

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 430.00: INMATE DISCIPLINE

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430.01: Purpose

103 CMR 430.00 establishes a fair and impartial system governing Massachusetts Department of Correction (Department) Inmate disciplinary proceedings. The process is intended to serve as a method of maintaining order in the institutions while encouraging positive inmate behavior change.

430.02: Cancellation

103 CMR 430.00 cancels all previous Department or Institution policy statements, rules or regulations, and all previous Commissioner's Bulletins and Orders, regarding the conduct of disciplinary proceedings, to the extent they are inconsistent with 103 CMR 430.00.

430.03: Applicability

103 CMR 430.00 is applicable to Department employees and inmates incarcerated within Department institutions, except patients committed under M.G.L. c. 123, residents committed under M.G.L. c. 123A and confined at the Massachusetts Treatment Center or a branch thereof and subject to the provisions of 103 CMR 431.00: *Observation of Behavior Reports* and residents of the Massachusetts Alcohol and Substance Abuse Center. 103 CMR 430.00 is not intended to confer any procedural or substantive rights not otherwise granted by state or federal law.

430.04: Access to 103 CMR 430.00

The Department of Correction shall maintain an employee accessible copy of 103 CMR 430.00 within its Central Policy File. Each Superintendent shall maintain a copy of 103 CMR 430.00 within his or her Central Policy File, and at each inmate library.

430.05: Definitions

Aggravated Assault. An assault where aggravating factors exist including, but not limited to: use of a weapon; biting; use of a shod foot; multiple participants involved in the assault; seriousness of bodily injury; or, any other factors that manifest extreme indifference to life.

Automatic Discovery. Evidence which the Disciplinary Officer shall provide to the inmate automatically, and without request by the inmate, prior to the disciplinary hearing.

Business Day. Monday through Friday, excluding holidays.

430.05: Continued

Central Inmate Disciplinary Unit (CIDU). The centralized unit responsible for the oversight, implementation and auditing of all inmate disciplinary functions within the Department.

Commissioner. The Commissioner of Correction.

Department Disciplinary Unit (DDU). A restricted area or areas designated by the Commissioner to which an inmate has received a sanction recommended by a Special Hearing Officer.

Deputy Commissioner of the Prison Division (Deputy Commissioner). The executive staff person who reports to the Commissioner, and whose duties include, but are not limited to, the management of: Assistant Deputy Commissioner(s) of the Prison Division, the Central Inmate Disciplinary Unit, and the Office of Communication and Administrative Resolution.

Director of Inmate Discipline (Director or Director of Discipline). The administrative manager appointed by the Commissioner to oversee all inmate disciplinary functions within the Department, excluding Placement Reviews and conditions of confinement in the DDU.

Disciplinary Detention. The Restrictive Housing of an inmate who has been found guilty of a serious violation of 103 CMR 430.00. Such sanction shall not exceed 15 days for one offense and no more than 30 days for all violations arising out of the same or substantially connected incident(s), unless specifically authorized by the Commissioner. Disciplinary detention does not refer to inmates sanctioned to a DDU.

Disciplinary Restrictive Housing. A placement of an inmate in Restrictive Housing in a state correctional facility for disciplinary purposes to serve a Disciplinary Detention or DDU sanction after a finding has been made that the inmate has committed a breach of discipline.

Disciplinary Officer. An officer of supervisory rank or function appointed by the Director in minimum and pre-release security level institutions, or the Superintendent, in consultation with the Director, in medium and maximum security level institutions. Disciplinary Officers shall oversee disciplinary processing functions at the institutional level and shall directly report to their appointing authority; *i.e.*, the Director or Superintendent.

Exculpatory Evidence. Evidence that is potentially helpful to the inmate in either proving innocence or in establishing lesser responsibility for the offense(s) as charged.

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Exigent Circumstances. Circumstances that create an unacceptable risk to the safety of any person.

Hearing Officer. An officer of supervisory rank who is appointed by and reports to the Director to conduct disciplinary hearings.

Inmate Management System (IMS). The Department's automated information system that provides processing, storage and retrieval of inmate-related information needed by Department personnel and other authorized users within the criminal justice system.

Intimate Act. An act that suggests overly familiar behavior, *e.g.*, kissing, caressing or other related acts, excluding acts that are defined as sexual abuse in 103 DOC 519.00: *Sexual Harassment/Abuse Response and Prevention Policy (SHARPP)*.

Offer of Proof. A brief description of expected testimony or evidence.

Placement Review. A multidisciplinary examination to determine whether Restrictive Housing continues to be necessary to reasonably manage risks of harm, notwithstanding any previous finding of a disciplinary breach, exigent circumstances, or other circumstances supporting a placement in Restrictive Housing.

Placement Review Committee. A multidisciplinary group which shall include, but may not be limited to:

- (a) member of the security staff;
- (b) member of the programming staff; and
- (c) one member of the mental health staff.

This Committee may include the Superintendent, Deputy Superintendents, Director of Security, Director of Classification, Restrictive Housing Unit Captain, or their respective designees, and such other staff as deemed necessary to determine whether Restrictive Housing continues to be necessary to reasonably manage risks of harm, notwithstanding any previous finding of a disciplinary breach, exigent circumstances or other circumstances supporting a placement in Restrictive Housing.

Preponderance of Evidence. A belief, formed after weighing the evidence, that the proponent's contention is more likely true than not true.

Proponent. The staff member seeking a guilty finding against an inmate, or supporting a disciplinary report against an inmate.

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Qualified Mental Health Professionals. Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients.

Restrictive Housing. A placement that requires an inmate to be confined to a cell for at least 22 hours per day for the safe and secure operation of the facility. For purposes of 103 CMR 430.00, Restrictive Housing shall not include the following: any placement ordered by a medical or mental health provider, including but not limited to, the placement of an inmate in a Health Services Unit; the placement of an inmate in a hospital; the placement of an inmate in a medical setting where treatment is being provided; or the placement of an inmate on a mental health watch.

Secure Adjustment Unit. A highly structured unit that is not Restrictive Housing and that provides access to cognitive behavioral treatment, education, programs, structured recreation, leisure time activities and mental health services for those inmates diverted from or released from Restrictive Housing.

Secure Treatment Unit. A maximum security residential treatment program that is not Restrictive Housing and that is designed to provide an alternative to Restrictive Housing for inmates diagnosed with serious mental illness in accordance with clinical standards adopted by the Department of Correction. Secure Treatment Units consist of the Secure Treatment Program and the Behavioral Management Unit.

Serious Mental Illness (SMI). A current or recent diagnosis by a qualified mental health professional of one or more of the following disorders described in the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders*:

- (a) schizophrenia and other psychotic disorders;
- (b) major depressive disorders;
- (c) all types of bipolar disorders;
- (d) a neurodevelopmental disorder, dementia or other cognitive disorder;
- (e) any disorder commonly characterized by breaks with reality or perceptions of reality;
- (f) all types of anxiety disorders;
- (g) trauma and stressor related disorders;
- (h) severe personality disorders; or
- (i) a finding by a qualified mental health professional that the inmate is at serious risk of substantially deteriorating mentally or emotionally while confined in Restrictive Housing, or already has so deteriorated while confined in Restrictive Housing, such that diversion or removal is deemed to be clinically appropriate by a qualified mental health professional.

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Special Disciplinary Officer. A person appointed by the Commissioner, Superintendent or the Director to oversee any disciplinary matter or class of disciplinary matters, or an officer of supervisory rank or function appointed by the Director to oversee disciplinary processing functions for matters approved for a DDU disciplinary hearing. The Special Disciplinary Officer shall report directly to the appointing authority unless otherwise directed by the Commissioner.

Special Hearing Officer. A Hearing Officer appointed by the Commissioner to conduct DDU disciplinary hearings who shall report directly to the Director.

Stalking. The willful and malicious engagement in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress.

Superintendent. The chief administrative officer of a state correctional institution.

430.06: Self-injurious Behavior

Disciplinary reports solely for self-injurious behavior are prohibited. Disciplinary reports for behavior directly and wholly related to self-injurious behavior, such as destruction of state property, are also prohibited. Likewise, disciplinary reports for reporting to the Department or contract staff feelings or intentions of self-injury or suicide are prohibited. Whenever a staff person becomes aware of an inmate's self-injurious behavior, the staff person shall prepare an incident report and communicate the matter to the appropriate mental health staff in accordance with 103 DOC 650: *Mental Health*.

430.07: Disciplinary Personnel

(1) The Superintendent at each maximum and medium institution, in consultation with the Director, shall appoint a Disciplinary Officer who is of supervisory rank or function, who shall perform the functions of that office, as set forth in 103 CMR 430.00. The Director shall appoint a Disciplinary Officer(s) who is of supervisory rank or function who shall perform the disciplinary office functions at minimum and pre-release institutions, as set forth in 103 CMR 430.00. The Superintendent or Director may appoint an Assistant Disciplinary Officer(s) who is of equal or lesser rank to the Disciplinary Officer for the purpose of performing the functions of that office as set forth in 103 CMR 430.00. The Superintendent or Director may appoint a Disciplinary Officer(s) and Assistant Disciplinary Officer(s) for a definite or indefinite term. The

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Commissioner or Superintendent may appoint a Special Disciplinary Officer for any disciplinary matter or class of disciplinary matters. The Director may appoint a Disciplinary Officer(s) of supervisory rank or function for the purpose of performing the functions of a Disciplinary Officer, as set forth in 103 CMR 430.00, for disciplinary matters which may result in the inmate receiving a sanction to a DDU.

(2) The Director shall appoint a Hearing Officer or officers to conduct disciplinary hearings as set forth in 103 CMR 430.00. The Director may appoint a Hearing Officer or officers for a definite or indefinite term and may, in addition, appoint a new Hearing Officer to hear and determine any disciplinary matter or class of disciplinary matters.

(3) The Commissioner may appoint a Special Hearing Officer or officers to handle a particular matter or class of matters.

430.08: Department Disciplinary Unit (DDU) Referral

In cases where the Disciplinary Officer, in consultation with the Superintendent, determines that a sanction to a DDU may be warranted, the Disciplinary Officer shall forward a copy of the disciplinary report and a summary of available information to the Director. The Director shall make the final determination whether a DDU hearing shall be held.

430.09: Detection and Reporting of Disciplinary Offenses

(1) Informal Handling of Lesser Offenses. The informal handling of lesser offenses in accordance with existing practices is not precluded or discouraged by 103 CMR 430.00. Where an employee reasonably believes that formal disciplinary action is not necessary, the employee may, with the approval and review of the employee's supervisor, within 24 hours issue a written warning or take other appropriate action and handle the matter informally. When informal sanctions are imposed the inmate shall be notified through an Informal Sanction Form. Additionally, each institution shall record this information into the unit/IMS Informal Sanction Screen within 24 hours to monitor and track informal sanctions being issued within the institution. Inmates may challenge the informal handling of a disciplinary matter and request that the matter be handled formally, and that a disciplinary report be written. If an inmate refuses to sign the Informal Sanction Form, which refusal acts as the inmate's exercise of a challenge to informal handling, the employee may proceed as provided in 103 CMR 430.09(2). Informal Sanctions are limited to one of the following:

- (a) Written Warning;
- (b) One - five hours extra duty; to be assigned as needed by the Unit Officer;

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(c) One - three days restriction in one's room or unit, to begin within 24 hours of the incident. Inmates on this type of restriction may leave the room or unit to appear at scheduled appointments, programs or meals; or

(d) One - three days loss of a specified leisure activity; to begin within 24 hours of the incident.

(2) Formal Handling of Disciplinary Offenses. Where informal handling is not appropriate, an employee who has reason to believe that a disciplinary offense has been committed by an inmate shall write a disciplinary report and submit it to the employee's supervisor for review within 24 hours.

(a) Upon receipt of the disciplinary report, a supervisor shall further investigate the matter

if deemed necessary, within 24 hours, and recommend one of the following:

1. the matter be handled informally in consultation with the reporting staff person;
2. the matter be dismissed if further investigation, facts or mitigating circumstances change the facts as originally presented;
3. formal action be taken and forward the report to the Shift Commander.

(b) Upon receipt of the disciplinary report the Shift Commander shall, within 24 hours, recommend one of the following:

1. further investigation;
2. the matter be handled informally in consultation with the reporting staff person's supervisor;
3. the matter be dismissed if further investigation, facts or mitigating circumstances change the facts as originally presented;
4. formal action be taken and forward the report to the Disciplinary Officer.

(3) At all levels of review, the disciplinary report shall be reviewed for accuracy, while ensuring adherence to applicable time frames.

(4) All disciplinary reports shall be reviewed as required by 103 DOC 650: *Mental Health Policy*.

430.10: Responsibilities of the Disciplinary Officer

Within two business days from receipt of the disciplinary report, the Disciplinary Officer shall review the disciplinary report, or make any further investigation the Disciplinary Officer deems necessary, including a review of informant information, if applicable, and do one of the following:

- (a) dismiss the disciplinary report;
- (b) reduce the disciplinary report to an incident report;
- (c) with the approval of the Superintendent, take no immediate action on the report pending the receipt of further information; or

- (d) proceed with formal disciplinary action and assign offenses as set forth in 103 CMR 430.24.

430.11: Proceedings in Formal Disciplinary Matters: Notice and Scheduling of Hearing Before a Hearing Officer

(1) Within two business days of the Disciplinary Officer or a designee assigning offenses to the disciplinary report, a copy of the disciplinary report, a notice of hearing, a request for representation/witness form and a request for evidence form, shall be served upon the inmate by the Disciplinary Officer or a designee. Automatic discovery shall ordinarily be served on the inmate at this time, but not less than 48 hours before the hearing. Automatic discovery includes:

- (a) copies of incident reports concerning the incident alleged to have occurred in the disciplinary report;
- (b) copies of, or access to, all exculpatory evidence;
- (c) copies of, or access to, all documentary, photographic, audio, or videographic evidence referred to in the disciplinary report or which the Disciplinary Officer intends to introduce at the hearing;
- (d) informant information checklist with applicable sections completed by the Disciplinary Officer;
- (e) In cases where the Disciplinary Officer determines restitution may be an appropriate sanction, the disciplinary officer shall provide the inmate with an itemized list of damages or costs associated with or resulting from the inmate's actions.

(2) The Disciplinary Officer or designee shall approve or deny with good cause and in writing any requests made by the inmate for witnesses or evidence. This response shall be served on the inmate or his or her representative no less than 48 hours prior to the hearing. The factors that the Disciplinary Officer or designee may consider when ruling on these requests shall include, but not be limited to, the following:

- (a) relevance;
- (b) whether the evidence is cumulative or repetitive;
- (c) unavailability of the reporting staff person or other staff person for a prolonged period of time due to illness, authorized absence or for other good cause;
- (d) failure of the inmate to provide a sufficient offer of proof of the expected testimony of a proposed witness or the need for requested evidence.

(3) The Disciplinary Officer shall schedule a hearing before a Hearing Officer within a reasonable time, but not less than 24 hours after the inmate has been served with both the disciplinary report and the notice specifying the date and time of the hearing. The Disciplinary

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Officer or Hearing Officer may continue a hearing. The inmate or, if applicable, his or her representative shall be given written notice of such continuance and the new date and time for the hearing. The inmate shall be entitled to one continuance for good cause provided that any request for a continuance must ordinarily be made at least 24 hours prior to the scheduled time of the hearing. Requests for continuances shall not be unreasonably denied.

(4) An inmate may waive the right to 24 hours notice of the disciplinary hearing. An inmate may waive the right to appear before the Hearing Officer. Such waivers shall be appropriately documented.

(5) An inmate may waive the right to a disciplinary hearing and enter a guilty plea or agree to a continuance without a finding pursuant to 103 CMR 430.26 before the Disciplinary Officer or Hearing Officer. If the inmate pleads guilty, the Disciplinary Officer or Hearing Officer shall conduct an interview with the inmate and may assess mitigating circumstances presented by the inmate. The Disciplinary Officer or Hearing Officer shall then recommend sanction(s) in accordance with 103 CMR 430.25. An inmate may appeal the sanction in accordance with 103 CMR 430.18.

(6) If an inmate wishes to be represented in accordance with the provisions of 103 CMR 430.12(1) and (2), or if the inmate wishes to have the reporting staff person or other witnesses present in accordance with the provisions of 103 CMR 430.14(4) and (5), the inmate shall complete the request for representation and witness form and submit it to the Disciplinary Officer within 24 hours of receipt. The inmate must submit the request for evidence form within 24 hours of receipt. The inmate's unexcused failure to submit a request for representation and witness form or evidence form may, at the discretion of the Disciplinary Officer, constitute a waiver of the inmate's rights to call witnesses, request additional evidence, and to be represented at the hearing. However, such a failure to submit forms shall not deny the inmate automatic discovery.

(7) Contraband evidence that is deemed to constitute a risk to the safety or security of the institution, its staff, inmates, or any participant in the hearing process shall not be presented at the hearing. The Disciplinary Officer or designee shall make reasonable attempts to supply the inmate with either photographs or photocopies of the evidence, unless the photographs or photocopies of the evidence would themselves be contraband or constitute a security risk (for example, pornography). Attorneys or law students who represent the inmate, may request in writing, to view contraband evidence prior to the hearing by notifying the Disciplinary Officer at least 48 hours prior to the hearing. The Disciplinary Officer shall grant or deny the request with a written explanation should the request be denied.

430.12: Representation of Inmates, Special Accommodations, and the Recording of Proceedings

(1) An inmate may be represented by an attorney or a law student in disciplinary proceedings in accordance with 103 CMR 430.00. It is the inmate's responsibility to secure such representation. The inmate shall be allowed to make, or have made on the inmate's behalf, a telephone call for that purpose. If a representative agrees to represent an inmate, he or she shall provide written notice to the Disciplinary Officer. Provided written notice is received, a Disciplinary Officer shall allow a continuance request unless the Disciplinary Officer determines the continuance would cause undue delay or is otherwise unreasonable. The inmate's representative shall be entitled to make one amended written request for witnesses, evidence or the reporting staff person's presence, provided that such amended request is communicated to the Disciplinary Officer at least three business days prior to the scheduled time for the hearing.

(2) Where an inmate is illiterate or non-English speaking, or where the issues presented are complex, the inmate shall be afforded the right to be assisted by a staff member designated by the Disciplinary Officer or by the Department's designated telephonic interpreter service. It shall be the inmate's responsibility to request such assistance within a reasonable time prior to the scheduled hearing.

(3) An inmate, either verbally or in writing, may seek an accommodation pursuant to 103 DOC 408: *Reasonable Accommodations for Inmates*, for any of the procedures set forth in 103 CMR 430.00. Whenever said request is made, the Institution's Americans with Disabilities Act (ADA) Coordinator shall determine what accommodations, if any, are reasonable pursuant to the procedures set forth in 103 DOC 408.

(4) An inmate shall be permitted to record a hearing before a Hearing Officer through use of tape or electronic recording equipment provided by the inmate or the inmate's representative. Upon timely request by the inmate to the Disciplinary Officer, ordinarily to be made along with the inmate's request for representation/witness form, but in no case less than 48 hours prior to the hearing, the Hearing Officer or designee shall record the hearing electronically and provide a copy of the hearing for the inmate's use with a reasonable charge to be paid by the inmate. An indigent inmate, as defined by 103 CMR 481.00: *Inmate Mail*, shall be afforded a recorded copy of the hearing upon prior written request by the inmate or the inmate's representative. The inmate shall be required to deliver any recordings so used to the Hearing Officer at the close of the disciplinary hearing. The Hearing Officer shall deliver such recording(s) to the Disciplinary Officer who shall be responsible for the safekeeping of the recordings. The inmate or the inmate's representative shall have access to the recording(s) for future reference and the representative shall be permitted to make and retain a duplicate recording at the hearing.

430.13: The Hearing Officer's General Powers

(1) The Hearing Officer shall govern the conduct of every phase of a hearing including, but not limited to, the interpretation and construction of 103 CMR 430.00

and the conduct of all parties. The Hearing Officer may, for good cause, go into executive session at any time to consider procedures, and reconvene the hearing at a reasonable date and time.

(2) The Hearing Officer shall be impartial. If the inmate or inmate's representative challenges the impartiality of the Hearing Officer, the Director or a designee shall determine if the inmate/representative has stated substantial reasons to support the claim. For example, a witness to the event at issue shall not sit as a Hearing Officer. If the Director removes the Hearing Officer, the Director shall designate a replacement as soon as practicable.

(3) The Hearing Officer shall not be bound by the rules of evidence or privilege observed by the courts of the Commonwealth.

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

(5) The Hearing Officer cannot compel the attendance of non-Department of Correction staff.

(6) The Hearing Officer shall make findings of fact, determine guilt or innocence, and make sanction recommendations.

430.14: Fact Finding Aspects of a Hearing before a Hearing Officer

(1) At the beginning of a hearing on a disciplinary offense which is designated as a referral to the District Attorney for prosecution, prior to the reading of offenses to the inmate, the Hearing Officer shall advise the inmate that the inmate has the right to remain silent and that anything the inmate says during the hearing may be used against the inmate in a court of law. For any other hearing on a disciplinary offense, at the beginning of the hearing the Hearing Officer shall read the offenses to the inmate and ask if the inmate wishes to admit or deny the offenses. If the inmate admits the offenses, the Hearing Officer may immediately consider mitigating evidence when recommending the sanction(s).

(2) If the inmate does not admit the offenses, the Hearing Officer shall conduct a fact finding hearing at which the Hearing Officer may consider written, oral and physical evidence. All evidence considered by the Hearing Officer shall be presented in the presence of the inmate, except certain informant information, which shall be presented in accordance with the provisions of 103 CMR 430.15.

(3) The Hearing Officer shall begin the disciplinary hearing by identifying the date, time and place of the hearing, the parties present, and reading the disciplinary report aloud. The inmate shall then be asked for a plea of guilty or not guilty. After the

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reading of the disciplinary report and the inmate's plea, the Hearing Officer shall consider any preliminary matters. When requested by the Hearing Officer, Reporting Officer, or upon his or her own initiative, the Disciplinary Officer or Assistant Disciplinary Officer shall present the case at issue. Evidence shall ordinarily be presented first by the proponent(s) of the disciplinary report(s), with an opportunity for cross-examination allowed by the inmate or the inmate's representative. The inmate shall then be allowed, but is not required to, present testimony or evidence in support of the inmate's case. An inmate's silence may be used to draw an adverse inference against the inmate, but silence shall not be the sole basis for a guilty finding. An inmate's request for sequestration of witnesses shall not be unreasonably denied, although the Hearing Officer may have appropriate staff present throughout the hearing as required by particular security or safety concerns. The foregoing procedure in no way limits the authority of the Hearing Officer as set forth in 103 CMR 430.13.

(4) The inmate may call and question witnesses in his or her defense, or to present other evidence, when permitting him or her to do so will not be unduly hazardous to personal or institutional safety. The factors that the Hearing Officer may consider when considering an inmate's request to call witnesses, questioning of witnesses, or offer other documentary or physical evidence shall include, but shall not be limited to, the following:

- (a) relevance;
- (b) whether the evidence or witness testimony is cumulative or repetitive; and
- (c) hazards presented by an individual case.

(5) The reporting staff person shall, when requested by the inmate or the Hearing Officer, attend the hearing unless the Superintendent or designee determines that good cause exists for the officer's unavailability. Any determination of unavailability shall be in writing and shall be completed prior to the commencement of the hearing. The Superintendent or a designee may approve the determination or disapprove it and require rescheduling of the hearing at a time when the reporting staff person will be available. If the inmate does not request the presence of the reporting staff person at the disciplinary hearing, the Hearing Officer may accept the reporting staff person's statement in the report as true, provided that the report is based on the staff person's eyewitness account or other personal knowledge and is otherwise credible. Further, such statements in the report may be considered by the Hearing Officer in making findings pursuant to 103 CMR 430.16(1). In the event that the inmate has requested the presence of the reporting staff person at the disciplinary hearing, but the officer is nonetheless unavailable, the Hearing Officer may assess the credibility of the staff person's statement in the report and is not required to accept it as true.

(6) The Hearing Officer may call and question witnesses on the Hearing Officer's own motion. The Hearing Officer may continue a hearing.

430.15: Procedures for the Use of Informant Information

In disciplinary cases involving informant information, the Hearing Officer may consider documentary evidence and/or testimony which is not presented in the presence of the inmate or the inmate's representative only if, after viewing or hearing such documentary evidence or testimony, the following has occurred:

(1) The Hearing Officer has made a finding that the informant is reliable and that the information is credible. This finding shall be included in the record and should contain the following information:

(a) The facts upon which the Hearing Officer based the conclusion that the informant was reliable and that the information was credible. These facts should ordinarily not be general and must be specific, as set forth in 103 CMR 430.15(1)(b).

(b) A statement of the information provided by the informant with as much specificity 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 provided.

(c) In making the foregoing findings, the Hearing Officer shall be guided by and record the findings on a form approved by the Commissioner consistent with 103 CMR 430.00, which form includes criteria focusing on the personal knowledge, reliability, and credibility of the informant and the specificity of the information supplied. A separate inquiry and finding shall be made for each informant. Each form with these findings shall be given to the inmate at a reasonable time before the inmate is given an opportunity to question the reporting officer or other witnesses and to present the inmate's case.

(2) The Hearing Officer has made a finding that the disclosure of the documentary evidence or testimony provided by the informant to the inmate or the inmate's representative would create a substantial risk of harm to the informant, to any other person, or to the security of the institution.

(3) The Hearing Officer has presented a written summary of the information provided by the informant to the inmate at the hearing, which shall be included with the form required by 103 CMR 430.15. 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 disciplinary report itself would create a substantial risk of disclosing the identity of the informant. In such a case, the Hearing Officer shall justify this nondisclosure with specific written findings included in the form given to the inmate. However, the inmate or the inmate's representative may question the reporting officer subject to the provisions of 103 CMR 430.13 and 103 CMR 430.15(1)(b) with regard to the reliability and credibility of the informant.

(4) The Hearing Officer may consider informant information and base the findings in 103 CMR 430.15(1) on information which is limited to oral or written hearsay

evidence subject to the foregoing provisions. The Hearing Officer shall not be required to interview the informant in person.

(5) The form required by 103 CMR 430.15 and any written summary of informant information shall be included in the Hearing Officer's written record of the proceedings. This standard form may, from time to time, be revised with the approval of the Commissioner; in such case, any prior form(s) shall be discontinued and the revised form shall be used in all disciplinary hearings until it is replaced.

430.16: Deliberation and Decision by the Hearing Officer

(1) After the close of the presentation of the evidence, the Hearing Officer shall consider and determine the guilt or innocence of the inmate. Evidence relied upon by the Hearing Officer, shall be that on which reasonable persons are accustomed to rely in the conduct of serious affairs. The proponent(s) of the disciplinary report shall have the burden of proving the offense(s) by a preponderance of the evidence.

(2) If the inmate is found guilty, the Hearing Officer may recommend one or more of the sanctions listed in 103 CMR 430.25. The inmate's disciplinary chronology shall not be considered by the Hearing Officer in determining the guilt or innocence of the inmate, but it may be considered in deciding the appropriate sanction. The Hearing Officer may recall the inmate after reaching a guilty finding but prior to recommending a sanction to discuss issues related to the decision on sanction(s). Upon a rehearing, the Hearing Officer should not increase the sanction(s) previously recommended without good cause.

(3) Findings requiring the payment of an amount of restitution shall be supported by a preponderance of the evidence.

430.17: Record of Disciplinary Proceedings

(1) If a guilty finding is reached, the Hearing Officer shall prepare a written decision containing the following:

- (a) a description of the evidence relied upon in reaching the guilty finding;
- (b) a statement of the reason(s) for the sanction recommendations, including any mitigating circumstances;
- (c) an explanation for the exclusion of evidence and witnesses;
- (d) a notice of the right of appeal.

This written decision shall be given to the inmate within five business days of the close of the hearing.

A copy of the findings and sanctions (if any) shall also be sent directly to the individual who represented the inmate at the disciplinary hearing *via* mail, facsimile or electronic means, at the request of the inmate or the inmate's representative.

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(2) The evidence relied upon for the guilty finding and the reasons for the sanction recommendation shall be set out in specific terms. Where the hearing has involved the use of informant information, the statement of the evidence shall be set out in accordance with 103 CMR 430.15.

(3) The Disciplinary Officer shall maintain all disciplinary decisions, dispositions and appeal results. The Disciplinary Officer shall regularly confer with supervisory staff regarding the disciplinary decisions and appeals resulting from disciplinary reports written by their subordinate staff to benefit and learn from this feedback.

(4) Where the inmate has been found guilty, all reports, notices, correspondence, requests and any other related documents shall be kept in the inmate's institutional and central office records.

430.18: Appeal Procedures

(1) All inmates may appeal the finding or sanction(s) of the Hearing Officer to the Superintendent within 15 days following the inmate's receipt of the Hearing Officer's written decision. If the 15th day of this appeal period does not fall on a business day, this day will not count and the next business day shall be counted as the 15th day. In matters in which a DDU sanction is recommended, the appeal shall be to the Deputy Commissioner of the Prison Division or a designee.

(2) The Superintendent, as the appellate authority, may sustain the finding and sanction recommendation(s) of the Hearing Officer, order a rehearing, reduce or suspend the recommended sanction, dismiss the offenses, or take whatever remedial action the Superintendent deems appropriate. The Superintendent may take into consideration an inmate's documented disability upon appeal. In no event shall the Superintendent increase any sanction recommendation on an appeal from a decision of the Hearing Officer, but may decrease the recommended sanctions as defined in 103 CMR 430.25. The Superintendent shall normally decide an appeal within 30 days of its receipt and notify the inmate in writing of the decision with supporting reasons. If a rehearing is ordered, the disciplinary process shall recommence from service of the disciplinary report. A new Hearing Officer shall be assigned to conduct the rehearing.

(3) The Commissioner or a designee may appoint an individual or group of individuals to serve as the appellate authority in place of the Superintendent or Deputy Commissioner of the Prison Division in any disciplinary case or class of cases.

430.19: Review of Dispositions

The Deputy Superintendent shall conduct a procedural review of all disciplinary dispositions within ten business days of the conclusion of the appeal process, to ensure that all procedural guidelines established in accordance with 103 CMR 430.00, have been complied with. This review shall be documented.

430.20: Not Guilty Findings and Dismissals

Dismissed and not guilty disciplinary reports may be kept for the specific and exclusive purposes of research, officer training and statistical data. Access to any and all of an inmate's disciplinary history by criminal justice and law enforcement agencies is permitted as authorized by law.

430.21: Placement in Restrictive Housing

When an inmate is placed in Restrictive Housing pending investigation for a possible disciplinary offense and/or pending adjudication of a charged disciplinary offense, such placements shall be governed by 103 CMR 423.00: *Restrictive Housing*. If an inmate is subsequently found guilty of any offense arising from an incident which led to the inmate's placement in Restrictive Housing, the inmate shall receive credit for each day in Restrictive Housing against a resulting DDU or disciplinary detention sanction.

430.22: Disciplinary Detention

(1) An inmate may be placed in disciplinary detention only pursuant to a sanction recommended by a Hearing Officer and approved by an appellate authority if the inmate filed an appeal. Placement in disciplinary detention shall not occur until:

- (a) the inmate has waived the right to appeal either through submitting a written waiver to the Disciplinary Officer or failure to file an appeal within the time prescribed in 103 CMR 430.18; or
- (b) the inmate's appeal has been decided against the inmate; or
- (c) the inmate has requested in writing to begin the disciplinary detention time notwithstanding the fact that the appeal is pending.

(2) The Superintendent shall designate such person or persons as deemed appropriate to review the status of inmates who do not have a serious mental illness housed in disciplinary detention on a weekly basis. If an inmate in disciplinary detention has a serious mental illness, the inmate shall be reviewed as set forth in 103 CMR 430.31(1) through (6). Consistent with the safety of all staff and inmates, an SMI inmate on disciplinary detention status may be transferred to an outplacement such as a Secure Adjustment Unit or Secure Treatment Unit in accordance with the process set forth in 103 CMR 430.31(8).

(3) No inmate shall be retained in disciplinary detention continuously for more than 15 days for any one offense. No more than 30 days disciplinary detention shall be imposed on an inmate for all offenses arising out of the same or substantially connected incident(s), unless specifically authorized by the Commissioner. No inmate shall, at any given time, be facing more than 30 days disciplinary detention time, unless for good cause specifically authorized in writing by the Commissioner. Each Superintendent may convert disciplinary detention to an equal amount of room/unit restriction based on operational needs of the facility.

(4) Inmates placed in disciplinary detention shall be subject to the same limitations and programming requirements set forth in 103 CMR 430.32 and 103 CMR 430.33 for inmates in the DDU.

430.23: Time Limits

The procedural time limits set forth in 103 CMR 430.00, except for those set forth in 103 CMR 420.28 and 103 CMR 430.29, are directory and may be waived by the Superintendent, Commissioner or their designees for good cause and in writing.

430.24: Code of Offenses

Category One.

- 1-1 Killing of another.
- 1-2 Aggravated assault on a staff member, contract employee, member of the public, volunteer or animal.
- 1-3 Aggravated assault of another inmate or parolee.
- 1-4 Aggravated assault on a visitor.
- 1-5 Taking or holding any person hostage.
- 1-6 Escape or attempted escape.
- 1-7 Possession, manufacture, or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 1-8 Possession, manufacture, or introduction of any gun, firearm, weapon, sharpened instrument, knife or poison of any component thereof.
- 1-9 Sexual assault on a staff member, contract employee, member of the public, or volunteer.
- 1-10 Sexual assault or sexual abuse of another inmate.
- 1-11 Sexual assault on a visitor.
- 1-12 Rioting.
- 1-13 Inciting others to riot or inciting other inmates to participate in a major group demonstration within any institution.
- 1-14 Setting a fire, using or placing a bomb or incendiary device.
- 1-15 Introduction, distribution or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 1-16 Engaging in or inciting an organized work stoppage.

430.24: Continued

- 1-17 Fighting with, assaulting or threatening another person, due to security threat group activities or gang activities.
- 1-18 Engaging, encouraging, recruiting or pressuring others to engage in security threat group activities.
- 1-19 Fighting with or assaulting any person in an area designated for visiting, while visits are occurring.
- 1-20 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category Two.

- 2-1 Unauthorized possession of items or material likely to be used in an escape.
- 2-2 Causing a valid threat of transmission of a contagious disease to any person due to intentional or reckless action.
- 2-3 Assault on a staff member, contract employee, member of the public, volunteer, or animal.
- 2-4 Assault on another inmate or parolee.
- 2-5 Assault on a visitor.
- 2-6 Making a bomb threat, or using a hoax device, or a hoax substance.
- 2-7 Fighting with any person.
- 2-8 Refusing to submit to urinalysis, breathalyzer, or other standard sobriety test or altering or interfering with any such test, or failing to provide a urine sample when ordered to do so by a staff member without medical or mental health justification.
- 2-9 Refusing or failing to submit to testing required by statute, or order, such as DNA blood tests, when ordered to do so by a staff member.
- 2-10 Engaging in or inciting a group demonstration inside the correctional institution or a hunger strike inside the correctional institution.
- 2-11 Unauthorized use or possession of drugs, narcotics, illegal drugs, unauthorized drugs or drug paraphernalia.
- 2-12 Possession, manufacture or introduction of unauthorized keys.
- 2-13 Indecent exposure, or masturbating in the view of another person.
- 2-14 Receiving test results indicating the presence of unauthorized drugs, alcohol or other intoxicants.
- 2-15 Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties during an emergency.
- 2-16 Tampering with, damaging, blocking or interfering with any locking or security device or window.
- 2-17 Impersonating any staff member, contract employee, volunteer or visitor.
- 2-18 Causing an inaccurate count by means of unauthorized absence, hiding, concealing oneself or other form of deception or distraction.

430.24: continued

- 2-19 Possessing, making, introducing or transferring intoxicants and alcohol, or possession of ingredients, equipment, formula, or instructions that are used in making intoxicants and alcohol.
- 2-20 Possession of the clothing of a staff member or contract employee, or visitor.
- 2-21 Causing injury to another person by resisting orders, resisting forced movement or physical efforts to restrain.
- 2-22 Making a false fire alarm or tampering with, damaging, blocking or interfering with firealarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.
- 2-23 Counterfeiting, committing forgery, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.
- 2-24 Conduct which interferes with the security or orderly running of the institution. 2-25 Wearing or displaying colors or any type of emblem, insignia or logo suggesting possible membership or affiliation with a gang, group party or other association whenever such wearing or display may, when the Superintendent has reasonable cause to believe, pose a threat to the security, good order or safety of the institution. 2-26 Possessing, wearing or using security threat group paraphernalia or photographs. 2-27 Failure to timely report to a location or program assignment resulting in a declaration of escape status.
- 2-28 Distribution or sale of tobacco.
- 2-29 Engaging in intimate acts and/or sexual acts with another.
- 2-30 Stalking.
- 2-31 Possession of a cell phone, unauthorized electronic device, or paraphernalia for a cell phone or unauthorized electronic device, regardless of whether the cell phone/device is operable.
- 2-32 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category Three.

- 3-1 Lying to or providing false information to a staff member.
- 3-2 Receipt or possession of contraband of items not authorized for retention by inmates.
- 3-3 Reserved for Future Use.
- 3-4 Threatening another with bodily harm or with any offense against another person, their property or their family.
- 3-5 Refusing a direct order by any staff member.
- 3-6 Impersonating another inmate.
- 3-7 Refusing a transfer to another institution.

430.24: continued

- 3-8 Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 3-9 Throwing objects, materials, substances, or spitting at another.
- 3-10 Theft of property or possession of stolen property.
- 3-11 Unauthorized accumulation/misuse of prescribed medication.
- 3-12 Possession, manufacture, or introduction of an unauthorized tool.
- 3-13 Organizing or participating in an unauthorized group activity or meeting inside the correctional institution.
- 3-14 Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from another inmate or an inmate's friend(s) or family.
- 3-15 Flooding a cell or other area of the institution.
- 3-16 Refusing a cell or housing assignment.
- 3-17 Causing an individual to be penalized or proceeded against by providing false information.
- 3-18 Gambling and/or possession of gambling paraphernalia.
- 3-19 Giving, receiving or offering any person a bribe or anything of value for an unauthorized favor or service.
- 3-20 Receiving a tattoo while incarcerated, tattooing another, or possessing tattoo paraphernalia and/or body piercing.
- 3-21 Fraud, embezzlement, or obtaining goods, services, money or anything of value under false pretense.
- 3-22 Creating an emergency by feigning illness or injury.
- 3-23 Possession of tobacco products and/or an incendiary device.
- 3-24 Being out of place or in an unauthorized area outside of the inmate's unit.
- 3-25 Communicating, directly or indirectly with any staff member, contract employee, volunteer or their relatives at their home addresses, home telephone numbers, email addresses, social media accounts or for non-official business.
- 3-26 Use of obscene, abusive or insolent language or gesture.
- 3-27 Conduct which disrupts the normal operation of the facility or unit.
- 3-28 Possession of an altered appliance.
- 3-29 Engaging in an unauthorized visit while on a community work crew or a pre-release work assignment.
- 3-30 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

Category Four.

- 4-1 Receipt or possession of contraband.
- 4-2 Mutilating, defacing or destroying state property or the property of another person.
- 4-3 Unauthorized possession of money or other negotiable items.

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- 4-4 Use of mail or telephone in violation of established rules or regulations.
- 4-5 Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary action.
- 4-6 Possession of any photographic, or hand drawn material and/or unauthorized publication that depicts sexually explicit acts, and/or nudity.
- 4-7 Reserved for Future Use.
- 4-8 Misuse or waste of issued supplies, goods, services, or property.
- 4-9 Failure to maintain acceptable hygiene.
- 4-10 Failure to maintain acceptable hygiene or appearance of a housing area.
- 4-11 Violating any departmental rule or regulation, or any other rule, regulation, or condition of an institution or community based program.
- 4-12 Failure to comply with standing count procedures.
- 4-13 Being out of place or an unauthorized area within a unit.
- 4-14 Reserved for Future Use.
- 4-15 Attempting to commit any of the above offenses, making plans to commit any of the above offenses or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

430.25: Sanctions

- (1) Sanctions for each Category 1 offense are as follows:
 - (a) Loss of statutory good time, not to exceed 360 days loss for all charges arising out of any one incident or substantially related incidents;
 - (b) Disciplinary Detention for up to 15 days;
 - (c) 60-120 days loss of a privilege including, but not limited to, one of the following: television, radio, multi-media player, personal tablet, canteen, either visits or phone privileges, hot pots, and leisure programs;
 - (d) Cell or housing restriction for up to 20 days; and
 - (e) Restitution.
 - (f) Referral to the DDU for a period not to exceed ten years for all violations arising out of one incident or substantially related incidents;No more than one sanction (excluding restitution) shall be imposed per offense and no more than five sanctions (excluding restitution) may be imposed for all offenses arising out of any one or substantially related incidents in which the highest offense(s) alleged is from Category 1.
- (2) Sanctions for each Category 2 offenses are as follows:
 - (a) Loss of statutory good time, not to exceed 180 days loss for all charges arising out of any one incident or substantially related incidents;
 - (b) Disciplinary Detention for up to 15 days;

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(c) 30-90 days loss of a privilege including, but not limited to, one of the following: television, radio, multi-media player, personal tablet, canteen, either visits or phone privileges, hot pots, and leisure programs;

(d) Cell or housing restriction for up to 15 days;

(e) Restitution;

(f) Referral to the DDU for a period not to exceed five years for all violations arising out of one incident or substantially related incidents.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than four sanctions (excluding restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 2.

(3) Sanctions for each Category 3 offense are as follows:

(a) Disciplinary Detention for up to ten days;

(b) Up to 60 days loss of a privilege including, but not limited to, one of the following: television, radio, multi-media player, personal tablet, canteen, either visits or phone privileges, hot pots, and leisure programs;

(c) Cell or housing restriction for up to ten days;

(d) Restitution;

(e) Prohibition from replacing any altered appliance for up to four months;

(f) Up to 15 hours of extra duty.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than three sanctions (excluding restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 3.

(4) Sanctions for each Category 4 offense are as follows:

(a) Up to 30 days loss of a privilege including, but not limited to, one of the following: television, radio, multi-media player, personal tablet, canteen, either visits or phone privileges, hot pots, and leisure programs;

(b) Restitution;

(c) Room/Unit restriction up to five days;

(d) Prohibition from replacing any altered appliance for up to four months;

(e) Up to ten hours of extra duty;

(f) Written reprimand.

No more than one sanction (excluding restitution) shall be imposed per offense and no more than two sanctions (excluding restitution) may be imposed for all offenses arising out of anyone or substantially related incidents in which the highest offense(s) alleged is from Category 4.

(5) No more than a total of 30 days disciplinary detention or 40 days cell, housing, or unit restriction may be imposed for all violations arising out of one incident or substantially related incidents.

(6) Findings requiring the payment of an amount of restitution by an inmate shall be supported by a preponderance of evidence.

430.26: Sanction Limitations in Restrictive Housing

Inmates on Restrictive Housing status shall not serve more than a total of 15 days sanction of loss of phone, property (including, but not limited to, television, radio, multi-media players and personal tablets), visits or canteen. If an inmate retains the use of either a radio or television, he or she may receive a loss of privilege sanction consistent with 103 CMR 430.25(1) through (4), of one, but not both, at the same time.

430.27: Continuance Without a Finding

(1) Disciplinary Officers, Hearing Officers, and any appellate authority under 103 CMR 430.00 may, wholly within their discretion, and with the consent of the inmate, continue the inmate's disciplinary report(s) without a finding for a period not to exceed one year or any shorter period as may be set by the Disciplinary Officer, Hearing Officer, or appellate authority. If, at the conclusion of any such continuance, the inmate has pending but unresolved disciplinary charges, the continuance shall be extended until after a hearing is held, and findings issued for any such pending charges which arose during the period of continuance. At the end of any such continuance, the disciplinary report which was continued without a finding shall be filed, unless prior to such time the inmate is charged with and later found guilty of a disciplinary offense committed during the period of the continuance. If the inmate has been found guilty of a disciplinary offense committed during the period of the continuance, guilty findings shall automatically enter on all charges in the continued disciplinary report and the inmate shall be allowed to be heard only on the question of sanctions. A request to be heard on the question of sanctions shall be directed to the Superintendent of the institution in which the inmate is housed.

(2) An inmate agreeing to a continuance without a finding shall be informed in writing that the inmate is waiving the right to a hearing or appeal under 103 CMR 430.00, other than the right to be heard on the question of sanctions if sanctions are later imposed. The inmate in such case shall have no right to appeal the guilty findings or sanction entered under 103 CMR 430.27(2). Such waiver shall be on a form consistent with 103 CMR 430.00 and approved by the Commissioner or designee and shall be signed by the inmate and any staff aforementioned in 103 CMR 430.26(1). A request to be heard on sanctions shall be directed to the Superintendent of the institution in which the inmate is housed.

(3) Continuances without a finding under 103 CMR 430.26 shall not ordinarily be granted for Category 1 offenses.

430.28: DDU Hearings and Sanctions

(1) The Commissioner shall appoint a Special Hearing Officer(s) to hear all disciplinary matters which may result in the inmate receiving a sanction to a DDU. The Director may appoint a Special Disciplinary Officer(s) for disciplinary matters which may result in the inmate receiving a sanction to a DDU. This Special Disciplinary Officer shall perform the functions of a Disciplinary Officer, as set forth in 103 CMR 430.00 including, but not limited to, acting as the proponent.

(2) All DDU hearings shall be recorded by the Special Hearing Officer.

(3) A DDU Special Hearing Officer may suspend a sanction, or any portion thereof, for a period of time not to exceed 12 months.

(4) The Deputy Commissioner of the Prison Division or a designee shall serve as the appellate authority in any disciplinary case in which an inmate receives a recommended sanction to a DDU, subject to the procedures set forth in 103 CMR 430.18(1). When no DDU sanction is imposed, the inmate shall follow the normal appeal procedure provided by 103 CMR 430.18.

(5) The Deputy Commissioner of the Prison Division shall designate a staff person to conduct a disposition procedural review of all DDU hearings within ten business days of the conclusion of the appeal process to ensure that all procedural guidelines established in accordance with 103 CMR 430 have been complied with. This review shall be documented in IMS.

(6) The Superintendent may recommend that the Deputy Commissioner of the Prison Division approve an inmate(s) for release from the DDU prior to the expiration of the DDU sanction. The factors to be considered in making such a request to the Deputy Commissioner include, but shall not be limited to: the medical or mental health needs of an individual inmate, the need to prepare an inmate for release from custody, whether the inmate has made a positive institutional adjustment, or the operational needs of the DDU, *e.g.*:

- (a) number of DDU placements;
- (b) nature of the disciplinary report resulting in the current DDU placement;
- (c) length of time to release from custody.

(7) Inmates who are granted early release from the DDU prior to the expiration of the DDU sanction shall have the remainder of the DDU sanction suspended, conditional upon the inmate's disciplinary behavior. If an inmate subsequently receives a new disciplinary report for a Category 1 or Category 2 offense, the Deputy Commissioner of the Prison Division shall conduct a desk review to determine whether the inmate's disciplinary behavior warrants the resumption of the DDU sanction. The original termination date of the DDU sanction shall remain in effect.

(8) When an inmate in the DDU is expected to be released to the community within 40 days, any continued retention of the inmate in the DDU must be authorized by the Deputy Commissioner of the Prison Division or designee. When the inmate is released to the community directly from the DDU, the release shall be documented in an incident report indicating the approving authority for the continued placement in the DDU, the detailed release plan, and the required notifications provided in accordance with 103 DOC 493: *Reentry Policy*, 103 DOC 407: *Victim Services*, and 103 DOC 404: *Inmate Release Policy*. The requirements of 103 CMR 430.25(8) do not apply to immediate court-ordered releases.

(9) Any inmate released from the custody of the Department directly to the community pursuant to his or her Good Conduct Discharge (GCD) date, shall similarly be released from his or her DDU imposed sanction.

430.29: DDU Screening

Before placement in the DDU, an inmate shall be screened by a Qualified Mental Health Professional to determine if the inmate has a serious mental illness (SMI) or to determine if placement in the DDU is otherwise clinically contraindicated based on clinical standards adopted by the Department of Correction, with said standards adopted in consultation with the Department of Mental Health, and the Qualified Mental Health Professional's clinical judgment. Additional mental health procedures and treatment attendant to DDU placement shall comport with the requirements set forth in 103 DOC 650: *Mental Health Services*.

Additionally, prior to or immediately upon placement in the DDU, the inmate shall be screened by medical staff to determine whether there are any medical contraindications to placement in the DDU, including the existence of a permanent physical disability that precludes placement in the DDU. In such case, the inmate shall not be placed in the DDU. This screening shall be documented and placed in the inmate's medical record.

430.30: DDU Reviews

(1) An inmate who has been sanctioned to disciplinary Restrictive Housing in the DDU shall be reviewed by the Placement Review Committee 180 days after the effective date of the DDU sanction, *i.e.*, the date that the Deputy Commissioner of the Prison Division issues written authorization for the DDU sanction, and every 90 days thereafter.

(2) For each Placement Review, the inmate shall be:

- (a) provided with 24 hours written notice prior to each Placement Review;
- (b) provided the opportunity to participate in each Placement Review in writing;

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(c) upon review, if no placement change is ordered, provided a written statement as to the evidence relied on and the reasons for the placement decision; and

(d) advised as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

(3) After each Placement Review, the inmate shall be retained in the DDU only if the superintendent or designee determines that the inmate poses an unacceptable risk:

(a) to the safety of others;

(b) of damage or destruction or property; or

(c) to the operation of a correctional facility.

(4) If the Placement Review Committee or superintendent or designee recommends that the inmate should be released from the DDU, the recommendation shall be forwarded to the Deputy Commissioner of the Prison Division for final determination. If the Deputy Commissioner determines that the inmate should be released from the DDU, the Deputy Commissioner will determine the status of the remaining time left to serve on the DDU sanction (whether the sanction shall be deemed served, remainder of sanction suspended, *etc.*). When the remainder of a DDU sanction is suspended, the suspension is conditional upon the inmate's disciplinary behavior; if the inmate receives a new disciplinary report for a Category 1 or Category 2 offense, the Deputy Commissioner of the Prison Division shall conduct a desk review to determine whether the inmate's disciplinary behavior warrants the resumption of the DDU sanction. The original termination date of the DDU sanction shall remain in effect. If the determination is made by the Deputy Commissioner that the inmate will be released from the DDU prior to the expiration of the DDU sanction, a classification board shall be held in accordance with 103 CMR 420.00: *Classification*.

(5) The DDU correctional program officer shall maintain Placement

Review records. 430.31: DDU Confinement of SMI Inmates

(1) An inmate shall not be held in the DDU if the inmate has been determined to have a serious mental illness or a finding has been made by a qualified mental health professional that DDU is clinically contraindicated unless, not later than 72 hours after the DDU placement or finding, the Commissioner or a designee certifies in writing:

(a) the reason why the inmate may not be safely held in the general population; and

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- (b) that there is no available placement in a Secure Treatment unit or Secure Adjustment Unit; and
 - (c) that efforts are being undertaken to find appropriate housing and the status of the efforts; and
 - (d) the anticipated time frame for resolution; or
 - (e) whether exigent circumstances exist.
- (2) A copy of the written certification shall be provided to the inmate. An inmate held in DDU in accordance with 103 CMR 430.00 shall be offered additional mental health treatment in accordance with clinical standards adopted by the Department of Correction.
- (3) SMI inmates in DDU shall be reviewed thereafter at least every 72 hours. The Placement Review Committee shall perform such Placement Reviews on Monday, Wednesday and Friday.
- (4) After each Placement Review, the inmate shall be retained in the DDU only if the superintendent or designee determines that the inmate poses an unacceptable risk:
- (a) to the safety of others;
 - (b) of damage or destruction of property; or
 - (c) to the operation of a correctional facility.
- (5) Within 15 days of the inmate's initial placement in the DDU, or within 15 days of the Placement Review Committee's determination that the inmate's placement in DDU will last more than 60 days, the inmate shall be advised as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review. This shall be documented in the IMS.
- (6) Additionally, at each 72-hour Placement Review of an SMI inmate, the inmate shall be:
- (a) provided with 24 hours written notice of prior to each Placement Review;
 - (b) provided the opportunity to participate in each review in writing;
 - (c) upon review, if no placement change is ordered, provided a written statement as to the evidence relied on and the reasons for the placement decision; and

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(d) advised as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

(7) If an inmate diagnosed with an SMI remains in the DDU for more than 30 days, an individualized treatment plan that includes weekly monitoring by mental health staff, treatment as necessary, and steps to facilitate the transition of the inmate back to general population, shall be developed.

(8) Consistent with the safety of all staff and inmates, an SMI inmate may be transferred from the DDU to an outplacement in a Secure Treatment Unit, *e.g.*, STP or BMU, as provided in 103 DOC 650: *Mental Health Services*.

Consistent with the safety of all staff and inmates, an SMI inmate may be transferred from the DDU to an outplacement in a Secure Adjustment Unit or other non-Restrictive Housing unit in accordance with the process set forth in 103 DOC 650: *Mental Health Services*, for placement and transfer of SMI inmates to Secure Treatment Units, and in consultation with the DDU Administrator.

An inmate transferred from the DDU to a Secure Treatment Unit, Secure Adjustment Unit, or other non-Restrictive Housing unit will continue to serve and be credited with his DDU time throughout his placement in such unit.

430.32: DDU Programming

(1) Inmates held in the DDU for a period of more than 30 days shall have access to vocational, educational and rehabilitative programs to the maximum extent possible consistent with the safety and security of the unit and shall receive good time for participation at the same rates as the general population.

(2) Any inmate who has fewer than 180 days until the inmate's mandatory release date or parole release date and is held in the DDU shall be offered reentry programming that shall include, but shall not be limited to, substantial re-socialization programming in a group setting, regular mental health counseling to assist with the transition, housing assistance, assistance obtaining state and federal benefits, employment readiness training and programming designed to help the person rebuild interpersonal relationships, which may include, but shall not be limited to, anger management and parenting courses and other re-entry planning services offered to inmates in a general population setting.

430.33 DDU Conditions

(1) Inmates in DDU shall be provided the following:

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- (a) meals that meet the same standards established by the commissioner for general population inmates;
 - (b) access to showers and shaving not less than three days per week;
 - (c) issuance of an allowed exchange of clothing, bedding, and linen, and provided laundry, barbering, and hair care services on the same basis as general population;
 - (d) the same opportunities for writing and receipt of letters as is available to the general population;
 - (e) access to legal materials and legal reference material;
 - (f) rights of visitation and communication by those properly authorized; provided, however, that the authorization may be diminished for the enforcement of discipline for a period not to exceed 15 days for each offense;
 - (g) access to reading and writing materials and the opportunity to borrow reading materials from the institution library unless clinically contraindicated;
 - (h) access to either a radio or television, the choice of which will be in the Department's sole discretion, if confinement exceeds 30 days;
 - (i) periodic mental and psychiatric examinations under the supervision of the Department of Mental Health;
 - (j) medical and psychiatric treatment as clinically indicated under the supervision of the Department of Mental Health;

 - (k) access to canteen purchases and privileges to retain property in a cell as provided by 103 CMR 403.00: *Inmate Property*, however, that such access and privileges may be diminished for the enforcement of discipline for a period not to exceed 15 days for each offense or where inconsistent with the security of the unit;
 - (l) One hour of exercise per day outside their cells, five days per week, unless security or safety considerations dictate otherwise. Additional out-of-cell time shall be provided as required by 103 DOC 650: *Mental Health Services*;
 - (m) telephone privileges in accordance with 103 CMR 482.00: *Telephone Access and Use*. Superintendents may set limits on the permitted number of telephone calls; and
 - (n) the same access to disability accommodations as inmates in general population, except where inconsistent with the security of the unit.
- (2) Notwithstanding the provisions of 103 CMR 430.33, the Superintendent may further limit the amount of property and issue scrubs in *lieu* of such clothing for security purposes if there is imminent danger that an inmate or inmates will destroy an item, or induce injury to self or others.
- (3) To maximize out-of-cell activities, the Superintendent or designee shall assess whether, and to what extent, out-of-cell activities over and above five hours per week of out-of-cell recreation time (*i.e.*, one hour per day, five days a week) per inmate are consistent with the safety and security of all staff and inmates in the DDU. Such

additional out-of-cell activities may include, but not be limited to, additional recreation periods, longer recreational periods, or programming.

In assessing whether additional out-of-cell activities or programs can safely be offered, the Superintendent or designee shall consider any factors deemed pertinent to such assessment, including but not limited to, the number of inmates in the DDU, the number of available correction officers, the number of available program staff, the availability of physical space in the unit, the nature of the threat posed by particular inmates, and/or the climate of the DDU.

430.34: DDU Staff Qualifications and Training

All correction officers, supervisors and managers assigned to the DDU shall be trained in accordance with standards and qualifications adopted by the Commissioner in consultation with the sheriffs and the Department of Mental Health and shall comport with the requirements set forth in 103 DOC 216: *Training and Staff Development*.

Training should include but not be limited to suicide prevention, trauma informed care, crisis intervention, de-escalation, signs and symptoms of mental illness, co-occurring disorders, emergency response, code 99, fire exits, restraints, IMS entries, counts, showers, medication, recreation, phones, rounds, pyramid of force, unit structure/operations, post orders, and interpersonal communications.

430.35: Limitations on Placement in Restrictive Housing

The fact that an inmate is lesbian, gay, bisexual, transgender, queer or intersex or has a gender identity or expression or sexual orientation uncommon in general population shall not be grounds for placement in Restrictive Housing.

A pregnant inmate shall not be placed in Restrictive Housing.

An inmate with an anticipated release date (release from the custody of the Department) of less than 120 days shall not be held in Restrictive Housing unless:

- (a) the placement in Restrictive Housing is limited to not more than five days;
- or
- (b) the inmate poses a substantial and immediate threat.

430.36: Emergency

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution an emergency exists which requires the suspension of part or all of 103 CMR 430.00, such suspension may be ordered, provided that any such suspension beyond 48 hours must be authorized by the Commissioner for good cause.

103 CMR: DEPARTMENT OF CORRECTION

430.37: Responsible Staff

The Director of Discipline shall implement and monitor 103 CMR 430.00 throughout the Department. Each Superintendent shall implement and monitor 103 CMR 430.00 at the institution.

430.38: Annual Review

103 CMR 430 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

430.39: Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 430.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, clause or phrase of 103 CMR 430.00.

REGULATORY AUTHORITY

103 CMR 430.00: M.G.L. c. 124, §§ 1(b), (i) and (q) and M.G.L. c. 127, § 39, 39A, 39B, 39C, 39E, 39F and 39H.