

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>		EFFECTIVE DATE 09/18/2013	NUMBER 02.03.100
SUBJECT EMPLOYEE DISCIPLINE		SUPERSEDES 02.03.100 (04/14/2008)	
		AUTHORITY MCL 423.501 et seq.; 791.203; Civil Service Rules 2-6 and 6-5	
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**POLICY STATEMENT:**

Appropriate staff shall investigate allegations of employee rule violations and, as appropriate, use progressive discipline to obtain employee compliance with regulations and conditions of employment.

**RELATED POLICIES:**

- 01.01.140 Internal Affairs
- 02.03.109 Discriminatory Harassment
- 02.03.130 Corrective Action for Performance Problems

**POLICY:**

DEFINITION

- A. Management Representative - Executive Policy Team (EPT) members and staff designated by EPT members to chair disciplinary conferences and/or recommend/impose discipline.

GENERAL INFORMATION

- B. Exclusively represented employees shall be governed by their collective bargaining unit agreement where in conflict with this policy.
- C. The Chief Deputy Director shall ensure that the Employee Handbook is updated as necessary to identify current Department work rules and other employment requirements. The Employee Handbook shall be provided to all new employees by the appropriate Human Resources (HR) Office. Revisions to the Employee Handbook shall be provided to all employees. The current Employee Handbook shall be available to all staff on the Department's Document Access System (DAS).
- D. The current Civil Service Commission rules are available on the Civil Service Commission website. The current rules also are available for review by employees in the HR Office or other appropriate location, as determined by the Warden or appropriate administrator. The Chief Deputy Director or designee shall ensure that any revisions to the Civil Service Commission rules which, if violated, could result in discipline, are incorporated into this policy or the Employee Handbook, as appropriate.
- E. Employees are required to comply with Civil Service Commission rules and regulations and the Department's policies, procedures, and Employee Handbook. Employees failing to do so may be subject to discipline as set forth in this policy.
- F. If an employee's performance level warrants the issuance of either an interim or probationary unsatisfactory service rating, an unsatisfactory service rating shall be issued only after a disciplinary conference is conducted consistent with this policy. At the conclusion of the conference, the unsatisfactory service rating shall be issued if it is determined to be warranted based on the evidence presented at the conference. The unsatisfactory service rating shall address the performance deficiencies and the action necessary to regain satisfactory status, unless the level of performance warrants discharge.

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- G. Only management representatives are authorized to chair disciplinary conferences and recommend/impose discipline. In Correctional Facilities Administration (CFA), only the Warden shall be designated as the management representative to perform these disciplinary functions for employees under his/her supervision unless otherwise approved by the appropriate Regional Prison Administrator (RPA).
- H. As set forth in PD 01.01.140 "Internal Affairs", the appropriate management representative or designee shall notify the Internal Affairs Division when an employee is alleged to have committed a major rule violation. Requirements set forth in PD 01.01.140 shall be followed for processing and investigating cases within the jurisdiction of the Internal Affairs Division.
- I. An employee is entitled to representation upon request beginning at the point in time that the employee is questioned regarding his/her conduct if that conduct is the direct object of a disciplinary investigation. A representative shall be from the same institution, Field Operations Administration (FOA) region, or work location unless otherwise provided for in the applicable collective bargaining unit agreement for an exclusively represented employee or, for non-exclusively represented employees, Civil Service rules. The representative shall be granted leave consistent with PD 02.02.101 "Administrative Leave".
- J. If discipline is imposed inconsistent with the requirements set forth in this policy directive or Civil Service Commission rules and regulations, the Chief Deputy Director or designee has the authority to correct the discipline imposed to bring it into compliance with such requirements.
- K. An employee who disagrees with discipline imposed pursuant to this policy may file a grievance in accordance with the Civil Service Commission rules and/or appropriate collective bargaining unit agreement. The Chief Deputy Director or designee shall be responsible for issuing any necessary instructions for processing grievances.

#### DISCIPLINARY INVESTIGATIONS

- L. When an allegation that an employee committed a rule violation is brought to the attention of the appropriate management representative, s/he shall designate an Inspector or a supervisory level employee not directly involved in the incident involving the alleged rule violation to conduct a thorough and timely investigation of the facts surrounding the alleged rule violation, unless otherwise directed by the Internal Affairs Manager. The employee designated may be from another facility, office, or Department with prior approval of the Warden, CFA RPA, FOA Regional Administrator, Chief Deputy Director or designee, or other EPT member or designee, as appropriate.
- M. Upon completion of the investigation, the investigator shall provide a written report of the facts established during the investigation to the appropriate management representative. The management representative shall review the investigation report and determine if there is sufficient evidence to formally charge the employee with a rule violation. The management representative must receive approval from the Chief Deputy Director or designee prior to charging an employee with a rule violation for which discipline is to be determined by the Chief Deputy Director or designee. If the employee is not charged, s/he shall be notified in writing that the investigation has been concluded and charges will not be filed.

#### SUSPENSION FOR INVESTIGATION

- N. An employee being investigated for an alleged rule violation shall be suspended if any of the following apply:
  - 1. The alleged rule violation affects the order and security of the work site.
  - 2. There is evidence that the employee used excessive force, as defined in PD 04.05.110 "Use of Force", against an offender.

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3. The employee has a pending criminal charge for any controlled substance or criminal sexual conduct offense, or has any pending criminal felony charge.
  4. The employee has outside employment that poses a conflict of interest with Department employment, as set forth in PD 02.03.105 "Outside Employment".
- O. An employee being investigated for an alleged rule violation may be suspended if any of the following apply:
1. The employee is under criminal investigation for conduct connected with or related to his/her employment with the Department.
  2. The employee has a pending criminal misdemeanor charge for conduct connected with or related to his/her employment with the Department or has a pending criminal misdemeanor charge for any conduct which, if the allegations are found to be true, would likely result in the employee being discharged from employment, unless suspension is mandatory pursuant to Paragraph N.
  3. The alleged rule violation is for conduct which, if the allegations are found to be true, would likely result in the employee being discharged from employment, unless suspension is mandatory pursuant to Paragraph N.
  4. The suspension is in accordance with applicable collective bargaining unit agreements.
- P. Except when necessary to attend a scheduled disciplinary conference, a suspended employee shall not be allowed to enter any Department facility, building, or office without specific permission from the Warden or appropriate administrator. The Warden or appropriate administrator shall ensure that a stop order is prepared and posted in appropriate areas of the facility, building, or office under his/her control to prevent unauthorized entry by a suspended employee. Written notification of the stop order also shall be sent to the Chief Deputy Director or designee.
- Q. A suspension pursuant to Paragraph N, no. 3, shall be for the duration of the disciplinary investigation and the criminal proceedings. The length of all other suspensions shall be determined by the management representative, except that a suspension for more than seven calendar days requires the approval of the Chief Deputy Director or designee. The management representative shall base his/her decision on the conduct alleged to have occurred, and the impact the employee's presence would have on the order and security of the work site and the ongoing investigation. The management representative may have the employee temporarily reassigned to another work site in lieu of continued suspension, except if the suspension is pursuant to Paragraph N, no. 3 or Paragraph O, no. 2. All suspensions shall be documented on an Employee Departure Report (CS-301).
- R. The entire suspension ordered pursuant to Paragraph N, no. 3, or Paragraph O, no. 2, shall be without pay. All other suspensions shall be without pay only for the first seven calendar days of the suspension.
- S. If disciplinary charges are not filed against a suspended employee, or if it is later determined that there was no rule violation committed, the employee shall be returned to work and shall be entitled to back pay for the period of the unpaid suspension. An employee also shall be entitled to back pay for the period of the unpaid suspension if it is determined that a rule violation was committed except for that period of suspension applied toward a disciplinary suspension pursuant to Paragraph II; an employee also shall not be entitled to back pay if the employee is discharged from employment.

#### DISCIPLINARY CONFERENCES

- T. If it is determined that an employee is to be charged with a rule violation which may result in disciplinary sanctions being imposed (i.e., discharge, demotion, suspension, or written reprimand), the appropriate management representative shall ensure that a disciplinary conference is scheduled and conducted in a

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timely manner. The employee shall be given written notice of the charge(s) and the date of the disciplinary conference. The employee also shall be notified that s/he is subject to discipline up to and including discharge. The employee also shall be provided copies of all documents pertaining to the charges, and the opportunity to view any other evidence in a private location where a copy has not been provided. If the employee is on an extended leave, the employee shall be notified that s/he may submit a written response to the charges and evidence that will be used at the conference if s/he is unable to attend the conference.

- U. The disciplinary conference shall be conducted with the charged employee and appropriate management representative serving as the chairperson in attendance. The investigator will attend the disciplinary conference unless she/he is on an extended leave, or has retired. Investigators may participate in the conference either in person, by telephone, or by video conference as determined by management. However, the conference is not required to be rescheduled if the charged employee fails to attend after receiving notice of the conference. The charged employee may waive in writing the presence of the investigator, subject to the approval of the chairperson. The charged employee shall be permitted to have a representative in attendance upon request, even if the employee does not attend the conference.
- V. The charged employee shall be allowed to speak and provide documentation on his/her behalf at the disciplinary conference, but shall not be allowed to have witnesses present oral testimony on his/her behalf. The charged employee is required to truthfully answer all questions asked by the disciplinary conference chairperson. Failure to do so may result in additional disciplinary action.
- W. If issues are raised during the disciplinary conference which indicates that the investigation is incomplete, the chairperson may adjourn the disciplinary conference to continue the investigation. The disciplinary conference shall be reconvened to address the findings of the investigation, with notice provided as set forth in Paragraph T, even if the investigation reveals there was no rule violation.
- X. If it is determined by the chairperson, or by the Chief Deputy Director or designee, that the employee was not properly charged, the chairperson shall reconvene the disciplinary conference after the appropriate charges are determined and notice is provided as set forth in Paragraph T.
- Y. The chairperson shall determine whether the employee committed a rule violation based on a preponderance of the evidence presented at the disciplinary conference. If the rule violation is one for which only the Chief Deputy Director or designee may impose discipline, the chairperson shall consult with the Chief Deputy Director or designee prior to dismissing a disciplinary charge. The chairperson also shall ensure that a disciplinary conference summary is prepared. The summary shall include the arguments presented at the conference, the determination whether a rule violation was committed and, if so, if there were any mitigating or aggravating circumstances, and the discipline to be imposed or recommended.
- Z. If it is determined that the employee did not commit a rule violation, the employee shall be notified in writing of that determination. If it is determined that a rule violation was committed, disciplinary sanctions shall be imposed as set forth below.

#### IMPOSITION OF DISCIPLINARY SANCTIONS

- AA. Employees who commit similar rule violations should generally receive similar discipline for their conduct. An employee who continues to commit rule violations should generally receive more severe discipline than an employee who commits a single rule violation; however, some conduct is so egregious as to warrant discharge for a first offense. Attachment A shall be used to determine the appropriate discipline for rule violations that are committed by employees, absent a finding of mitigating or aggravating circumstances which support a departure from the discipline identified for the rule violation. Attachment A is not to be used to determine the discipline for professional, supervisory, and managerial employees since such employees are held to a higher standard of conduct than other employees.

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- BB. An unsatisfactory service rating and prior discipline shall be considered aggravating factors when determining discipline; however, only unsatisfactory service ratings and discipline within the preceding two years shall be considered unless the ratings and/or discipline remain in the employee's personnel file due to the employee having incurred additional discipline, corrective action, or an unsatisfactory service rating during that two year period.
- CC. For professional, supervisory, or managerial employees, a management representative must receive approval from the Chief Deputy Director or designee prior to imposing any discipline; the management representative is not authorized to determine discipline for these employees. For all other employees, a management representative is authorized to determine and impose discipline as identified in Attachment A for all rule violations except when discipline is to be determined by the Chief Deputy Director or designee. A management representative is authorized to determine and impose discipline below that identified in Attachment A due to mitigating circumstances except for where discipline is to be determined by the Chief Deputy Director or designee; a settlement agreement shall be used in such cases consistent with the requirements set forth in Paragraph DD. Only the Chief Deputy Director or designee is authorized to determine and impose discipline that exceeds that identified in Attachment A for a rule violation, including a demotion.
- DD. Except for professional, managerial, and supervisory employees, management representatives authorized to impose discipline may offer and/or agree to settle a disciplinary case at any time during the disciplinary proceeding except:
- if the settlement includes a demotion or otherwise exceeds the discipline identified for the violation in Attachment A, or
  - the discipline is required to be determined by the Chief Deputy Director or designee.
- EE. Approval must be obtained from the Chief Deputy Director or designee before agreeing to enter into a "Last Chance Agreement". Standardized language developed by the Chief Deputy Director or designee shall be used whenever a disciplinary case is settled. Any deviation must be approved in advance by the Chief Deputy Director or designee.
- FF. Whenever discipline is to be determined by the Chief Deputy Director or designee, the appropriate management representative shall submit the entire disciplinary packet, including the disciplinary conference summary, to the Chief Deputy Director or designee. The Chief Deputy Director or designee shall notify the appropriate HR office of the approved discipline; HR office staff shall notify the appropriate management representative.
- GG. Whenever discipline is determined by the management representative, the entire disciplinary packet, including the disciplinary conference summary shall be submitted to the Chief Deputy Director or designee for review after the disciplinary determination is made.
- HH. In all cases, the appropriate management representative shall ensure the charged employee is provided a copy of the disciplinary conference summary and notified of the approved discipline. S/he also shall ensure that the approved discipline, including discipline imposed through a settlement agreement, is imposed.
- II. An employee who receives a disciplinary suspension may request approval from the Chief Deputy Director or designee to work and forfeit accrued leave credits for the period of the suspension in lieu of serving the suspension unpaid; sick leave credits cannot be used for this purpose. Any period of unpaid suspension pending investigation may be applied toward the disciplinary suspension with the approval of the management representative.

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### RETENTION AND DISCLOSURE OF DISCIPLINARY RECORDS (INCLUDING UNSATISFACTORY SERVICE RATINGS)

- JJ. Upon written request of an employee, disciplinary reports and related disciplinary records shall be removed from the employee's Personnel file when the employee has completed two years of actual work time during which s/he has not received any additional discipline or corrective action. If there is additional discipline, the existing discipline shall remain in the file until the employee has completed two years of actual work time without receiving any further corrective or disciplinary action.
- KK. Documentation removed from an employee's Personnel file pursuant to Paragraph JJ , or due to a court or administrative order (e.g., from the Civil Service Commission), shall not be used to determine appropriate discipline for a rule violation.
- LL. Ordinarily, documents in an employee's Personnel file, including disciplinary reports, are exempt from disclosure to the public as set forth in PD 01.06.110 "Freedom of Information Act - Access to Department Public Records". However, if the Department divulges disciplinary reports or other records of disciplinary action to a third party outside of the Department, the Department shall provide written notice to the employee or former employee who was the subject of the disciplinary action, except as set forth in Paragraph MM. The written notice shall be sent by first class mail to the employee's last known address no later than the day the disciplinary action is divulged. Disciplinary reports and records of other disciplinary action shall not be divulged if more than four years old unless ordered in a legal action or arbitration to be provided to a party.
- MM. Notice pursuant to Paragraph LL is not required if the employee or former employee specifically waived notice as part of a written signed employment application with another employer, if ordered by a court or arbitrator to disclose to a party in a legal action or arbitration, or if required by a government agency as a result of a claim or complaint by an employee. Notice also is not required if the disciplinary action is divulged to the collective bargaining unit representing the employee.

### OPERATING PROCEDURES

- NN. The Chief Deputy Director or designee shall ensure that a Department-wide procedure is developed to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. The appropriate Deputy Directors and Wardens shall ensure that any additional procedures necessary to implement requirements set forth in this policy directive are developed within 30 calendar days after the effective date of the Department-wide procedure. These requirements include ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

### AUDIT ELEMENTS

- OO. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

### ATTACHMENTS

- PP. This policy includes the following attachment:
1. Attachment A – Discipline Standards

APPROVED: DHH 9/3/13

**ATTACHMENT A**

**DISCIPLINE STANDARDS**

(NOT APPLICABLE TO PROFESSIONAL, SUPERVISORY, AND MANAGERIAL EMPLOYEES)

FIRST RULE VIOLATION

The following shall be used to determine discipline for a first rule violation absent a finding of aggravating or mitigating circumstances; however, the Chief Deputy Director or designee shall determine discipline for any violation related to an escape or escape attempt, and, if aggravating circumstances are found to exist, may be any sanction up to and including discharge.

NUMBER	WORK RULE	DISCIPLINE WITHOUT AGGRAVATION OR MITIGATION
1	Humane Treatment of Individuals	3 Day Suspension
2	Use of Position for Personal Gain	3 Day Suspension
3	Discriminatory Harassment	*
4	Misuse of State or Other Agency Property or Equipment	1 Day Suspension
5	Conduct Unbecoming	*
6	Physical Contact	1 Day Suspension
7	Confidential Nature of Records	Written Reprimand
8	Use of Health Care Services	Written Reprimand
9	Class II Insubordination	* Discharge
10	Class I Insubordination	3 Day Suspension
11	Searches While on Facility Property	* Discharge
12	Responding or Assisting During an Emergency	3 Day Suspension
13	Enforcing Rules, Regulations, Policies, Procedures, Post Orders and Work Statements	1 Day Suspension
14	Maintaining Order	1 Day Suspension
15	Chain of Command	Written Reprimand
16	Criminal Acts - Felony	* Discharge
17	Controlled Substance/Intoxicant – Possession, Introduction, or Attempted Introduction	* Discharge
18	Use of Alcohol or Controlled Substance	* Discharge
19	<i>Use of Controlled Substance/Other</i>	<i>Rule Rescinded Eff. 4/24/00</i>
20	Introduction or Possession of Contraband Items	*
21	Contraband in Vehicle on the Premises of a Facility Housing Offenders	3 Day Suspension
22	Misdemeanor or Other Restrictions	*
23	Possession and/or Use of Medication	Written Reprimand
24	<i>Improper Relationship-Romantic, Sexual, Shared Residence, Unauthorized, or Overly Familiar</i>	<i>Superseded by Rule 46 Eff. 9/17/99</i>
25	<i>Recreational Activities with Prisoners</i>	<i>Rule Rescinded Eff. 4/24/00</i>
26	Entry Into a Facility	Written Reprimand
27	Dereliction of Duty	3 Day Suspension
28	Use of Force	* Discharge
29	Exchange of Duties - Custody/Security	1 Day Suspension
30	Duty Relief	1 Day Suspension
31	Security Precautions	1 Day Suspension
32	Attention to Duty	1 Day Suspension

\* Determined by Chief Deputy Director or designee and may be any sanction up to and including discharge; unless otherwise specified above; management representative can only recommend discipline for these violations.

FIRST RULE VIOLATION – Continued

NUMBER	WORK RULE	DISCIPLINE WITHOUT AGGRAVATION OR MITIGATION
33	Reporting Violations	1 Day Suspension
34	Reporting Approach to Introduce Contraband, Violate Rules, Policies, Procedures, Post Orders and Work Statements	1 Day Suspension
35	<i>Failure to Become Familiar with Duties</i>	<i>Rule Rescinded Eff. 4/24/00</i>
36	<i>Failure to Take Counts</i>	<i>Rule Rescinded Eff. 9/30/03</i>
37	Required Rounds	<i>Rule Rescinded Eff. 04/01/12</i>
38	Reporting Requirements	1 Day Suspension
39	Required Field Agent Contact	<i>Rule Rescinded Eff. 04/01/12</i>
40	<i>Performing Less than Satisfactorily</i>	<i>Rule Rescinded Eff. 4/24/00</i>
41	<i>Failure to Meet Training Requirements</i>	<i>Rule Rescinded Eff. 4/24/00</i>
42	Employee Uniform Requirements	Written Reprimand
43	<i>Punctuality and Use of Time Cards / Clocks</i>	<i>Rule Rescinded Eff. 4/24/00</i>
44	<i>Failure to Give Proper Notice of Absence</i>	<i>Rule Rescinded Eff. 4/24/00</i>
45	<i>Inappropriate Use of Leave Credits</i>	<i>Rule Rescinded Eff. 4/24/00</i>
46	<i>Sexual Misconduct, Sexual Harassment, Improper Relationship, or Overly-Familiar Contact</i>	<i>Superseded by Rules 50, 51 and 52 Eff. 02/13/06</i>
47	Falsifying, Altering, Destroying, Removing Documents or Filing False Reports	* Discharge
48	Giving or Receiving Gifts or Services	3 Day Suspension
49	Fighting	<i>Rule Rescinded Eff. 04/01/12</i>
50	Overly-Familiar or Unauthorized Contact	*
51	Sexual Conduct with Offender	* Discharge
52	Sexual Harassment of Offender	*
53	Workplace Safety	* Discharge
54	Misuse of Recording Devices or Recorded Information	*

\* Determined by Chief Deputy Director or designee and may be any sanction up to and including discharge; unless otherwise specified above; management representative can only recommend discipline for these violations.

SECOND OR SUBSEQUENT RULE VIOLATION

The Chief Deputy Director or designee shall determine discipline for a second or subsequent rule violation if the preceding rule violation was prior to April 1, 2012, and for any rule violation related to an escape or escape attempt, and may be any sanction up to and including discharge. In all other cases, the following Progressive Discipline Grid shall be used to determine the appropriate discipline to be imposed absent a finding of aggravating or mitigating circumstances. However, if the discipline identified in this attachment is less than what would be imposed if the violation was a first violation, the greater discipline shall be imposed. Although Unsatisfactory Service Ratings are not specifically listed in this attachment, an unsatisfactory rating is discipline and will be considered when assessing the appropriate discipline for subsequent rule violations.

<b>IF FIRST RULE VIOLATION WAS ON OR AFTER 04/01/12 AND DISCIPLINE FOR FIRST RULE VIOLATION WAS:</b>	<b>DISCIPLINE W/O AGGRAVATION OR MITIGATION FOR SECOND RULE VIOLATION IS:</b>	<b>DISCIPLINE W/O AGGRAVATION OR MITIGATION FOR THIRD RULE VIOLATION IS:</b>	<b>DISCIPLINE W/O AGGRAVATION OR MITIGATION FOR FOURTH RULE VIOLATION IS:</b>	<b>DISCIPLINE WITHOUT AGGRAVATION FOR FIFTH RULE VIOLATION IS:</b>
Written Reprimand	1 Day Suspension	3 Day Suspension	5 Day Suspension	* Discharge
1 Day Suspension	3 Day Suspension	4 Day Suspension	5 Day Suspension	* Discharge
2 Day Suspension	3 Day Suspension	4 Day Suspension	5 Day Suspension	* Discharge
3 Day Suspension	4 Day Suspension	5 Day Suspension	7 Day Suspension	* Discharge
4 Day Suspension	5 Day Suspension	7 Day Suspension	10 Day Suspension	* Discharge
5 Day Suspension	7 Day Suspension	10 Day Suspension	15 Day Suspension	* Discharge

\* Determined by Chief Deputy Director or designee.