



Office of Legislative Corrections Ombudsman

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Prisoner Discipline

The following information is based on Michigan Department of Corrections Policy Directive 03.03.105 “Prisoner Discipline.”

General Information

1. Violations of rules are classified as Class I, Class II, or Class III misconducts.
2. Class I misconducts are subject to the hearing requirements in MCL 791.252 and all rules in the Administrative Code and MDOC Policy Directives for “major misconducts.”
3. Class II and III misconducts are subject to all requirements regarding “minor” misconducts.
4. A misconduct which is a felony must be referred to the appropriate law enforcement agency as well as being pursued through MDOC disciplinary process.
5. A prisoner is presumed to be in possession of an item found in an area over which s/he has control and for which s/he has been assigned responsibility, even if the prisoner is not present. The prisoner has the burden to rebut this presumption at a misconduct hearing.
6. To determine time limits for hearings, the day on which the prisoner is confined, transferred, or received written notice of the charge is not counted, but the day the hearing occurs is counted.
7. The Hearing Investigator coordinates all Class I and Class II misconduct hearings.

Class I Misconducts

1. Class I Misconducts (Includes Attempt, Accomplice to, and Conspiracy to Commit): Assault and Battery, Assault Resulting in Serious Physical Injury, Escape, Failure to Disperse, Felony, Fighting, Homicide, Incite to Riot or Strike, Rioting or Striking, Possession of Dangerous Contraband, Possession of Weapon, Sexual Assault, Sexual Misconduct, Smuggling, Substance Abuse, Threatening Behavior.
2. Prisoners charged with a Class I Misconduct are entitled to a formal hearing under Administrative Rule 791.3315. This hearing shall be conducted by hearing officers from the Department of Licensing and Regulatory Affairs (LARA).
3. Review: A supervisory level employee must conduct a review of the Misconduct Report with the prisoner within 24 hours of the report being written, unless there is reasonable cause for delay as determined by the LARA hearing officer at the misconduct hearing.

4. Confinement Pending Hearing: At the review, the reviewing officer must order a prisoner charged with a non-bondable misconduct to be confined in temporary segregation, or on toplock if no temporary segregation cells are available. A prisoner charged with a bondable misconduct may be confined to temporary segregation or toplock if failure to do so would constitute a threat to the security and good order of the facility - The reasons must be stated in the Misconduct Report and relate specifically to the underlying facts. Date and time of placement must be noted in MR.
5. Hearing Investigator (HI): A HI will be assigned to investigate if the prisoner requested witnesses or documents, the prisoner fails to cooperate during the review process, or the prisoner is in Residential Treatment Program, including SSOTP, SSRTP, and ASRP, the prisoner is confined in temporary segregation pending the hearing, the prisoner receives special education services, or prisoner is on OPT active case load.
6. Hearing:
 - a. The hearing must be conducted within seven business days after the Report was reviewed with the prisoner, unless:
 - i. A hearing investigator was assigned, in which case the hearing must be conducted within 14 business days. However, if the prisoner was in segregation or on toplock, the hearing must be conducted within seven business days after such confinement.
 - ii. The prisoner was transferred to a higher security level, in which case the hearing shall be conducted within 14 business days.
 - iii. If there is reasonable cause for delay, as determined by the LARA hearing officer.
 - b. The hearing officer can find a prisoner guilty of a lesser included violation, even if it is a different class of misconduct.
 - c. Decisions are made based on a preponderance of the evidence.
 - d. If a prisoner is found guilty, the hearing officer must determine the appropriate sanction and sanction dates. Prisoners may request a copy of his/her hearing investigation packet from the HI.
 - e. Hearing records for not guilty or dismissed charges must be reviewed by the Warden or designee; if s/he disagrees, s/he may submit a request for rehearing to the Hearings Administrator.
7. If the prisoner is found guilty, a copy of the Misconduct Report and the Hearing Report will be kept in the prisoner's Central Office, Record Office, and Counselor files.

Class II Misconducts

1. Class II Misconducts (Includes Attempt, Accomplice to, and Conspiracy to Commit): Bribery of an Employee, Creating a Disturbance, Destruction or Misuse of Property, Disobeying a Direct Order, Gambling: Possession of Gambling Paraphernalia, Insolence, Interference with the Administration of Rules, Out of Place, Possession of Forged Documents, Forgery, Possession of Money, Possession of Stolen Property/Theft, Unauthorized Occupation of Cell or Room.

2. Review: A supervisory level employee must conduct a review of the Misconduct Report with the prisoner within 24 hours of the report being written, unless there is reasonable cause for delay as determined by the facility hearing officer at the misconduct hearing. The reviewing officer may elevate a Class II misconduct to a Class I misconduct at the time of review, and document specific reasons for the elevation.
3. Waiver/Plea: A prisoner may waive his/her Class II hearing and plead guilty in writing.
4. A prisoner is not entitled to an investigation by HI, but the facility hearing officer must make a reasonable investigation of the charges and may direct the HI to collect additional evidence.
5. Hearing:
 - a. Unless the hearing is waived and the prisoner pleads guilty, an informal hearing is conducted pursuant to Administrative Rule 791.3310.
 - b. Only Resident Unit Managers (HUM), Captains, and/or Lieutenants designated by the Warden may conduct the hearing. The staff person conducting the hearing shall have had no prior direct involvement in the matter.
 - c. A hearing must be conducted within seven business days of the date of review, unless:
 - i. The hearing officer directs the HI to collect additional evidence, in which the hearing shall be conducted within 14 business days.
 - ii. There is reasonable cause for delay as determined by the facility hearing officer.
 - d. The hearing officer can find a prisoner guilty of a lesser included violation, even if it is a different class of misconduct.
 - e. Decisions are made based on a preponderance of the evidence.
 - f. If a prisoner is found guilty, the hearing officer must determine the appropriate sanction and sanction dates.
 - g. Hearing records for not guilty or dismissed charges must be reviewed by the Warden or designee to monitor for errors in the misconduct process.
6. If the prisoner is found guilty, a copy of the Misconduct Report and the Misconduct Hearing Report will be kept in the prisoner's Record Office and Counselor file, but not in the prisoner's Central Office file.

Class III Misconducts

1. Class III Misconducts (Includes Attempt, Accomplice to, and Conspiracy to Commit): Abuse of Privileges, Contraband, Excessive Noise, Health, Safety or Fire Hazard, Horseplay, Lying to an Employee, Temporary Out of Place/Bounds, Unauthorized Communications, Violation of Posted Rules.

2. Review: A staff member other than the person who issued the Misconduct Report must conduct a review of the Misconduct Report with the prisoner.
3. Waiver/Plea: A prisoner may waive his/her Class III hearing and plead guilty in writing.
4. A prisoner is not entitled to an investigation by HI, but the facility hearing officer must make a reasonable investigation of the charges.
5. Hearing:
 - a. Unless the hearing is waived and the prisoner pleads guilty, an informal hearing is conducted pursuant to Administrative Rule 791.3310.
 - b. Only staff designated by the Warden may conduct the hearing. The staff person conducting the hearing shall have had no prior direct involvement in the matter.
 - c. A hearing must be conducted within seven business days of the date of review.
 - d. Decisions are made based on a preponderance of the evidence.
 - e. If a prisoner is found guilty, the hearing officer must determine the appropriate sanction and sanction dates.
6. If the prisoner is found guilty, a copy of the Misconduct Report and the Misconduct Hearing Report will be kept in the prisoner's Counselor file, but not in the prisoner's Central Office file.

Prisoners with Mental Disabilities

1. A prisoner with a mental disability is not responsible for the misconduct if s/he lacks substantial capacity to know the wrongfulness of his/her conduct or is unable to conform his/her behavior to MDOC rules as a result of the mental disability. Mental disability is defined as:
 - a. Mental illness: a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or the ability to cope with the ordinary demands of life.
 - b. Severe chronic brain disorder: characterized by multiple cognitive defects
 - c. Developmental disorder: characterized by severe and pervasive impairment in several areas of development.
2. Requests for responsibility determinations are directed to the Outpatient Mental Health Team if the prisoner is on their caseload or to a Qualified Mental Health Professional (QMHP). The prisoner, HI, or hearing officer may raise the issue of responsibility.
3. Whenever a non-bondable Class I misconduct is written on a prisoner receiving inpatient mental health services (including CSP and RTS), or a Class I or II misconduct is written on a prisoner receiving mental health services through RTP (including SSOTP, SS RTP or

ASRP), the Unit Chief or QMHP must determine prior to the hearing whether the prisoner is responsible for his/her behavior. If a prisoner is responsible, the matter may proceed to hearing, unless the prisoner is receiving inpatient mental health services. In that case the treatment team and/or Regional Corrections Mental Health Program Director must determine whether the misconduct process would be detrimental to the prisoner's mental health needs.

4. If a responsibility determination is requested, the misconduct does not need to be reviewed within 24 hours of the Misconduct being written.
5. If a prisoner is found guilty, the hearing officer may assign only the sanctions of loss of privileges and/or restitution, as appropriate.

Misconduct Sanctions

1. Toplock: A prisoner on toplock is restricted to his/her own cell, room or bunk and bunk area. A prisoner cannot leave his area for any reason without specific authorization from the appropriate staff person. Prisoners shall be released from toplock for regular showers, visits, medical care (including individual and group therapy), school and law library. The Warden may authorize prisoners to go to the dining room, work assignments and other specified activities. Prisoners must have a minimum of one hour per day of out-of-cell activity.
2. Loss of Privileges: examples: day room, exercise facilities, group meetings, hobbycraft, kitchen area, general library, movies, music practice, radio, TV, leisure time, telephone, visiting (if misconduct involved visit), kiosk, etc.
3. Yard Privileges: A prisoner serving a sanction of detention, toplock or loss of privileges cannot be deprived of yard for more than 30 consecutive days without being provided a seven-day break.
4. The Warden may waive all or any part of a sanction.
5. Class I misconducts: A SOAHR hearing officer may impose one or more of the following sanctions upon a finding of guilt:
 - a. Detention (punitive segregation): not to exceed 30 days for each violation or 60 days for all violations arising from a single incident;
 - b. Toplock (confinement to quarters): Not to exceed seven days for each violation; not to be combined with detention;
 - c. Loss of Privileges: Not to exceed 30 days for each violation or 60 days for all violations arising from a single incident;
 - d. Restitution.
6. Class II misconducts: A RUM, Captain, and/or Lieutenant acting as a hearing officer may impose one or more of the following sanctions upon a finding of guilt:

- a. Toplock: Not to exceed five days for all violations arising from a single incident;
 - b. Loss of Privileges: Not to exceed 30 days for all violations arising from a single incident;
 - c. Assignment of extra duty: Not to exceed 40 hours for all violations arising from a single incident;
 - d. Restitution.
7. Class III misconducts: A facility hearing officer may impose one or more of the following sanctions upon a finding of guilt:
- a. Toplock: Not to exceed five days for all violations arising from a single incident;
 - b. Loss of Privileges: Not to exceed 15 days for all violations arising from a single incident;
 - c. Assignment of extra duty: Not to exceed 20 hours for all violations arising from a single incident;
 - d. Counseling and reprimand.

Misconduct Appeals:

1. Class I: The Warden or prisoner may appeal the results of a Class I misconduct hearing by submitting a Request for Rehearing to the Hearings Administrator within 30 calendar days of receiving the hearing report. Generally, a decision will be made within 30 calendar days of receiving the Request for Rehearing.
2. Class II: A prisoner may appeal the decision of the facility hearing officer's decision to the Deputy Warden within 15 calendar days after receipt of the hearing officer's written decision. A response will be filed within 30 calendar days of receiving the appeal. The Warden may order a rehearing on his/her own initiative.
3. Class III: A prisoner may appeal the decision of the facility hearing officer's decision to appropriate supervisory level staff as determined by the Warden, within 15 calendar days after receipt of the hearing officer's written decision. A response will be filed within 30 calendar days of receiving the appeal. The Warden may order a rehearing on his/her own initiative.