

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 291

DEPARTMENT OF CORRECTIONS

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ARCHIVES DIVISION
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FILING CAPTION: Prohibited Conduct and Processing Disciplinary Actions

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CONTACT: Julie Vaughn

971-701-0139

Julie.A.VAUGHN@doc.oregon.gov

3601 State St

Salem, OR 97301

Filed By:

Julie Vaughn

Rules Coordinator

NEED FOR THE RULE(S):

These rules are necessary to establish the rules of conduct governing adults in custody and outline the procedures to be followed in processing disciplinary action(s). This revision furthers our longstanding commitment to place fewer AICs in segregation for shorter periods of time. This change will reduce the maximum consecutive sanction to DSU from 180 days to 90 days.

JUSTIFICATION OF TEMPORARY FILING:

The Department of Corrections finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because long-term placement of Adults in Custody (AICs) in Disciplinary Segregation would continue. It is the policy of the department to restrict an AIC for the shortest time necessary to provide for the safe, secure, efficient, and orderly management of Department of Corrections facilities, the safety and security of department employees, the public, AICs, and property of the Department of Corrections. Failure to promptly amend these rules will unnecessarily and unduly extend sanctions for AICs found in violation of certain rules during the permanent rulemaking process.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:

291-105-0064, 291-105-0066

AMEND: 291-105-0064

RULE TITLE: Postponements and Continuances of Hearings

RULE SUMMARY: Amends to reduce the maximum consecutive sanction to DSU from 180 days to 90 days.

RULE TEXT:

(1) A hearing may be postponed or continued by the Hearings Officer or the adjudicator for a reasonable period of time for good cause.

(2) "Good cause" includes, but is not limited to:

(a) Preparation of defense; or

(b) Illness or unavailability of the AIC charged; or

(c) Gathering of additional evidence (for example, calling of witnesses, gathering of witness statements, investigation, acquisition of physical evidence); or

(d) Avoiding interference with an ongoing police investigation or pending prosecution; or

(e) Determination of appropriate sanctions.

(3) The reason for the postponement in a formal hearing shall be made part of the record.

(4) If an AIC has been placed on disciplinary segregation status pending a hearing and a continuance or postponement is ordered on the motion of the Hearings Officer, the Hearings Officer shall consider retention of the AIC on disciplinary segregation status and:

(a) Determine that the AIC no longer presents a threat to security and recommend to the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status, that the AIC be released from disciplinary segregation status pending conclusion of the hearing; or

(b) Determine that the rule violation(s) alleged is so serious that, if proven, the AIC would present an immediate and continuing threat to the safety, security, or orderly operation of the facility. The Hearings Officer will recommend to the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status that the AIC be retained on disciplinary segregation status. The written approval of the functional unit manager or designee of the facility where the AIC is on disciplinary segregation status shall be made a part of the record. The AIC may be retained on disciplinary segregation status for a period no longer than allowed for the alleged rule violation(s). In no case shall an AIC be retained on disciplinary segregation status for a period in excess of 90 consecutive days.

(5) If an AIC has been placed on disciplinary segregation status pending a hearing and a continuance or postponement is requested by the AIC, the Hearings Officer shall not consider retention of the AIC on disciplinary segregation status; the AIC will be retained on disciplinary segregation status. The AIC will be retained on disciplinary segregation status for a period no longer than allowed for the alleged rule violation(s). The AIC may not be retained on disciplinary segregation status under this provision for more than 90 days.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

AMEND: 291-105-0066

RULE TITLE: Principles of Application of Disciplinary Sanctions

RULE SUMMARY: Amends to reduce the maximum consecutive sanction to DSU from 180 days to 90 days.

RULE TEXT:

- (1) A single act of misconduct may violate more than one misconduct rule.
- (2) Loss of Privilege: If the AIC's misconduct involves the abuse or misuse of a specific privilege (for example: recreation yard, canteen, etc.), the Hearings Officer or adjudicator may order a loss of that specific privilege and may increase the loss of that specific privilege sanction up to twice the amount listed in the appropriate grid box.
- (3) If an AIC receives a conduct order and a misconduct report that results in a recommended loss of privileges sanction, the AIC will receive credit for the length of the conduct order toward the loss of privilege sanction.
- (4) If an AIC is placed in disciplinary segregation pending a misconduct report and the formal hearing results in a recommended disciplinary segregation sanction, the AIC will receive credit for the length of time in disciplinary segregation awaiting the hearing toward the recommended disciplinary segregation sanction.
- (5) For rule violations arising from separate misconduct reports, disciplinary segregation sanctions shall be served consecutively, up to 90 days.
- (6) For rule violations arising from the same misconduct report:
 - (a) Concurrent disciplinary segregation sanctions may be imposed by the Hearings Officer or functional unit manager or designee, up to 90 days. The AIC shall be ordered to only serve the sanction for the most serious violation in the misconduct report.
 - (b) Consecutive sanctions may be imposed by the Hearings Officer or functional unit manager or designee. The reasons for consecutive sanctions shall be supported by written substantial reasons outlining the factor(s) supporting the consecutive sanctions. No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that factor is also used to impose discipline.
- (7) The Department's rule on Prohibited Rules of Conduct and Processing Disciplinary Actions for Adults in Custody contains two disciplinary grids. One grid governs disciplinary action for major violations (Exhibit 1). The other grid governs disciplinary action for minor violations (Exhibit 2).
- (8) Each of the disciplinary grids shall outline the available sanctions within each box, which includes fines, disciplinary segregation time, and the loss of privileges.
- (9) There are additional sanctions available to the Hearings Officers and adjudicators for major violation(s) and minor violations (OAR 2911050069 and 291-105-0071). These sanctions shall be applied in proportion to the violation, the AIC's prior misconduct, and institutional behavior.
- (10) Merged and Consecutive Sanctions: In the case of multiple rule violations, a Hearings Officer or adjudicator shall impose any sanctions for only the single most severe or most applicable rule violation found as charged in a single misconduct report, except as specifically allowed by OAR 291-105-0066(5)(b). The applicable sanction(s) for the remaining rule violations shall be deemed to have merged with the sanction(s) imposed for the single rule violation, unless consecutive sanctions are imposed as authorized in OAR 291-105-0066(5)(b).
- (11) The Hearings Officer may consider input regarding appropriate sanction(s) from stakeholders involved with the AIC (for example, Behavioral Health Services (BHS), housing unit employees, counselor(s), Security Threat Management, etc.), if:
 - (a) Input provided by BHS indicates the AIC's actions constitute an act of self-harm the misconduct shall be dismissed with prejudice.
 - (b) Input provided by BHS indicates the AIC has a Serious Mental Illness, the AIC may be sanctioned up to 30 consecutive days in disciplinary segregation. The AIC may receive loss of privileges, fines, and other sanctions as allowed by OAR 291-105-0069.
- (12) Limitations on the Length of Confinement in Disciplinary Segregation for Rule Violations:
 - (a) No AIC shall be confined in disciplinary segregation for more than 90 consecutive days. On the 90th consecutive day

of confinement in disciplinary segregation, an AIC shall be reassigned and ordered to other housing. Once reassigned and ordered to other housing, the AIC shall be subject to additional confinement in disciplinary segregation (up to a maximum of another 90 days) as a sanction for a new rule violation(s).

(b) Once an AIC has received the maximum sanction of 90 consecutive days, the Hearings Officer is not required to impose any additional disciplinary segregation sanction. The Hearings Officer is also not required to order additional loss of privileges sanctions to an AIC who has already received the maximum 90 days disciplinary segregation sanction, if the Hearings Officer determines that the sanction would not be meaningful to the AIC. Such action shall be made a part of the written record of the hearing.

(c) New violations committed while assigned to disciplinary segregation: If an AIC is ordered to serve an additional disciplinary segregation sanction for committing a new rule violation(s) while assigned to disciplinary segregation, the additional disciplinary segregation sanction may be served consecutively or concurrent, to any prior disciplinary segregation sanction(s), up to a maximum of 90 days.

(d) New violations committed while assigned to Intensive Management Unit (IMU) Status or Behavioral Health Unit (BHU) Status: An AIC who commits a new rule violation(s) while assigned to IMU status or to the BHU under OAR 291-048-280, shall not be ordered to serve a disciplinary segregation sanction for the violation(s). The AIC shall be subject to the range of additional sanctions described in OAR 291-105-0069 & OAR 291-105-0071, including but not limited to fines and loss of privileges.

(13) When an AIC has been assigned to disciplinary segregation as part of a disciplinary sanction that is considered a Level I or Level II violation and the AIC is temporarily transferred to the custody of a jurisdiction other than the Department or is released from prison, the AIC shall not be given credit for time served in disciplinary segregation while out of Department custody unless it is determined that the other jurisdiction maintained the AIC in a similarly restrictive status, in such cases the AIC shall be credited with the number of days held in disciplinary segregation type status.

(a) If the AIC is returned to the Department's custody within three years, the case will be reviewed by the functional unit manager or designee of the institution where the behavior occurred. The review will consider the number of days already served of the disciplinary segregation sanction and will determine if the remaining disciplinary segregation sanction or any portion of it will be served.

(b) If the AIC is returned to the Department's custody after three years, the remaining disciplinary segregation sanction will be considered served.

(14) In those instances where the functional unit manager or designee under the authority of OAR 291-011-0030(3), determines it is appropriate, the AIC may be released from disciplinary segregation.

(a) At that point, the current disciplinary segregation sanction will be deemed to have been completed and the remaining disciplinary segregation sanction will not be served as loss of privileges while the AIC resides in the general population.

(b) Any loss of privileges sanction ordered to be served upon the AIC's release from disciplinary segregation, shall begin at the time the AIC is actually released from disciplinary segregation.

(c) Notification of an early release from disciplinary segregation will be provided to appropriate sections for necessary action, including the Hearings Unit, where the early release will be entered into the disciplinary system.

(15) AICs who commit a rule violation may be subject to classification review in accordance with the Department of Corrections rule on Classification (OAR 291104).

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.068, 421.180, 421.185, 421.190, 423.020, 423.030, 423.075

**Exhibit 1
MAJOR VIOLATION GRID**

	#	Rule	
I	2.05 1.01 2.03 4.15 4.05 4.10 1.15 4.20 2.15 2.40 4.33 4.25 4.30 4.35 2.20 2.01 4.45	AIC Assault I Arson Assault of the Member of the Public Compromising an Employee Disturbance Distribution I Drug Possession Escape I Extortion I Hostage Taking Possession of an Electronic Device Possession of an Escape Device Possession of a Weapon Racketeering Sexual Assault/Abuse Staff Assault I Unauthorized Organization I	DSU: 60 days max LOP: 28 days max Fine: \$200 max
II	2.06 1.10 4.11 4.21 2.16 4.04 2.25 2.02	AIC Assault II Contraband I Distribution II Escape II Extortion II Leave Violation Sexual Harassment Staff Assault II	DSU: 30 days max LOP: 28 days max Fine: \$100 max
III a	4.01 2.10 4.40	Disobedience of an Order I Disrespect I Unauthorized Area I	DSU: 14 days max LOP: 28 days max Fine: \$75 max
III b	2.07 2.30 1.05 4.46 1.25	AIC Assault III Non-Assaultive Sexual Activity Property I Unauthorized Organization II Unauthorized Use of Info Systems I	LOP: 28 days max Fine: \$75 max
IV	2.45 1.11 4.02 2.11 3.01 3.05 3.15 3.10 1.20 1.26	Body Modification Contraband II Disobedience of an Order II Disrespect II False Information to Employees I Forgery Fraud Gambling Possession of Body Modification Par. Unauthorized Use of Info Systems II	LOP: 14 days max Fine: \$50 max

Exhibit 2
MINOR VIOLATION GRID

	#	Rule	
V	4.03 2.12 1.06	Disobedience III Disrespect III Property II	LOP:10 days max Fine: \$25 max
VI	1.12 3.02 4.41	Contraband III False Information to Employees II Unauthorized Area II	LOP: 7 days max Fine: \$15 max