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September 5, 2025

ADMINISTRATIVE REGULATION
NUMBER

403

OPR: MEN'S AND WOMEN'S SERVICES

PROCEDURES FOR INMATE RULE VIOLATIONS

I. GENERAL

This Alabama Department of Corrections (ADOC) Administrative Regulation (AR) establishes the responsibilities, policies, and procedures for inmate rule violations.

II. POLICY

It is the policy of the ADOC to establish a regulation to identify the disciplinary process for inmates who commit violations.

III. DEFINITIONS AND ACRONYMS

- A. **Arrest**: The taking of an inmate into custody, or making a charge, by the authority of this regulation, federal law, Alabama law, or municipal law for charging an inmate with a violation.
- B. **Arresting Official**: An ADOC employee who charges an inmate with a violation.
- C. **Behavior Citation Form**: An instrument used for the documentation of a non-Good Time earning inmate's Low Level Rule Violation and the sanction(s) imposed.
- D. **Disciplinary Hearing**: A procedural hearing conducted for rule violation(s).
- E. **Disciplinary Report**: An instrument used for the documentation of an inmate's rule violation, hearing proceedings, and the sanction(s) imposed.
- F. **Employee**: For the purpose of this regulation, an ADOC employee is considered as any full-time, part-time, temporary employee and other persons such as, but not limited to, contractors, vendors, education personnel, and volunteers.

- G. **Hearing Officer**: An ADOC employee designated by the Warden/Division Director/Designee to chair the hearing and render a recommendation.
- H. **Inmate Database**: A systematically arranged collection of information pertaining to active and inactive inmates, that is digitally stored, including inmate demographics, sentencing requirements, and incarceration details, for subsequent retrieval and reporting.
- I. **Mental Health Code**: A letter code assigned to each inmate that indicates whether the inmate is on the mental health caseload, and the level of treatment required. There are five possible mental health codes:
1. **MH-A**: Assigned to inmates not currently receiving mental health services and who are not on the mental health caseload.
 2. **MH-B**: Assigned to inmates who require outpatient mental health services and who have demonstrated stable coping skills for at least six months and can be housed in facilities that do not provide daily mental health services by mental health staff.
 3. **MH-C**: Assigned to inmates who require outpatient mental health services at a major facility, who have any diagnosed mental disorder associated with functional impairment that interferes with their ability to meet the ordinary demands of living.
 4. **MH-D**: Assigned to inmates who are receiving chronic or acute mental health services and require placement in a specialized housing unit (e.g., Residential Treatment Unit or Stabilization Unit).
 5. **MH-H**: A temporary mental health code that is reserved for use only by the Office of Health Services indicating that an inmate with any of the other MH code designations will not be moved from the current housing unit or facility.
- J. **Re-Initiation**: The re-serving of a disciplinary.
- K. **Residential Treatment Unit (RTU)**: A specialized housing placement for treating inmates with serious mental illness who are at risk for psychiatric deterioration in a less restrictive setting. This may be a short-term placement for inmates to resolve crises, or a long-term placement for inmates who experience persistent difficulty functioning in an outpatient setting.
- L. **Rule Violation**: Any act or infraction that may result in a behavior citation or disciplinary.
- M. **Sanction**: An authorized penalty for a rule violation.

- N. **Serious Mental Illness (SMI)**: Psychotic Disorders, Bipolar Disorders, and Major Depressive Disorder; any diagnosed mental disorder (excluding substance use disorders) currently associated with serious impairment in psychological, cognitive, or behavioral functioning that substantially interferes with the person's ability to meet the ordinary demands of living and requires an individualized treatment plan by a qualified mental health professional(s). (American Correctional Association, Restrictive Housing Expected Practices, January 2018)
- O. **Serving Officer**: An ADOC employee designated to present an inmate with ADOC Forms concerning a rule violation.
- P. **Stabilization Unit (SU)**: A designated residential unit that provides intensive mental health services for inmates who are experiencing severe psychiatric symptoms, or who remain at acute risk of harming themselves or others after crisis intervention has been insufficient to address these problems.
- Q. **Structured Living Unit (SLU)**: An outpatient diversionary unit for inmates diagnosed with Serious Mental Illness who would otherwise have been placed in a restrictive housing unit.
- R. **Vault**: A software system used to digitally store documents related to the incarceration of active and inactive inmates. This system controls user access and provides the ability to search for inmate specific documentation electronically.
- S. **Working Days**: For the purpose of this regulation, Monday through Friday excluding holidays.

IV. **RESPONSIBILITIES**

- A. Wardens/Division Directors are responsible for:
 - 1. Developing their facility/divisional Standard Operating Procedures (SOPs), as necessary, for the implementation of AR 403, *Procedures for Inmate Rule Violations*.
 - 2. Designating a law enforcement officer, classification employee, or other ADOC employee as a Hearing Officer for a formal disciplinary hearing.
 - 3. Approving/disapproving disciplinary action(s).
- B. The Hearing Officer is responsible for conducting rule violation hearings.
- C. ADOC employees are responsible for knowing and following the procedures established by this Administrative Regulation.

- D. Inmates are responsible for knowing and following the procedures established by this Administrative Regulation.

V. **PROCEDURES**

A. Pre-Hearing Action for Disciplinary Procedures:

1. Arrest or Charge of Inmate: The arrest or charge of an inmate for a rule violation may be made by an employee of the ADOC:
 - a. ADOC does not discipline an inmate for symptoms directly related to his or her mental illness, including, but not limited to, issuing disciplinaries or applying disciplinary sanctions to inmates for engaging in conduct directly related to self-injurious behavior.
 - b. The employee making the arrest or charge is designated as the Arresting Official.
 - c. In accordance with this regulation and AR 626, *Mental Health Consultation to the Disciplinary Process*, ADOC Form MH-041, *Mental Health Consultation to the Disciplinary Process*, ADOC Form 403-A, *Disciplinary Report*, shall be served on the inmate within ten (10) working days:
 - (1) After the violation is reported and / or discovered; or
 - (2) After an investigation by the Law Enforcement Services Division (LESD) Investigator or ADOC investigation has been completed; or
 - (3) After an escapee is back in the custody of the ADOC.
 - d. In accordance with this regulation and AR 626, *Mental Health Consultation to the Disciplinary Process*, ADOC Form MH-041, *Mental Health Consultation to the Disciplinary Process* will be completed and served as applicable.
 - e. If the inmate is currently on acute or non-acute suicide watch or mental health observation, then ADOC Form 403-A, *Disciplinary Report*, will not be provided to the inmate unless and until a member of the inmate's treatment team approves it. Where appropriate, a mental health staff member may assist in delivery and explanation of the disciplinary report.
 - f. For inmates in the RTU, SU, or SLU, the treating mental health professional (MHP), certified registered nurse practitioner (CRNP), psychiatrist, or psychologist will accompany the officer serving the

notice of the disciplinary charges. Correctional and mental health staff will coordinate days and times for the serving of disciplinary notices in these units.

- g. If the treating MHP, CRNP, psychiatrist, or psychologist accompanying the serving officer deems it clinically appropriate, the inmate will be seen in person, out-of-cell, for a confidential assessment and any intervention he or she deems clinically appropriate. This confidential assessment is in addition to the mental health consultation.
2. Appointment of Hearing Officer: The Warden/Division Director or designee shall appoint an ADOC employee to serve as the Hearing Officer.
 - a. Knowledge of an incident shall **not** preclude an employee from serving as a Hearing Officer.
 - b. The following individuals involved in the incident shall **not** serve as a Hearing Officer:
 - (1) Arresting Official;
 - (2) Witness(es);
 - (3) Victim(s) of the incident;
 - (4) Individual(s) directly involved in the incident;
 - (5) Individuals involved in the investigation of the incident.
 3. Investigation of Charges: The Warden may order an investigation of the charges at the facility level or request an LESD investigation.
 4. Preparation of Charges: ADOC Form 403-A, **lines 1-4** must be completed before the inmate is charged. If the inmate's action(s) in one incident violates multiple rules, then the Arresting Official and Supervisor shall use discretion in which charge(s) to pursue.
 5. Mental Health Consultation: When applicable, a mental health professional shall complete ADOC Form MH-041 providing an opinion of the inmate's capacity in the Disciplinary Report Module.
 6. Serving The Inmate with the Charge:
 - a. The ADOC Form 403-A, completed through **line 4**, must be served by the Serving Officer on the inmate at least twenty-four (24) hours prior to the convening of the hearing.

- b. The Serving Officer shall read the charges to the inmate.
 - c. If the inmate refuses to sign on **line 5** for receipt of the charges, then the Serving Officer shall indicate by writing "Refused to Sign" at the inmate signature block and he/ she shall sign on line 5.
 - d. The Serving Officer shall inform the accused inmate that he/she should prepare his/her testimony, in the form of an oral or written statement, to be presented to the Hearing Officer during the hearing.
 - e. The inmate will be notified he/she has a right to call witnesses and shall be required to sign that he/she does or does not desire witnesses. If the inmate refuses to sign, then the Serving Officer shall indicate by writing "Refused to Sign" and sign his/her signature on **line 6**.
 - f. The inmate may provide the names of normally not more than three (3) witnesses with relevant testimony who will not present a security threat. The Serving Officer shall list the names on **line 7**.
 - g. The inmate shall be advised that it will be necessary to write any questions that he/she may have for the Arresting Officer and/or his/her witness.
 - h. The inmate shall be served a copy of ADOC Form 403-A.
 - i. After the inmate has been served, a suspense copy will be placed in the inmate database and classification shall be informed.
7. Procedural Requirements: The Hearing Officer, prior to convening the hearing, shall check the disciplinary to ensure that procedural requirements up to that point have been met and that the remainder of the requirements are met after the hearing. Procedural requirements are as follows:
- a. The inmate must be given written notice of the charge(s) at least twenty-four (24) hours prior to the hearing.
 - b. Hearings shall not be conducted for inmates currently on acute suicide watch, non-acute suicide watch, mental health observation, or any other kind of crisis placement, unless and until approved by the treating MHP. Upon release from any such placement, a hearing may be scheduled when mental health staff determines that conducting the hearing would not pose a danger to the inmate's mental health. Any such determination must be made within ten (10) days after release from any such placement for a Low-Level Rule Violation, within thirty (30) days for a Medium Level Rule Violation, within sixty (60) days for a High-Level Rule Violation, or within ninety (90) days for a Severe Level Rule Violation.

- c. The inmate must be permitted to attend the hearing and testify or present documentary evidence unless he/she refuses to attend or is disruptive
 - (1) If the inmate has been transferred to another facility, the hearing shall be held at the facility where the inmate is assigned.
 - (2) The Arresting Officer and witnesses may testify audio/visually (i.e., telephone, webcam, etc.) after being sworn in by the Hearing Officer in the presence of the inmate.
- d. The inmate must be permitted to call witnesses.
- e. The inmate must be permitted to prepare and submit to the Hearing Officer pertinent written questions to be asked of the Arresting Officer and witnesses at the hearing.
- f. If the inmate is not capable of acting in his / her own defense, then an ADOC employee will be appointed by the Hearing Officer to assist the inmate.
- g. The Hearing Officer must make findings of fact.
- h. The inmate must be informed of the decision of the Hearing Officer and must be given a copy of the signed and approved Disciplinary Report which lists the findings of fact, the basis for the findings of fact, the decision of the Hearing Officer, and the final decision from the Warden.

B. Procedures DURING the Disciplinary Hearing:

- 1. The Hearing Officer will ensure that:
 - a. The disciplinary has been served a minimum of 24- hours prior to the hearing and the hearing is held within ten (10) working days from the serving date of the disciplinary report, except as otherwise provided herein. If the disciplinary hearing cannot be held within ten (10) working days, then an ADOC Form AR 403-D, *Notice of Postponement of Disciplinary Hearing Process*, shall be completed advising the inmate of the postponement.
 - b. If an inmate has a mental health code of MH-C or higher or an SMI designation, or an intellectual or developmental disability, ADOC Form MH-041, *Mental Health Consultation to the Disciplinary Process*, must be completed and attached to the ADOC Form 403-A.

- c. If any of the procedural requirements have **not** been met, then the disciplinary hearing will **not** convene, and the disciplinary report will be dismissed and subject to Re-Initiation.
- d. In the event that a procedural error is correctable, this will be done, and the disciplinary hearing will proceed.
- e. If the inmate is **not** present for the hearing, an explanation, in detail, shall be attached to ADOC Form 403-A.

2. The Hearing Officer shall:

- a. Positively identify the inmate by his/her ID Card or using the inmate database.
- b. Complete ADOC Form 403-A, **line 8**, with the hearing date, time, and place.
- c. Ensure the inmate is present in the Hearing Room unless he/she refuses to attend or becomes disruptive. Indicate on **line 9** of ADOC Form 403-A if the inmate is present/not present.
- d. Swear in the Arresting Officer, inmate, and all witnesses and sign on **line 10**. Dismiss all witnesses from the room.
- e. Read the charge to the inmate and determine if he/she understands the charge.
- f. Determine if the inmate is capable of acting in his/her own defense.
 - (1) If the decision is made that the inmate understands the charge and procedural requirements, then the disciplinary hearing shall proceed.
 - (2) If the decision is made that the inmate appears **unable** to understand the charge and/or procedural requirements, then the disciplinary hearing will be postponed for up to thirty (30) days. The Hearing Officer shall refer the inmate for a mental health consultation. If the hearing is not held within 30 days, the disciplinary report is void. If within the 30-day period it is determined that the inmate is capable, then the disciplinary hearing shall be reconvened.
- g. Complete **line 11** of ADOC Form 403-A indicating that an inmate is/is not capable of representing him/herself. If the inmate is not capable of acting in his/her own defense due to illiteracy, then the hearing may be

postponed up to five (5) working days. The Hearing Officer shall appoint an ADOC employee to assist the inmate.

- h. Neither inmates nor free-world counsel may represent an inmate at a disciplinary hearing.
- i. Mental health staff may be present to assist an inmate on the mental health caseload or who has an intellectual or developmental disability, either on request of the inmate or upon recommendation by mental health or correctional staff.
- j. Ask the inmate how he/she pleads and record the response on ADOC Form 403-A. If an inmate refuses to voice a plea it should be noted as a plea of “not guilty.”

(1) If the inmate pleads guilty, the Hearing Officer shall:

- (a) Dismiss the witness(es);
- (b) Have the inmate sign on ADOC Form 403-A, **line 12**, on the disciplinary work sheet and/or annotate the same in the module;
- (c) Have the inmate present his/her testimony. If the inmate’s testimony is sufficient to satisfy a guilty plea, the Hearing Officer will accept the guilty plea and include in the findings of fact that the inmate’s testimony was sufficient to satisfy the guilty plea.

(2) If the inmate pleads not guilty, the Hearing Officer shall:

- (a) Have the inmate sign on ADOC Form 403-A, **line 12**, on the disciplinary work sheet and/or annotate the same in the module.
- (b) Allow the Arresting Officer to present his/her testimony and record the testimony on ADOC Form 403-A, **line 13**.
- (c) If the Arresting Officer (or the official who performed the investigation) used a confidential source, then the Hearing Officer should ensure the following criteria are met by asking the Arresting Officer and or investigating official the following:

- 1. The source must have been used in the past.