- B-2 Introducing and/or possession of an unauthorized tool.
- B-3 Introducing illegal or unauthorized drugs, intoxicants or alcohol into the institution.
- B-4 Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm or under threat of informing.
- B-5 Committing acts of indecent exposure, voyeurism or frottage against another person.
- B-6 Wearing a disguise for the purpose of misrepresenting one's self.
- B-7 Adulteration of any food or drink.
- B-8 Refusing to cooperate with any drug or alcohol testing procedures.
- B-09 Violating a major condition of the Transition Program.
- B-10 Giving or offering an official or staff member a bribe.
- B-11 Giving money, credit cards or valuables to or receiving any of the above from any person for purposes of introducing contraband or for any other illegal or prohibited purpose.
- B-12 Destroying, altering or damaging government property or the property of another person having a value in excess of \$100.00.
- B-13 Manufacturing a facsimile of a weapon.
- B-14 Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security or official paper.

431.11: continued

- B-15 Committing any act deemed to be a nonviolent felon under the laws of the Commonwealth of Massachusetts or the federal government.
- B-16 Conviction of three of the same previous offenses within one year in the moderate category shall result in the treatment of the fourth offense as a High Category offense.
- B-17 Conduct which disrupts or interferes with the security or orderly running of the institution.

C. Moderate Category

- C-1 Fighting with another person.
- C-2 Misuse of authorized medication.
- C-3 Possession of money or currency or credit cards unless authorized.
- C-4 Loaning of property or anything of value for profit or increased return.
- C-5 Violating a minor condition of the Transition Program.
- C-6 Misrepresenting privilege level or abusing the use of the confidentiality envelope.
- C-7 Refusing a direct order.
- C-8 Lying or providing a false statement to a staff member regarding another person or making unfounded complaints or charges against a staff member or the institution with malicious intent.
- C-9 Interfering with count.
- C-10 Making, possessing or using intoxicants, alcohol, illegal drugs or drug paraphernalia.
- C-11 Destroying, altering or damaging government property or the property of another person having a value of \$100.00 or less.
- C-12 Threatening another person with bodily harm including sexual assault.
- C-13 Possessing unauthorized sexually explicit or offensive-related printed material or objects
- C-14 Tattooing.
- C-15 Conducting an unauthorized business.
- C-16 Use of the mail or telephone to threaten, frighten or intimidate another person.
- C-17 Being in an area not authorized for resident use.
- C-18 Any act deemed to be a misdemeanor under the laws of the Commonwealth of Massachusetts or the federal government.
- C-19 Conviction of three of the same previous Low Category offenses in a one year period will result in the fourth offense being treated as a Moderate Category offense.

D. Low Category

- D-1 Possession of anything not authorized.
- D-2 Use of obscene, abusive or threatening language, actions or gestures to any resident, staff or visitor.
- D-3 Being in an unauthorized location.
- D-4 Intentional unexcused absence from institutional assignment.
- D-5 Gambling.
- D-6 Horseplaying.
- D-7 Failure to follow safety or sanitary regulations including failure to maintain living quarters in a tidy and sanitary manner.
- D-8 Unauthorized possession of property belonging to another person.
- D-9 Smoking where prohibited.
- D-10 Malingering or feigning an illness to avoid an official assignment or order.
- D-11 Unauthorized use of the mail or telephone.
- D-12 Conduct with a visitor which violates institutional regulations.

(2) Aiding another person to commit any of the offenses set forth in 103 CMR 431.11(1), attempting to commit any of such offenses, or making concrete plans to commit any of such offenses shall be considered the same as a commission of the offense itself.



431.12: Sanctions

The range of sanctions following a finding by the B.R.C. that it is more likely than not that the incident occurred as reported, includes, but is not limited to those set forth in 103 CMR 431.12. In selecting and imposing an appropriate sanction or sanctions, the B.R.C. should consider the following guidelines, which permit the B.R.C. to tailor the sanction to the offense, and to take into account any mitigating or aggravating circumstances which the B.R.C. may note in its decision:

(1) Greatest Severity.

Category I (Mitigating Circumstances)

- Minimum Privilege Unit for up to ten days.
- Loss of related privileges for up to 60 days.
- Restitution.
- Recommendation for forfeiture of good time.
- Loss of job.

Category II

- Minimum Privilege Unit for up to 20 days.
- Loss of related privileges for up to 70 days.
- Restitution.
- Recommendation for forfeiture of good time.
- Loss of job.

Category III (Aggravating Circumstances)

- Minimum Privilege Unit for up to 30 days.
- Loss of related privileges for up to 80 days.
- Restitution.
- Recommendation for forfeiture of good time.
- Loss of job.

(2) High Category

Category I (Mitigating Circumstances)

- Room restriction up to seven days, except for visits and treatment.
- Loss of related privileges for up to 30 days.
- Suspension of job for up to 30 days.
- Restitution.

Category II

- Room restriction for up to ten days, except for treatment.
- Loss of related privileges for up to 40 days.
- Loss of job.
- Restitution.

Category III (Aggravating Circumstances)

- Minimum Privilege Unit for up to five days.
- Loss of related privileges for up to 50 days.
- Restitution.
- Recommendation for forfeiture of good time.

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(3) Moderate Category

Category I (Mitigating Circumstances)

- Loss of related privileges for up to ten days.
- Restitution.
- Community services for up to ten hours.

Category II

- Unit confinement for up to five days, except treatment.
- Restitution.
- Loss of related privileges for up to 15 days.

Category III Aggravating Circumstances)

- Room confinement for up to five days, except treatment, visits and gym.
- Community service for up to 25 hours.
- Restitution.
- Loss of related privileges.

(4) Low Category

Category I (Mitigating Circumstances)

- Unwritten warning.
- Restitution.

Category II

- Written warning.
- Restitution.
- Loss of related privileges for up to 24 hours.

Category III (Aggravating Circumstances)

- Loss of related privileges for up to five days.
- Restitution.
- Community service for up to five hours.

(5) Any case in which the sanction includes a recommended good time forfeiture shall be submitted to the Commissioner for his determination as to what part, if any, of a resident's good time credits shall be forfeited pursuant thereto. The Commissioner may order a forfeiture of all good time credits by a resident. M.G.L. c. 127, § 129. The Commissioner may accept or reduce the B.R.C.'s recommended forfeiture of good conduct credits.

(6) Implementation of a sanction of restitution will follow the procedures set forth in 103 CMR 405.17.

(7) The B.R.C. may suspend sanctions imposed for severe and high offenses for a period to time not to exceed six months and for moderate and low offenses for a period of time not to exceed three months.

(8) In addition to imposing a sanction, the B.R.C. may refer a resident serving a criminal sentence to the Transfer Board as provided by 103 CMR 460.08(2). The resident and the Superintendent shall receive written notice of the referral.

103 CMR: DEPARTMENT OF CORRECTION

(9) In any case, regardless of outcome, the B.R.C. may refer the resident for therapeutic outcome, if appropriate.

103 CMR: DEPARTMENT OF CORRECTION

431.12: continued

(10) At the conclusion of the hearings process, the B.R.C. shall forward the hearings records to the Deputy Superintendent of Operations to review to assure conformity with 103 CMR 431.00.

431.13: Time Limits

All procedural time limits set forth in the B.R.C. Policy are directory and may be waived by the Superintendent or their designee.

431.14: Emergencies

Whenever, in the opinion of the Superintendent, an emergency exists which requires the suspension of part or all of 103 CMR 431.00, he/she may order such a suspension.

431.15: Responsible Staff

The Superintendent of the Massachusetts Treatment Center shall be responsible for implementing and monitoring 103 CMR 431.00.

431.16: Review Date

103 CMR 431.00 shall be reviewed at least annually from the effective date by the Superintendent or designee.

431.17: Severability Clause

If any article, section, subsection, sentence, clause or phrase is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Superintendent or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 431.00.

REGULATORY AUTHORITY

103 CMR 431.00: M.G.L. c. 124, §§ 1(b), (I), (q); c. 127, § 33; c. 123A, § 2.

NON-TEXT PAGE