

EXHIBIT 1

REVIEW OFFICER MANUAL NOVEMBER 2022

Introduction

It is the policy of the Department of Corrections and Community Supervision (DOCCS) to eliminate, mitigate, and respond to racial disparities so as to ensure a fair and equitable distribution of benefits and burdens in the placement of incarcerated individuals in housing unit assignments, institutional work assignments, and programs; and the proper post release supervision of releasees to include, but not limited to, supervision level, violation processes, and early discharge/merit terminations. Moreover, it is our policy that any DOCCS administrative processes associated with any incarcerated individual or releasees who may be subject to discipline and grievances are conducted fairly, to ensure that decisions are not influenced by stereotypes or bias based on race, color, ethnicity, or national origin. To do so, the Department shall provide ongoing staff training, monitoring, and auditing systems to ensure compliance with all provisions of this policy. The Department shall develop programs to help incarcerated individuals work and live together regardless of their identity and backgrounds.

This manual has been prepared to assist Review Officers in understanding their role in the disciplinary process, to assist the Department in its efforts to improve staff report writing skills and the overall administration of the Three Tier Disciplinary System.

Review Officers are designated by the facility Superintendent to review misbehavior reports and administrative recommendations on their behalf. A great deal of decision-making responsibility is entrusted to a Review Officer. It is imperative that a thorough review of all reports of incarcerated individual misconduct be conducted to ensure that disciplinary techniques are appropriately administered. It is also important to evaluate reports submitted for review carefully and use your discretion judiciously. An incarcerated individual's record will be permanently marked by reports of misconduct that result in guilty dispositions at Tier II and Tier III hearings. These records may impact an incarcerated individual's opportunities for program participation, transfers, Parole, Merit Time Eligibility, and Conditional Release.

This manual provides guidance by explaining the intent of relevant regulations and offering practical advice. The Office of Special Housing/Incarcerated Individual Disciplinary Programs is available to answer questions or discuss the issues presented herein by calling (518) 457-2337.

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Policy

Establishment of Review Officer

There shall be at each Correctional Facility staff members of the rank of Lieutenant or above, to be known as the Review Officer, the number to be dependent on the needs of the facility. The Superintendent may, if sufficient reason exists, designate some other employee to serve as the Review Officer.

Function of the Review Officer

A Review Officer shall receive all misbehavior reports (except those indicating self-harming behavior as provided below), which have not yet been reviewed, at least once every tour. They shall review such reports and consider the seriousness of the alleged violations of the standards of incarcerated individual behavior, referring such reports to the lowest appropriate disciplinary body (Tier I or II) for action below. The Review Officer must document reasons for any decisions to assign a disciplinary violation other than to the lowest possible tier.

1. Where the violation, if substantiated, would warrant only penalty of loss of recreation for up to and including 13 days and including the loss of privileges, for a period up to and including 13 days, other than correspondence and visitation privileges, the report shall be referred to the Violation Officer.
2. Where the violation, if substantiated, would warrant only a penalty of loss of privileges up to and including 60 days, the misbehavior report shall be forwarded to the Disciplinary Hearing Officer for appropriate action.
3. Where the violation, if substantiated, would warrant imposition of a penalty beyond that which may be imposed at a disciplinary hearing the misbehavior report shall be forwarded to the Superintendent for designation of a Hearing Officer to conduct a Superintendent's hearing.

The Review Officer may dismiss any misbehavior report which fails to state a valid charge or may return it to be rewritten. All misbehavior reports, including those returned for revisions, must be written, and reviewed within 17 hours of the incarcerated individual being placed in segregated confinement.

The Review Officer shall refer any report that includes a description that an incarcerated individual has engaged in an act of self-harm to the Deputy Superintendent for Security, who shall fulfill the function of the Review Officer and have the authority to dismiss the charge(s) if they believe, due to the incarcerated individual's mental state or for any other reason, that proceeding to a hearing would serve no useful purpose.

The Review Officer shall review the status of each incarcerated individual confined pursuant to a misbehavior report under review and may order the release of an incarcerated individual who is no longer a threat to the safety and security of the

facility or to themselves or confined for an act of misbehavior which is ineligible for a confinement sanction.

The Review Officer shall not act as a Hearing Officer in any proceeding arising from a misbehavior report which they have reviewed.

Once a misbehavior report is written and reviewed, the charges must be entered [REDACTED] and the report must be served upon the charged individual as soon as practicable, but no later than the next calendar day.

REVIEW OFFICER PROCEDURES

The Superintendent has designated you as one of the Facility's Review Officers pursuant to Title 7, Chapter V, New York Code of Rules, and Regulations (N.Y.C.R.R.). The review of misbehavior reports is an important step in the Three Tier Disciplinary System.

Review Procedure: Where an individual has been secured in a cell because of an alleged offense a misbehavior report must be authored and tiered by the Superintendent's designee (Review Officer) within 17 hours to determine whether Pre-Hearing Segregated Confinement is appropriate. Pre-Hearing Segregated Confinement is only appropriate where the Review Officer reasonably believes a k(ii) offense has been committed. All current Tier III charges qualify as a k(ii) offense. If Pre-Hearing Segregated Confinement is not appropriate, the housing unit officer must be immediately notified, because the individual's confinement may not exceed 17 hours.

Pre-Hearing Confinement may **only** be ordered, when the incarcerated individual's presence in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated individuals and creates an unreasonable risk to the security of the facility. The following acts are qualifying offenses:

- Causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the commissioner and, when appropriate, the commissioner of mental health or their designees reasonably determine that there is a strong likelihood that the person will carry out such threat. The commissioner of mental health or their designee shall be involved in such determination if the person is or has been on the mental health caseload or appears to require psychiatric attention. The department and the office of mental health shall promulgate rules and regulations pertaining to this clause;
- Compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
- Extorting another, by force or threat of force, to violate any rule;
- Coercing another, by force or threat of force, to violate any rule;
- Leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;

- Procuring deadly weapons or other dangerous contraband that poses a serious threat to the security of the institution; or
- Escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

For purposes of this section, attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent.

Each Review Officer has an opportunity, through their authority, to make a significant impact on the operation of the disciplinary system. Misbehavior reports are the foundation of the disciplinary process. The Review Officer screens deficient reports and reviews the appropriateness of confinement during the review process.

A Review Officer's decision may have implications beyond the administrative hearing process. Potentially, a misbehavior report and its supporting documentation could be the subject of criminal and/or civil court proceedings. It is for these reasons that a Review Officer must ensure that each misbehavior report that is submitted receives appropriate scrutiny. Therefore, when a deficiency is discovered the misbehavior report shall be sent back to the author of the report for corrective action.

The Review Officer has a direct relationship with all security staff members through the chain of command. The Review Officer may be in a position that requires them to provide appropriate direction up (i.e.: Captains, Deputy Superintendents) or down the chain of command. Since all staff is responsible for reporting incarcerated individual misbehavior, the Review Officer must function in a manner that addresses the needs of the disciplinary system and offers Security, Administrative and Program staff, regardless of level, appropriate direction. Whenever a misbehavior report is deficient in some area, or the use of confinement is inappropriate, the Review Officer should establish a dialogue (training approach), with the employees involved to take remedial action and enhance their skills in the future. This remedial action should include subordinate supervisory staff, (Sergeants) that have endorsed the misbehavior report as the Area Supervisor.

The Review Officer should understand the role of the area supervisor in the submission of misbehavior reports, recommendations for Administrative Segregation or Involuntary Protective Custody, and any supporting documentation. The Area Supervisor endorses reports submitted by subordinate staff within their area of responsibility. The purpose of the endorsement is multifaceted:

1. An incarcerated individual may be confined to SHU where such action appears reasonably necessary for investigative purposes related to disciplinary. In any such case, approval must be granted by the Superintendent and the Deputy Commissioner for Correctional Facilities, and such confinement may not extend beyond 48 hours. An incarcerated individual shall be offered four hours of out-of-cell programming during this time. Notwithstanding, within such time period the incarcerated individual shall either be:
 - a. Released from such confinement; or
 - b. Served a Tier III Misbehavior Report

2. The Area Supervisor screens reports prior to submission for review. The purpose for screening is to ensure that the report submitted for review is accurate, that the charges are substantiated in the body of the report and for completeness. An immediate screening of a report may detect deficiencies that can be corrected before the employee goes off duty. If an investigation is required, prescreening the report can provide the supervisor with a starting point from which they may obtain further information.

The Review Officer can enhance the skills of area supervisors, as well as other staff that prepare reports for submission to the Review Officer. If reports are reaching the Review Officer that are clearly deficient, and not simply a difference of opinion about writing styles, then the Review Officer should discuss the problem with the endorsing Area Supervisor. The requirements of misbehavior reports should be discussed with the Area Supervisor to assist them in being more effective in the future.

Standards of Incarcerated Individual Behavior

The Standards of Incarcerated Individual Behavior (Rule Book) is an incarcerated individual's formal notice of the conduct that is prohibited. Such notice is a requirement to impose discipline. The Rule Book is periodically revised as the needs of the Department evolve. The Review Officer must be knowledgeable of any revisions that are made and the date they become effective.

Assigning the Tier Designation

Each rule in the Standards of Incarcerated Individual Behavior has a tier level specified for assignment to a hearing. The Review Officer may not assign a report to a tier hearing level above that which the charge is specified in the Standards of Incarcerated Individual Behavior. Many of the rules may be assigned to any level of hearing. If there are multiple charges that span the spectrum of tier levels, the report may be assigned to one of the three levels the Review Officer deems appropriate. However, the presumption is that a report will be tiered at the lowest possible level, absent extenuating circumstances. Documentation will be provided through the entry of data [REDACTED]

Factors which might be considered when assigning a report to a tier level are:

- [REDACTED]
- Severity of the offense
- Location of the offense
- Manner offense was committed
- Risk to security
- Risk to personal safety
- Disciplinary history
- Other – Explain (requires narrative)

The Provisions for Attempts, Conspiracy, and Accessory to Acts of Misconduct

Any violations cited for an attempt, conspiracy, or act as an accessory shall be articulated in the description of the body of the report. Incarcerated individual’s may be disciplined to the same extent that they could if they actually committed the act.

[REDACTED]

[REDACTED]

[REDACTED]

Conditional and Parole Release

An incarcerated individual that has an established Conditional Release or Division of Parole release date and subsequently receives a misbehavior report that warrants assignment to a Superintendent’s Hearing may, as a result of the disposition, have such release date suspended or held in abeyance. The Review Officer should notify the Incarcerated Individual Records Coordinator and/or the facility Parole Officer about the pending hearing in order to suspend the incarcerated individual’s release, pending the disposition of the charge(s).

Rehearing

Occasionally a Review Officer may see a notice to conduct a rehearing for charges that were previously heard at another hearing. This means that the previous hearing was reversed, and the charges filed against the incarcerated individual will be heard again at a new hearing by a new hearing officer. What is important to note about reviewing reports that will be the subject of a rehearing is that the charges that were dismissed by the first Review Officer or by the Hearing Officer at the previous hearing are restricted from being heard at the new hearing.

A Review Officer may not be privy to such information during their review of the report. They should, however, make inquiry into such matters to forward the report to the appropriate body for a hearing and only those charges that should be reheard are considered by the subsequent Hearing Officer. Note: **The original tier level may not increase, but if appropriate may be reduced.**

If the incarcerated individual is in confinement, solely for the charges to be reheard, the five-day rule must be applied to the case. Day one commences on the date that the facility receives notice to conduct the rehearing.

The Review Officer may not send the misbehavior report that is the subject of a rehearing back to be rewritten.

Misbehavior Report Policy

Every incident of incarcerated individual misbehavior involving danger to life, health, security, or property must be reported, in writing, as soon as practicable.

The misbehavior report shall be made by the employee who has observed the incident or who has ascertained the facts of the incident. Where more than one employee has personal knowledge of the facts, each employee shall make a separate report or, where appropriate, each employee shall endorse their name on a report made by one of the employees.

The misbehavior report shall include the following:

1. A written specification of the particulars of the alleged incident of misbehavior involved.
2. A reference to the incarcerated individual rule book number allegedly violated by the incarcerated individual, and a brief description of the rule.
3. The date, time, and place of the incident.
4. Where more than one incarcerated individual was involved in an incident, the report should, to the extent practicable under the given circumstances, indicate the specific role played by each incarcerated individual. Where two or more incidents are involved, all of them may be incorporated into a single misbehavior report. However, each incident must be separately stated.

Misbehavior reports shall also contain the following language:

1. "You are hereby advised that no statement made by you in response to the charge, or information derived there from may be used against you in a criminal proceeding"
2. "You will be permitted to call witnesses on your behalf provided that doing so does not jeopardize institutional safety or correctional goals."
3. "If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or their designee prior to the hearing to make a statement on the need for continued prehearing confinement." (Superintendent's Hearing only)

NOTE: Paragraphs (2) and (3), above, shall not be included in misbehavior reports used in connection with violation hearings.

Employees of the Office of Mental Health may write misbehavior reports to the same extent as Department employees.

Misbehavior Reports

A misbehavior report is formal notice of the charges filed against the incarcerated individual. The charges against the incarcerated individual must be properly cited. The body of the report should paint a comprehensible picture of the events, be factual, and complete in its description of incident. It must contain sufficient specifics for an incarcerated individual to be able to effectively respond to the charges and prepare a defense. (i.e., Victim)

Too often, misbehaviors are written in a manner that presumes that the reader knows more about an incident than what is stated. The author should prepare the report as if the person reading it knows nothing about the incident or facility operations in general. The reader should not need to infer any facts or circumstances. Each rule, cited in the report as having been violated, must be substantiated in the body of the report with evidence.

Substantial Evidence

Misbehavior reports have been held by the courts to constitute "substantial evidence" provided they are detailed, based on first-hand information, and are not significantly contradicted at the hearing.

Substantial Evidence is the standard of proof required by the courts of New York to reach a disposition of guilt. Substantial Evidence is the type of evidence that responsible persons would ordinarily rely upon in reaching a conclusion in serious matters. A Hearing Officer may not take a leap of faith in reaching a guilty determination. The Review Officer must, therefore, ensure that the reports forwarded for a hearing, contain the requisite evidence to support the charge(s). There must be a rational connection between the evidence presented in the report and the conclusion reached at a hearing. The substantial evidence requirement is a level of proof which is significantly less than a preponderance of evidence or proof beyond a reasonable doubt. Substantial Evidence may include circumstantial evidence, direct evidence, eye-witness statements, documentary evidence, or

confidential information. Substantial Evidence is not significantly controverted by other evidence. It is a detailed allegation of misconduct that is supported by specific facts.

Conclusory Statements

Conclusory statements are not evidence, they are a statement of conclusion. Many misbehavior reports contain conclusory statements. Such statements are not, in and of themselves, evidence. An example of a conclusory statement would be "I observed incarcerated individual's Smith and Jones fighting". This statement is not evidence; it is a conclusion by its author. It is a statement that lacks specifics or detail. If the report provides a description of incarcerated individual's Smith and Jones violently punching each other about the head and body with their fists, kicking, jabbing, circling, wrestling on the floor, etc., would satisfy the substantial evidence requirement and a charge of fighting. Since the above quote fails to provide sufficient details, the hearing officer would be required to obtain testimony from the author of the report to develop a record containing those details.

Clerical Errors

If there is a clerical error in the report it may be amended by rewriting the report. Amending the report should take place prior to the incarcerated individual being served their copy of the report.

Authorized Report Writers

Only Department Employees or Mental Health Employees may prepare a report. Any other person that has observed incarcerated individual misbehavior should report such to one of the above employees. That employee should ascertain the facts and prepare a misbehavior report. The misbehavior report will not be based upon staff observation of the misconduct.

Duplicative Charges

Often when multiple misbehavior reports are submitted for a single incident, the authors charge the incarcerated individuals with the same offense(s). The duplicative charge(s) in the report that contains the least detail should be dismissed at review. If a misbehavior report contains an inordinate number of charges that are not warranted, then the Review Officer should dismiss each of the charges that are duplicative or are not supported by the facts.

Documentary Evidence

The Department uses many documents to supplement misbehavior reports in the disciplinary process. These documents are evidence and should ordinarily be consistent with the misbehavior report. If the facts of the case are inconsistent, they will need to be explained at the hearing. When the Review Officer notes that the charges against an incarcerated individual are based upon documentary evidence, those documents must be submitted for review in conjunction with the

misbehavior report. The following are examples of documentary evidence that may be submitted for review with a misbehavior report:

Memorandums	Unusual incident reports	Use of Force report	Photo array
Drug test documents	Sentence and Commitment	Injury reports	Phone records
Incarcerated Individual Account records	Institutional Pass	Package Room records	Visiting records
Maintenance records	Contraband records	Search reports	Photographs
Chain of Custody	Personal Property inventory	Claim forms	Call outs
Unauthorized Organization materials			

Disturbance Reports

Reports describing large disturbances are most effective when they are prepared in a format that:

1. First describes the scope and disposition of an incident, and
2. Describes the specific role, to the extent possible, of the incarcerated individual being charged.

Drug Cases

The Department will utilize its resources to identify, whenever possible, any substances which are found and suspected of being contraband drugs and to hold individuals responsible for possessing illicit drugs or introducing contraband drugs into a facility, in accordance with Directive #4938. Misbehavior reports for drug offenses can only be generated once a certified laboratory report of a positive result of a confirmatory test by the Department's independent forensic laboratory or the New York State Police laboratory. The contraband drugs may be used to initiate a disciplinary proceeding against an incarcerated individual (see Directive #4932, Chapter V, Standards Behavior & Allowances") and or used as evidence in a criminal prosecution.

Temporary Release Cases

Incarcerated Individuals in a Temporary Release Program whose urine has tested positive for a controlled substance are commonly offered an opportunity to participate in a relapse program. If the incarcerated individual agrees to participate and the Superintendent approves the incarcerated individual's relapse placement, the charges are dismissed. If the incarcerated individual's request for relapse is disapproved, the misbehavior report is heard at a hearing. Often there is a period that elapses between the filing of the drug use charge and the Superintendent's decision on the incarcerated individual's relapse placement. The day that the Superintendent issues a decision to deny relapse is counted as day one for the purposes of calculating the 14-day time for completion of the hearing. The incarcerated individual's relapse placement is subject to the Superintendent's approval and the charges are held in abeyance pending the decision.

Incarcerated Individuals who have failed to return from temporary release must be absent ten or more hours in order to be charged with absconding. If, however, the incarcerated individual has been taken into police custody or other criminal justice custody before their scheduled date and time of return, the absconding charges would not be appropriate since the incarcerated individual is unable to return.

The incarcerated individual who has failed to return as scheduled will be written a misbehavior report. It is very likely that a supplemental report will be filed upon the incarcerated individual's return to custody. That supplemental report should describe the date and time of return and the circumstances of their return. The date that the supplemental report is written begins the clock for calculating the five- and fourteen-day rules.

Penal Law Violations

Charge 001.00 Penal Law Violations may only be used following a criminal conviction. The misbehavior report should describe the date of the conviction, the numerical charge(s) from the N.Y.S. Penal Law and a brief narrative description, and the location (jurisdiction) in which the conviction was obtained. A copy of the Sentence and Commitment from the court should accompany the misbehavior report as documentary evidence.

Confidential Information

Reports based on confidential information or an investigation of an incident that was not based on staff observations require that the incarcerated individual be informed of sufficient specifics about the allegation to permit them to prepare a defense. The body of the report must contain the name of **victim(s)**, the **location** of the incident, the **date and time of the incident, what happened**, and **who else was involved** in the misconduct.

Discipline: Elected Representatives for the IGRC

Misbehavior reports that have been submitted against an elected representative of the Incarcerated Individual Grievance Resolution Committee, which will be assigned to a Tier III Hearing, must contain a notice of the incarcerated individual charged that, "affirmation of these charges may result in removal from the IGRC". Any Tier III misbehavior report submitted against an elected representative that fails to contain such notice should be returned to the author to be amended or rewritten.

The Review Officer is notified by the IGP Supervisor or the Superintendent within 24 hours of an incarcerated individual's status when elected or appointed to the committee. Review Officers should, therefore, be aware of those incarcerated individuals at their respective facilities.

IGRC Impeachment Notice

An elected incarcerated individual representative of the Incarcerated Individual Grievance Resolution Committee may be removed from their position after a

limited due process hearing has been conducted. IGRC Impeachment Hearings are conducted in accordance with the same procedures for Tier III Hearings. The Impeachment hearing is not, however, for the disposition of violations of the Standards of Inmate behavior. It is ordinarily a recommendation that the elected representative be removed for conduct associated with a violation of the IGRC Code of Ethics. This notice may also refer to the fact that the incarcerated individual was the subject of a Superintendent's Hearing and as a result of that disposition, is unable to fulfill their role as an elected representative and warrants removal.

The recommendation should cite specific section(s) of the "Code of Ethics" that were violated. The notice should also contain factual information describing, who was involved, what happened, when it happened, where it happened, why and how (if known). Detail and specifics are required in this notice just as is required in a misbehavior report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Involuntary Protective Custody Recommendation

An Involuntary Protective Custody Recommendation is prepared when it is determined that an incarcerated individual's health and safety are at risk if they were to be housed in general population. This recommendation also must provide specifics and detail.

Commonly, the Involuntary Protective Custody Recommendation is prepared when an incarcerated individual has been assaulted by an unknown assailant. Since facility officials are unable to identify the perpetrator, and separate them from the victim, we remove the victim for their protection when they refuse to request voluntary protective custody.

When the facility administration receives information that an incarcerated individual is the target of harm by unknown incarcerated individuals in general population and the potential victim fails or refuses to recognize such potential harm, if housed in population, the incarcerated individual should be placed in protective custody involuntarily (IPC/PC incarcerated individuals will not be placed in SHU).

Confinement Policy

Where a Security Supervisor has reasonable grounds to believe that an incarcerated individual's behavior represents an immediate threat to safety, security or order of the facility or is an immediate danger to other persons or to property, and such behavior fits the specified criteria of offenses eligible for SHU (k(ii)/Tier III) confinement. This information shall be reported to the Superintendent or designee, and the Superintendent or the designee may order confinement in a Special Housing Unit, Residential Rehabilitation Unit, SDP, or Diversion Unit. Any such order shall be in accordance with Directive #4933, "Special Housing Units", or Directive #4933D, "Residential Rehabilitation Units", as applicable. A security supervisor who requests authorization to place an incarcerated individual in a Special Housing Unit, RRU, SDP, or Diversion Unit pursuant to the provisions of this section shall submit such request, in writing, to the Superintendent as soon as possible, but in any event before going off duty.

Pre-Hearing Confinement may **only** be ordered, when the incarcerated individual's presence in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated individuals and creates an

unreasonable risk to the security of the facility. The following acts are qualifying offenses:

- Causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the commissioner and, when appropriate, the commissioner of mental health or their designees reasonably determine that there is a strong likelihood that the person will carry out such threat. The commissioner of mental health or their designee shall be involved in such determination if the person is or has been on the mental health caseload or appears to require psychiatric attention. The department and the office of mental health shall promulgate rules and regulations pertaining to this clause;
- Compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
- Extorting another, by force or threat of force, to violate any rule;
- Coercing another, by force or threat of force, to violate any rule;
- Leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;
- Procuring deadly weapons or other dangerous contraband that poses a serious threat to the security of the institution; or
- Escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

For purposes of this section, attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent.

Reports of confinement shall be made where confinement was requested by a Security Supervisor, but need not be made where confinement:

1. Is necessitated by a medically excused inability to participate in an assigned activity; or
2. Was directed by a decision in a disciplinary Superintendent's hearing.

The provisions of this section shall not be construed so as to prohibit emergency action by the Superintendent of the facility and, if necessary for the safety or security of the facility, all incarcerated individual's or any segment of the incarcerated population in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period on which the safety or security of the facility is in jeopardy. In any such case the Superintendent shall immediately notify the Commissioner.

Confinement occurs when an incarcerated individual's liberty is restricted in a significantly greater manner than that of incarcerated individuals in the general prison population.

When an incarcerated individual is in disciplinary confinement, either Special Housing Unit, Residential Rehabilitation Unit, SDP, or Diversion Unit the 5-day rule for completing a hearing will apply. Incarcerated Individuals pending or assigned to IPC, VPC, or Ad. Seg. status cannot be placed in segregated confinement unless a misbehavior report is issued where a k(ii) offense is alleged to have occurred.

When an incarcerated individual in Administrative Segregation or Involuntary Protective Custody status becomes the subject of disciplinary charges, and prehearing confinement is ordered the 5-day rule for completing the hearing is applied.

Disciplinary confinement is distinctly different from Administrative Segregation or Involuntary Protective Custody status. While the conditions of confinement for disciplinary or administrative confinement are similar, disciplinary confinement is for violating a rule listed in the Standards of Incarcerated Individual Behavior. Consequently, the five-day rule is applied. When no rule violations are cited an incarcerated individual who is assigned to Administrative Segregation the seven-day rule and for Involuntary Protective Custody the fourteen-day rule applies.

When reviewing misbehavior reports where prehearing confinement has been ordered the Review Officer is required to evaluate the appropriateness of such confinement. That evaluation hinges on our own regulations. If the facts or circumstances of the case do not meet the criteria as specified, the incarcerated individual would be released from confinement.

Alternatively, if the facts and circumstances warrant confinement and such confinement was not previously ordered, the Superintendent or designee may order the incarcerated individual confined. Upon confinement the disciplinary office shall be notified to ensure the hearing is completed within five days.

Incarcerated individuals who are in a Special Population, as defined below shall not be placed in segregated confinement (SHU) for any length of time.

1. Special Populations

- (i) twenty-one years of age or younger.
- (ii) fifty-five years of age or older.
- (iii) with a disability as defined in paragraph (a) of subdivision twenty-one of section 292 of the Executive Law. This includes developmentally disabled and physically disabled.
- (iv) who is pregnant, in the first eight weeks of the post-partum recovery period after giving birth, or caring for a child in a correctional institution pursuant to subdivision two or three of section 611 of Correction Law.
- (v) diagnosed with a Serious Mental Illness (SMI).

Some factors a Review Officer may consider when evaluating the need for prehearing confinement in addition to the regulatory provision are:

- Was there a reasonable threat to the safety and security of staff, incarcerated individual's, property, or operation of the facility?
- If the incarcerated individual is released from prehearing confinement, what potential is there for disruption of facility operations?
- Should the incarcerated individual be confined, but was not?
- Is there cell confinement available?
- Will the Review Officer be releasing another incarcerated individual from confinement in order to confine the incarcerated individual that is the subject of the report before them?
- Is the incarcerated individual currently serving a disciplinary disposition of confinement?
- Was the incarcerated individual placed in more restrictive confinement as a result of the report?
- Should the incarcerated individual be admitted to a Special Housing Unit/RRU/SDP/ or Diversion Unit?
- Will the Discipline Office be able to manage the timeliness of the charges to be heard, within five days?

Review Officer Checklist

In the past, a checklist was distributed as a guide for Review Officers and as a means of communication with reporting employees. A copy of the revised checklist is attached for use. It is a valuable tool for the Review Officer. In particular, any constructive, written comments that the Review Officer provides to the employee that submitted a deficient report should serve to correct the problem and train the employee for the future.

NEW YORK STATE DEPART. OF CORRECTIONS & COMMUNITY SUPERVISION
REVIEW OFFICER CHECKLIST

To:

From:

Re: Misbehavior Report

Incarcerated Individual _____ DIN _____ Date _____

Date:

I have reviewed the misbehavior report submitted on the above named incarcerated individual, and I have:

➤ Dismissed the following charge(s) for lack of substantiating evidence:

OR

➤ I am returning the report to be rewritten/amended for the following reason(s). This report should be rewritten as soon as possible and resubmitted for review to ensure compliance with established timeliness requirements.

1. Failure to identify a valid rule violation and or brief description of the charge(s).
2. Rule violation number does not coincide with the brief description, as indicated in the rule book.
3. The report fails to indicate the chain of evidence" for handling contraband or other evidence.
4. Lack of documentation to support misbehavior report, i.e., drug test documents, unauthorized organizational material, investigation reports, other _____
5. Discrepancies between charges cited and description of incident.

Specifically-

6. Report is not legibly written, or report is not readable on the carbon copy.
7. Report lacks the following information:

<input type="checkbox"/> Area supervisor endorsement	<input type="checkbox"/> brief description of rule violation
<input type="checkbox"/> I/I's full name & number	<input type="checkbox"/> date report written
<input type="checkbox"/> Cell/room/or dorm	<input type="checkbox"/> legible signature
<input type="checkbox"/> location of incident	<input type="checkbox"/> title of author of report
<input type="checkbox"/> incident date	<input type="checkbox"/> endorsement of employee
<input type="checkbox"/> A.M. or P.M.	<input type="checkbox"/> witnesses indicated on report

8. Other: -

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