



THE CITY OF NEW YORK
DEPARTMENT OF CORRECTION



DIRECTIVE

<input type="checkbox"/> NEW <input type="checkbox"/> INTERIM <input checked="" type="checkbox"/> REVISED			SUBJECT		
EFFECTIVE DATE 07/09/21		*TERMINATION DATE / /	DISCIPLINARY DUE PROCESS FOR INDIVIDUALS IN CUSTODY		
CLASSIFICATION # 6500R-G	SUPERSEDES 6500R-F	DATED 7/9/19			
RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER <i>Kenneth Stukes</i>			AUTHORIZED BY THE COMMISSIONER <i>Vincent Schiraldi</i>		
KENNETH STUKES, CHIEF OF DEPARTMENT SIGNATURE			VINCENT SCHIRALDI, COMMISSIONER SIGNATURE		



I. PURPOSE:

The purpose of this Directive is to outline New York City Department of Correction (Department) procedures for processing pre-hearing detention and individuals in custody disciplinary infractions.

II. POLICY

- A. The Department shall fairly facilitate the administrative process regarding individuals in custody violations of Departmental rules and regulations in accordance with due process requirements so as to maintain good order, discipline, and security in Department facilities.
- B. Sanctions shall be designed to encourage individuals to learn from their behavior and improve themselves.
- C. Sanctions shall be progressive in nature (increasingly severe steps or measures when an individual fails to correct a behavior after being given a reasonable opportunity to do so), taking into account each individual's previous institutional conduct history, mental health, and the direct circumstances surrounding the infraction charge.
- D. Staff shall not impose sanctions in a capricious (inconsistent) manner and sanctions shall be commensurate with the nature and circumstances of the infraction committed. Staff shall manage an individual's behavior in an impartial and consistent manner, shall impose penalties that are fair in light of comparable penalties given individuals with similar histories, and shall not impose or allow corporal punishment of any kind.

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III. PROCEDURES

A. INFORMAL RESOLUTION

1. Staff may respond to low-level misconduct (unacceptable or improper behavior) by verbal counseling.
2. Verbal counseling is considered an appropriate response when staff are able to immediately correct the behavior at hand and it is timely and swift in response.

B. INFRACTION PREPARATION



1. When an employee reasonably believes an individual in custody has violated an institutional or Departmental rule and such violation is not informally resolved, that employee must prepare Form 6500A, "Report and Notice of Infraction" (Attachment A) concerning that incident and notify a supervising officer who shall conduct an investigation. The Form 6500A must be legible, detailed, and specific regarding the time and place of the rule violation(s) and must include the description of the individual's actions and behavior.

Infractions involving sexual contact with staff may not include any other charges on the Form 6500A. All other charges must be processed on a separate Form 6500A.

2. The supervisor conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the incident.

Note: Staff on individual in custody sexual abuse allegations must be reported to the Central Operations Desk (COD) for investigation by the Investigations Division (ID) or Department of Investigation (DOI).

3. The investigation shall commence within twenty-four (24) hours of the incident. At the conclusion of the investigation, the supervisor investigating the incident shall document their official report on Form 6500B, "Investigation Report" (Attachment B), and notice of any resulting infraction shall be served upon the individual as soon as practicable but no later than three (3) business days after the incident, unless extenuating factors exist which would require an extension of such time limit. For infractions comprised solely of Grade II and Grade III violations, that extension shall not exceed ten (10) days after the incident. For infractions that include Grade I rule violations, the time limit may be extended beyond ten (10) days to fifteen (15) days under the following circumstances:

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- a. The underlying event is a major disturbance in which multiple individuals are alleged to have committed multiple rule violations;
- b. As a result of the individual's alleged misconduct, staff or individual witnesses necessary to the investigation cannot be questioned by supervisory staff conducting the investigation (e.g., hospitalized or otherwise unavailable);
- c. Sufficient evidence to warrant the initiation of disciplinary proceedings only becomes known to the Department after the ten (10) day period has elapsed.

Note: In the case of an escapee or absconder, the time will be held in abeyance until such time as the escapee or absconder is returned to custody.

In the case of an individual-on-individual sexual abuse violation, staff shall initiate the infraction process in accordance with Department policy. However, the adjudication of the infraction shall be suspended until completion of the investigation process.

In any case in which an individual in custody is served with an infraction more than three (3) business days after the incident, the supervisor conducting the investigation must explain in writing, with specificity, the reasons why the infraction could not be completed sooner and steps that were taken to complete it.

4. If ID or DOI are pursuing the matter and conducting an investigation, supervisors shall consult with the assigned investigator or designee prior to interviewing any witnesses for an investigation at the facility.
5. The supervisor conducting the investigation shall otherwise interview the individual(s) involved. If the rule violation in question could lead to a subsequent criminal prosecution, the supervisor shall inform the individual that while the investigation is not pursuant to a criminal proceeding, statements made by the individual may be used against them in a subsequent criminal trial. The individual in custody must also be informed of the right to remain silent, and that silence will not be used against them. The supervisor shall also interview the employee filing the report and all witnesses to the incident to ascertain the facts. The supervisor shall examine and secure any physical evidence or contraband. The

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supervisor shall then decide if there is reasonable cause to proceed with disciplinary action.

6. If the supervisor determines that the Form 6500A is inadequate, they shall ensure that the report is revised. If the supervisor determines that no disciplinary action is warranted, they shall check the "No" box on the Form 6500B next to question: "Hearing Recommended?"

If, after concluding the investigation, the supervisor decides that there is reasonable cause to proceed with a hearing, they shall check the "Yes" box on Form 6500B next to question: "Hearing Recommended?"



7. The individual in custody should then be served with Form 6500A specifying the alleged charges. Form 6500A must be specific and must include, at a minimum, details as to the time and place of the rule violation(s) and a description of the individual's behavior. The Form 6500A must be served at least twenty-four (24) hours before the commencement of the hearing to give the individual an opportunity to prepare a defense, unless the individual consents to a shorter time period in writing.

Where two (2) or more incidents are involved, all may be incorporated in a single report, but each incident must be separately described. Separate charges may be included for each offense.

8. The individual in custody will be asked to sign the Form 6500A as proof of receipt. If the individual does not sign the Form 6500A, a staff member other than the person serving the Form 6500A must note the individual's refusal on the form and including their name and shield number, legibly. Any member of the staff, except those who participated in the incident, may serve the individual with the Form 6500A.

When necessary to protect personal safety or institutional security, a supervisor may omit but refer to confidential information on the Form 6500A.

9. Prior to submission of the Form 6500A and related documentation to the Security Office, the Tour Commander shall review and initial all infractions. Any deficiencies shall be corrected by the Investigating Supervisor.

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10. The Form 6500A may be rewritten after the individual is served and before the hearing begins. In such cases, the rewritten Form 6500A must be marked "Amended" directly after the infraction number. If that happens, the individual charged must be served with a copy of an amended Form 6500A and shall be given at least twenty-four (24) hours from the time of receipt to prepare a defense.
11. Once a copy of Form 6500A is served upon the individual, copies of it and copies of any relevant reports relied upon in the decision to proceed with the hearing, along with any physical evidence or facsimiles of such, shall be forwarded to the Correction Officer assigned by the facility's Deputy Warden for Security to assist the Adjudication Captain.
12. If the individual is transferred to another facility pending the hearing, the Form 6500A and all underlying documentation and physical evidence shall be forwarded to the Correction Officer assigned by the receiving facility's Deputy Warden of Security to assist the Adjudication Captain. The Commanding Officer at the receiving facility shall designate a Security Captain or Tour Commander to ensure that the individual receives a copy of the Form 6500A, and that all underlying documentation is available for the individual's review (see Section III.B.6-8).

C. PRE-HEARING DETENTION (PHD)

1. Eligibility Criteria

- a. Individuals in custody who may be placed in PHD status shall include those who are under investigation for or charged with a disciplinary infraction and also fulfill one of the following criteria:
 - i. Are reasonably believed by the Tour Commander to have committed one or more of the following offenses:
 - A. Assault on Staff (including splashing incidents);
 - B. Criminal Act (e.g., assault on civilian);
 - C. Possession of scalpels, hobby blades, multiple weapons, including jail-made weapons, single edge razors, etc.;
 - D. Serious Incidents resulting in injury;

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- E. Fights in congregate areas (yards, corridors, program areas);
- F. Riot;
- G. Barricade incident;
- H. Gang assaults (three or more acting in concert);
- I. Multiple participant individual fights/melee; or
- J. Any other serious incident that threatens the safety and security of the Department as determined by OSIU or the Assistant Chief of Security.
 - ii. Whose removal from general population is necessary to:
 - A. Protect any person, including but not limited to staff or individuals prior to a disciplinary hearing;
 - B. Prevent an individual from intimidating or coercing other individuals to give false testimony or to refuse to testify at a hearing; or
 - C. Protect other significant safety and security interests of the Department.
- b. Exclusions

Individuals in custody precluded from assignment to Punitive Segregation housing and, by extension, PHD include:

- i. Adolescents and Young Adults;
- ii. Individuals with serious mental or physical disabilities or conditions.

Note: An individual in custody who is excluded from punitive segregation at the time of an infraction due to age or health status shall not be placed in punitive segregation for the same infraction at a later date regardless of whether the individual's age or health status has since changed.

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2. Pre-Hearing Detention (PHD)



- a. An individual in PHD shall be afforded one (1) hour of individual recreation per day and shall be entitled to services in accordance with Directive 4501R-E "Pre-Hearing Detention and Punitive Segregation Status Individuals." An individual may be placed in PHD prior to being served with a Form 6500A.
- b. The infraction hearing of an individual in PHD shall be completed within three (3) business days of the individual's transfer to PHD housing whenever possible but the individual shall not be held in PHD for more than seven (7) business days. If the hearing is not held in such time, the individual must be released from PHD.

Note: Any time spent in PHD by an individual in custody counts towards punitive segregation time administered for an infraction, if any.

- c. An individual in PHD may be released from PHD at any time if the Assistant Chief of Security or his/her designee determines that retention of that individual in PHD is not necessary for the safety or security of that individual or others in the Department.

3. Placement in PHD:

- a. Prior to placement in PHD, an individual in custody must be cleared by Mental Health pursuant to Directive 4501R-D. If the individual is cleared, the Tour Commander may authorize the immediate placement of an individual into PHD status. The Tour Commander shall ensure that the individual is provided with Form 6500C, "Notice of Pre-Hearing Detention" (Attachment C), at the time of placement.
- b. Upon placement of an individual in PHD, the Tour Commander must immediately notify COD to inform the Officer of the Day (OD) (during non-business hours) and the Assistant Chief of Security (during business hours) of that placement. Additionally, the Commanding Officer shall review the placement within twenty-hour (24) hours of the individual's transfer to PHD.
- c. Within twenty-four (24) hours of placement, the individual must be issued Form 6500C. Upon issuance, the individual shall have the opportunity to respond, orally or in writing, to the "Reason for placement" specified on the form.



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- d. The Commanding Officer of the facility initiating the PHD placement shall ensure that a complete and accurate infraction package is completed in a timely fashion and, if the individual is transferred to another facility for confinement in PHD status, that the infraction is forwarded to that facility.



D. INFRACTION HEARING PROCEDURES

1. Hearings shall be conducted by a Captain from the Adjudication Unit (a unit of the Legal Division). The Adjudication Unit is composed of Captains and an Assistant Deputy Warden who reports to the General Counsel and supervises the Captains assigned to the Adjudication Unit. The Captains must conduct disciplinary and due process hearings and other business for the Legal Division. The Captains in the Unit rotate among the facilities every four (4) weeks but they do not report to the Commanding Officer of the facility to which they are assigned.
2. The Adjudication Captain for a particular infraction hearing shall not be the reporting employee, the supervisor who conducted the investigation, or a witness to the incident. Hearings must take place within three (3) business days of service of the Form 6500A on the individual in custody, excluding:
 - a. The day the individual is served;
 - b. When the individual has a court appearance, whether in person or via a video-teleconference, and is therefore unavailable for the hearing;
 - c. The day the individual is hospitalized rendering them unable to attend a disciplinary hearing, or the individual is transferred out of the facility for a hospital or clinic appointment;
 - d. When the individual leaves the facility for an attorney interview and is therefore unavailable for the hearing;
 - e. When the individual is unavailable because they have been transferred to another facility; and
 - f. When the individual is unavailable due absence from the facility for any reason, including significant family events or emergency situations.

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3. Upon receiving notification by the facility, the Assistant Deputy Warden assigned to the Legal Division shall make arrangements to provide hearings for infraacted intermittent individuals. The timeframes outlined in this Directive do not apply to intermittent individuals.
4. The Correction Officer assigned by the facility to assist the Adjudication Captain shall be responsible for recording all infractions processed by the Adjudication Captain in a logbook established exclusively for this purpose. The information to be maintained shall include the following:
 - a. Infraction number;
 - b. Individual's name;
 - c. NYSID number;
 - d. Individual's commitment number;
 - e. Date of incident;
 - f. Time of incident;
 - g. Location of incident;
 - h. Individual's housing area;
 - i. Name of individual who wrote the infraction;
 - j. Investigating Captain;
 - k. Rule violation;
 - l. Individual's statement;
 - m. Hearing date;
 - n. Adjudication Captain's name;
 - o. Individual's plea to charge(s);
 - p. Tape number; and
 - q. Disposition.
5. Prior to calling the infraacted individual for the hearing, the Adjudication Captain shall review the Form 6500A to determine whether there are due process violations that may require the dismissal of the infraction. Due process violations include the following:
 - a. There is no proof of service on the Form 6500A: the infraacted individual did not sign the Report and Notice of Infraction acknowledging receipt of the charges nor was any notation made by staff that the individual was served with the charges but refused to sign the Form 6500A.
 - b. There is contradictory information and/or inconsistent allegations, or facts detailed in the Form 6500A that relate to the alleged misbehavior and are material to the charge(s).

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- c. The "Details of Incident" section on the Form 6500A is so vague that it fails to give the infractioned individual adequate notice of the preferred charge(s).
 - d. There is incorrect material information within the body of the charge(s). If the error is purely technical (e.g., an incorrect charge number is given) but the actual misconduct is adequately documented on the form, the Adjudication Captain may make the correction so long as a record of such correction is made. If the error is substantive, the Adjudication Captain shall not correct the error and may dismiss the charge.
 - e. The Investigating Captain was a witness to and/or a participant in the incident which formed the basis of the charge(s).
 - f. Investigation of the infraction was not commenced within twenty-four (24) hours of the incident.
6. Dismissals based solely on due process violations do not constitute "not guilty" findings because they are not based on the merits of the case(s). The dismissal of such infraction(s) does not preclude the Department from redrawing the charges and serving the individual with the amended infraction(s) unless the due process violation falls within Section III.D.5.e of this Directive.
- a. If the Department elects to redraw the charges and serve the individual with an amended Form 6500A, on rehearing the infraction, the Adjudication Captain must determine whether the delay in processing the infraction was prejudicial to the individual and so state in detail on Form 6500D, "Hearing Report and Notice of Disciplinary Disposition" (Attachment D). Factors to be considered include whether the individual would be unable to call and/or locate necessary witnesses or obtain needed documentation. If no prejudice to the individual's ability to prepare and present a defense was caused by the delay, the Adjudication Captain shall proceed with the disciplinary hearing.
 - b. If an individual is served more than three (3) business days after the incident, the Adjudication Captain must determine whether the individual has been prejudiced by the extension of time. The Adjudication Captain must set forth in detail in the Form 6500D the basis for the resulting determination.



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7. At the commencement of the infraction hearing, the Adjudication Captain must begin audiotaping the hearing in accordance with the procedures set forth in Attachment K, "Audiotaping Procedures." The Adjudication Captain must ascertain the name and book and case number of the individual in custody to ensure that the correct individual is being charged. The individual should be asked to present their Identification Card and the information contained thereupon should be checked against the infraction. The Adjudication Captain shall, upon such verification, identify themselves to the individual.
8. The Adjudication Captain shall check that the Form 6500A was served on the individual at least twenty-four (24) hours before the commencement of the hearing. The individual may waive the 24-Hour notice period in writing. If the individual waives the notice period, the Adjudication Captain shall note this on the audio recording.
 - a. If there is no proof of service (i.e., no individual signature or signature of a staff witness to the service), the Adjudication Captain shall personally serve the individual with a copy of the Form 6500A at the hearing and then adjourn the hearing until the twenty-four (24) hour notice period has elapsed (unless the individual waives the 24-hour notice period in writing on the Form 6500D).
9. If security concerns preclude a hearing in the usual hearing location, the hearing may take place in another area of the facility or in another facility.
10. Individual in Custody Rights: The Adjudication Captain shall advise the infringed individual of the following rights at the hearing:
 - a. The Right to Appear: An individual has the right to appear personally unless this right is waived in writing or the individual refuses to attend the hearing.
 - b. The Right to Make Statements: An individual has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Adjudication Captain must inform the individual that while the proceeding is not a criminal one, the statements made by the individual may be used against them in a subsequent criminal trial. The individual must also be informed of the right to remain silent, and that silence will not be used against them.



If the individual has been given Miranda warnings as a result of the incident, the Adjudication Captain shall inquire if the individual wishes to make any statements in light of these warnings.

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- c. **The Right to Present Material Evidence:** An individual has the right to present material, relevant, and non-duplicative evidence. Any material introduced at a hearing or relied on by the facility in support of the infraction must be presented, subject to applicable redactions of confidential informant and/or security related information must be shown to the accused individual. The Department is not required to disclose to an individual the identity of persons supplying confidential information to the Department or other law enforcement agencies. If after being shown such evidence at the hearing the individual requires and requests additional time, an adjournment may be granted.
- d. **The Right to Present Witnesses:** An individual in custody has the right to have witnesses, both individual and staff, testify at the hearing in the presence of the infractioned individual, provided they are reasonably available and attending the infraction hearing will not be unduly hazardous to institutional safety or correctional goals.
- e. **The Right to Assistance of Hearing Facilitator**
- i. **A Hearing Facilitator is a civilian employee of the Department, usually a Legal Coordinator from the Law Library, or a Counselor; Hearing Facilitators are not attorneys. Hearing Facilitators shall assist the individual by interviewing witnesses; obtaining evidence and/or written statements; providing assistance at the disciplinary hearing; providing assistance understanding administrative segregation decisions; providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken; providing assistance understanding the waiver of any rights provided by this Directive; and providing assistance in filing an appeal as provided by this Directive. The Hearing Facilitator will not advocate for or defend the individual in custody against the charges. The Adjudication Captain may adjourn the hearing for the individual to receive this assistance. If the individual requests the assistance of a Hearing Facilitator and that request is denied by the Adjudication Captain, the Adjudications Captain shall state the reasons for denying the request in the hearing record.**

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- ii. An individual may ask for a Hearing Facilitator in the following circumstances:
 - A. The individual is non-English speaking;
 - B. The individual is illiterate;
 - C. The individual is blind or deaf, low vision, or hard of hearing; or
 - D. For any other reason the individual is unable to prepare a defense
- iii. An individual in custody has the right to assistance of a Hearing Facilitator if the Adjudication Captain cannot obtain material evidence or witnesses requested by the individual or the Adjudication Captain deems that a Hearing Facilitator is necessary.
- f. **The Right to an Interpreter:** In addition to a Hearing Facilitator, an individual has the right to an interpreter in their native language if the individual does not understand or is not able to communicate in English well enough to conduct the hearing in English. The Adjudication Captain shall take reasonable steps to obtain an interpreter for the individual. If an interpreter is used, the interpreter shall sign the Form 6500D in the interpreter section indicating their presence at the hearing.
- g. **The Right to Appeal:** An individual who is found guilty at a disciplinary hearing has the right to appeal an adverse decision within two (2) business days of receipt of the Form 6500D (see Section III.G).
- 11. The Adjudication Captain shall ensure that the individual in custody has received copies of the charges. The Adjudication Captain shall read the charges to the individual and ask if the individual understands them.
- 12. Hearings may be held in absentia (without the individual present) only under the following circumstances. When either of these situations arises, the justification for holding the hearing in absentia must be clearly documented in the Adjudication Captain's decision:
 - a. The individual is notified of the hearing and refuses to appear; or
 - b. The individual appears and is extremely disruptive causing a situation which is unduly hazardous to institutional safety and necessitates the individual's removal from the hearing room, thus constituting a constructive refusal to appear.

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13. Once the Adjudication Captain has made certain that the infringed individual in custody understands the charges, in cases where the Form 6500A reflects that the individual was given Miranda warnings in connection with this infraction, the individual must be informed that while the proceeding is not a criminal proceeding, the statements made by the individual may be used against them in a subsequent criminal trial. The individual must also be informed of the right to remain silent, and that silence will not be used against them.
14. When an infraction is generated against an individual in custody for sexual contact with staff, and during the hearing the individual alleges that the sexual contact was consensual, the hearing shall be adjourned until such time that the ID investigation has been concluded and a determination made as to any violation committed by staff.
15. The Adjudication Captain shall inquire specifically if the individual wishes to make any statements in light of these warnings. Then the Adjudication Captain shall ask the individual for a plea to the charges: "guilty," "not guilty," or "guilty with an explanation."
16. Once apprised of the charges and advised of their rights and the possible penalties if found guilty, the infringed individual shall be interviewed by the Adjudication Captain outside the presence of any and all witnesses, including those the individual wishes to call on their own behalf.
17. The testimony of the infringed individual shall be documented on the Form 6500D.
18. For infractions involving Use of Force/Injury: If the infringed individual makes any allegation that staff used unnecessary or excessive force in connection with the incident giving rise to the levied charges, the Adjudication Captain shall report such allegation per existing Departmental procedures. Unless the Adjudication Captain believes that additional investigation is necessary, the Adjudication Captain should conduct the disciplinary proceeding and determine whether the individual is guilty of the charged infraction.
 - a. The Adjudication Captain shall review all of the relevant evidence, including injury reports and physical evidence to make a rational determination of how, why, and where injuries were inflicted on the individual and/or the staff person involved.

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19. If the infracted individual makes any allegation of abuse of authority, malfeasance, or corruption on the part of Department personnel, the Adjudication Captain shall report that allegation in writing directly to the Inspector General's Office.
20. If during the hearing the infracted individual exhibits any unusual behavior that may indicate a need for a mental health evaluation, appears unable to understand the nature of the proceedings due to mental or emotional disturbance, expresses a desire to self-harm, or a witness relates that the infracted individual has shown evidence of being a suicide risk, the hearing shall be adjourned and the Adjudication Captain shall refer the infracted individual to Mental Health for evaluation. If Mental Health determines that the infracted individual is competent to proceed and that continuing the hearing does not present a risk, the hearing shall be reconvened. If Mental Health determines that an individual is not competent to proceed at that time, the hearing shall be adjourned pending a further evaluation by Mental Health.
21. **Witnesses at the Hearing:** The Adjudication Captain shall ask the individual in custody if they wish to call any witnesses. This shall be done whether or not there is an indication on the Form 6500A that the individual requested witnesses at the hearing.
 - a. If the individual waives the right to have witnesses appear on their behalf, the individual shall so indicate on the Form 6500D and sign same.
 - b. If the individual wishes to call individual or staff witnesses, the witnesses should be called in accordance with the procedures set forth in Section III.D.10.d of this Directive.
 - c. If an individual witness requested by the infracted individual is no longer in the Department's custody or cannot be called within a reasonable time, that fact should be noted on the Form 6500D.
22. If the witness is not reasonably available, the Adjudication Captain may obtain the witness' written statement and substitute the statement for the witness' testimony. Statements taken from a witness who is not present at the hearing shall be made known to the individual and the individual afforded an opportunity to respond on the record.
23. For safety and security purposes, the Adjudication Captain may question a witness outside of the presence of the individual in custody. This would also apply to any witness who is not reasonably available.

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24. When an individual witness testifies at an infraction hearing, the Adjudication Captain must ascertain the name and book and case number of the individual witness. The Adjudication Captain shall verify the identity of the individual witness present and put the information on the record.
25. There is no minimum or maximum number of witnesses who may be called; however, the Adjudication Captain may impose reasonable limits on the number of witnesses an individual may call. All witnesses must give factual testimony as to some element of the charge against the infractioned individual in custody. In such cases, the Adjudication Captain shall document the reasons for these limits in the hearing record.
26. The Adjudication Captain shall determine whether a witness may testify and the conditions under which that testimony will be given. Witnesses must provide material testimony that is relevant and not repetitive of other testimony already in the record, however the Adjudication Captain may not exclude a witness solely because the testimony addresses the same subject as that of another witness. When a question arises as to whether an individual in custody should be allowed to call a staff or individual witness, the Adjudication Captain shall ask the individual to state what the witness is expected to say.
27. The Adjudication Captain shall show the individual in custody the testimony of any witness who testifies outside the individual's presence unless confidential information has been provided and safety or security would be jeopardized if that information were to be revealed. When an individual is not afforded an opportunity to review the testimony of a witness not present at the hearing, the substance of the testimony shall be provided to the individual, and the individual afforded the opportunity to respond on the record.
28. When witnesses are questioned outside the presence of the individual in custody, their statements shall be recorded on Form 6500E, "Inmate Witness Statement" (Attachment E), or Form 6500G, "Staff Witness Statement" (Attachment G), and the witness shall be asked to sign such. The Adjudication Captain shall make a part of the record the reasons why this was done. If an individual is excluded during the testimony of a witness, the Adjudication Captain shall play the taped testimony of that witness's testimony to the individual for their response unless confidential information is provided and/or someone's personal safety would be jeopardized if that information were to be revealed. The Adjudication Captain must make an independent assessment of the credibility of any confidential informant and document the assessment in detail on Form 6500D without revealing any confidential information. When, for security

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reasons, an individual is not afforded an opportunity to listen to the taped testimony of a witness not present at the hearing, the substance of the testimony shall be provided to the individual and the individual shall be afforded the opportunity to respond on the record.

29. The Adjudication Captain shall summarize the testimony of each witness on the Form 6500D and the witness shall sign this form indicating their presence at and participation in the hearing.
30. Individual in custody witnesses who refuse to testify shall be asked to state their reasons for such refusal and to sign Form 6500F, "Infracted Inmate Refusal to Testify/Inmate Refusal to Testify as a Witness" (Attachment F). If Form 6500E, Form 6500F, or Form 6500G are used, it shall be made part of the record in the case.
31. Once the hearing has begun, the Adjudication Captain shall make a reasonable effort to conclude the hearing in one session. Adjournments may be granted if an individual in custody requests additional time to locate witnesses, obtain the assistance of a hearing facilitator, or prepare a defense. Adjudication Captains may also adjourn a hearing in order to question additional witnesses not available at the time of the hearing, gather further information, refer a case to Mental Health, or if issues are raised that require further investigation or clarification in order to reach a decision. However, hearings must be completed within five (5) business days of convening unless otherwise authorized by the Assistant Deputy Warden of the Adjudication Unit, unless this timeframe is waived by the individual in writing.
32. When a case is adjourned, the adjournment and the underlying reason(s) for it must be stated on the record and noted on Form 6500D. Adjournments should be as brief as possible.
33. The Adjudication Captain may question any party or witness about any relevant matter to help in reaching a fair decision based on the facts. Form 6500D shall be a summary of the testimony and evidence presented.
34. The record of the hearing shall include a description of each document provided by the facility to the Adjudication Captain, a description of each document provided by the Adjudication Captain to the infracted individual (together with a list of documents, or portions of documents, withheld from the individual), a list of witnesses requested by the individual, a list of witnesses who testified, an indication of whether the individual was present when each witness testified, and



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an indication of whether a Hearing Facilitator was requested and if so, was present during the hearing.

35. After the hearing concludes, the Adjudication Captain shall weigh the evidence presented at the hearing and reach a decision as to the individual's guilt or innocence and the appropriate disposition or penalty, if any, to be imposed.
36. The Department has the burden of proof in all individual in custody disciplinary proceedings. The Adjudication Captain must be persuaded by a preponderance of the credible evidence (greater than 50%) that an individual committed the alleged violation or some lesser included violation, as described in "Description of Lesser Included Offenses" (Attachment I) in order to find the individual guilty.
37. Infractions may be dismissed for lack of evidence if no physical evidence or facsimile thereof is provided in a case in which the charges hinge on the existence of such object, or if testimonial, documentary, or physical evidence is insufficient to substantiate the charges as presented.
38. If the investigation was one of sexual abuse and the report of the abuse was made in good faith based on a reasonable belief that the abuse occurred, the Adjudication Captain may not find that the individual was lying or falsely reporting the incident and discipline the individual in custody for reporting it, even if the investigation was unfounded.
39. Infractions related to sexual activity between individuals in custody may be pursued as consensual sexual contact or activity, but such activity shall not be considered sexual abuse if the evidence shows the sexual activity between the individual was indeed consensual and not coerced.
40. A disposition shall be reached within five (5) business days after the conclusion of the hearing. The Adjudication Captain must complete the Form 6500D. The individual shall receive a copy within one (1) business day after the Adjudication Captain makes a decision, unless extenuating circumstances prevent the Department from being able to serve the individual.
41. Individuals in custody in PHD must receive 6500D within one (1) business day of the conclusion of the hearing. Individuals that have been transferred to another facility shall be served with the Form 6500D as soon as it is reasonably possible to do so.
42. The disposition shall be supported by substantial evidence and shall be in writing and shall contain the following:

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- a. A finding of "guilty," "not guilty," or "dismissed" on each charge in the infraction;
 - b. The evidence relied upon by the Adjudication Captain in reaching such finding;
 - c. The sanctions imposed, if any;
 - d. The testimony of each witness should be summarized and either credited or rejected, with a statement of the reasons therefore.
43. The facility of occurrence shall maintain a disciplinary record including the infraction, the investigation report (if prepared), the formal disposition, any sanctions imposed, and the appeal documents.
44. Records generated pursuant to a disciplinary hearing in which an individual in custody is found not guilty of the charges, after either the disciplinary hearing or appeal, shall be kept confidential and shall not be considered in making decisions pertaining to the individual's access to programs, services, or in the granting of or withholding of good time for sentenced individuals in custody.

E. PENALTIES THAT CAN BE ADMINISTERED

1. The authorized dispositions that the Adjudication Captain may impose include:
 - a. Reprimand;
 - b. Temporary loss of one or more privileges, but no individual shall be deprived of the following rights:
 - i. Receiving visitors;
 - ii. Sending or receiving mail;
 - iii. Contacting legal counsel;
 - iv. Recreation
 - c. Loss of part or all good time, if sentenced;
 - i. Grade I infractions can result in the loss of all good time.

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- ii. Grade II infractions can result in the loss of up to two-thirds of all good time.
- iii. Grade III infractions can result in loss of up to one-third of all good time.
- d. Punitive Segregation (see Section III.F),
 - i. If a PHD individual is found guilty and the penalty administered is a period of Punitive Segregation, the time the individual served in PHD shall be credited towards the penalty imposed;
 - ii. Punitive Segregation may not be administered for Grade III offenses.
 - iii. Individuals in custody who are found guilty of non-violent or Grade II offenses shall serve their time in Punitive Segregation II.
 - iv. Individual shall not serve Punitive Segregation time that had been earned in a previous incarceration.

Note: Nothing in this Directive shall prohibit the Department from housing individuals according to their custody management needs, including moving individuals to support-based housing units (such as the Transitional Restorative Unit, or the Second Chance unit).
- e. Individuals in custody in adolescent or young adult programming shall be managed in accordance with their individualized behavior support plans.
- f. **The Department shall not automatically assign a monetary fine to all guilty infractions. The Department shall only include a financial penalty as an option for restitution for destruction of property. Any imposition of a fine shall take into account the individual's ability to pay;**
- g. Any combination of the above;
- h. Penalties detailed in "Inmate Rule Offenses, Grades, and PSEG Level Placement," (Attachment J);
- i. The third time an individual is found guilty of committing a rule violation for the same offense, including any subdivision of the rule violation specified

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in that offense, within the individual's current term of incarceration, the Adjudication Captain may sentence that individual to a penalty within the normal range prescribed for the next higher grade of offenses. For example, the third time an individual is found guilty of violating any of the Grade III rules for an identification procedures offense, Rules 115.10, 115.11, or 115.12, that individual may be given a Grade II sentence. No individual found guilty of a Grade II offense, even one who has been found guilty three (3) previous times during the current period of incarceration of the same offense, shall be sentenced to more than ten (10) days in Punitive Segregation;

- j. **The Department shall eliminate the practice of imposing a twenty-five dollar (\$25) disciplinary surcharge against sentenced and detention incarcerated individuals found guilty of Grade I or Grade II offenses. The Department shall instead, implement a commissary restriction of 14 days for all Grade I guilty findings and 7 days for all Grade II guilty findings.**

2. If an individual in custody has been found guilty of multiple charges, the Adjudication Captain must decide whether the penalties should be served concurrently or consecutively. An individual may be found guilty of and sentenced for multiple charges only if the violations are specifically charged individually and each separate violation is proven by a preponderance of the evidence.
3. If an individual in custody believes that the decision was in error or that a penalty should be reduced, they have the right to appeal, in accordance with the procedures set forth in Section III.G. The Adjudication Captain must inform the individual of the right to appeal and to whom the appeal must be forwarded.
4. If an individual in custody is released on bail or on their own recognizance, is discharged, or is transferred to the custody of another jurisdiction or agency before commencing the infraction hearing, the Adjudication Captain may suspend the hearing pending the individual's possible return to Department custody. If the individual returns and the infraction hearing is recommenced, the presiding Adjudication Captain shall determine whether the passage of time since the suspension of the hearing has prejudiced the individual.

Note: Punitive Segregation time may not be served for these charges from previous incarcerations, but the infraction hearing should be adjudicated so that the individual's behavioral history is accurate, and the individual can be appropriately classified.

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5. If an individual in custody is released on bail or on their own recognizance, is discharged, or is transferred to the custody of another jurisdiction or agency before making restitution in accordance with a penalty imposed as a result of a disciplinary hearing, the individual may be required to finish making restitution upon returning to the jurisdiction of the Department.

F. PUNITIVE SEGREGATION SENTENCES

In accordance with Board of Correction guidelines, the Department shall ensure that individual in custody placement in Punitive Segregation Units adheres to the following:

1. An individual may not serve more than thirty (30) consecutive days in Punitive Segregation. An individual who has served thirty (30) consecutive days in punitive segregation must be released from punitive segregation for at least seven (7) days before the individual may be returned to punitive segregation. However, individual's who have committed a serious assault on staff that results in serious injury may be sentenced up to sixty (60) consecutive days of punitive segregation.
 - a. The Chief of Department or a designee must approve or disapprove in writing any punitive segregation sentence that exceeds thirty (30) days for a serious assault on staff that results in serious injury. The written approval or disapproval shall be sent immediately to the individual, to BOC, and to the contracted healthcare provider.
2. An individual may not serve more than sixty (60) days in Punitive Segregation in a six (6) month period unless the individual has continued to engage in persistent, serious acts of violence, other than self-harm, during or upon completion of the sixty (60) day period.
3. When an individual's punitive segregation sentence exceeds forty-five (45) days, the Chief of Department or a designee shall complete a review of the sentence forty-five (45) days after its commencement to determine whether the individual could safely be placed in an available alternative housing unit for the remainder of the sentence. The decision, and the reasoning supporting it, shall be stated in writing on Form 6500I, "Notice of Determination of Punitive Segregation 45-Day Review" (Attachment I), and immediately sent to the individual, to the BOC, and to the contracted healthcare provider.
4. Daily mental health rounds shall be provided to individuals who have been housed in punitive segregation longer than thirty (30) consecutive days or who



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have served more than sixty (60) days within a six (6) month period. Such rounds must be documented in writing.

G. APPEALS

1. An individual in custody who is found guilty at a disciplinary hearing has the right to appeal an adverse decision. The appeal shall be submitted on Form 6500H, "Notice of Appeal of Disciplinary Disposition" (Attachment H), within two (2) business days of the individual's receipt of Form 6500D, specifying the grounds for the appeal. The appeal shall be made to the Commanding Officer of the institution in which the infraction occurred.
2. The appeal must be in writing, must be based on facts already on the record, and must clearly set forth the basis for the appeal, except that the individual may raise any newly discovered evidence at the appeal. The individual may appeal based on the belief that there was a due process violation, that there was insufficient evidence to support a guilty finding, or because the Adjudication Captain was biased.
3. A decision on the appeal shall be rendered and delivered by the Department to the individual within five (5) business days after receipt of the appeal by the Commanding Officer. In such appeals, the determination of the Commanding Officer is final.
 - a. If the Commanding Officer fails to render the decision within the five-day threshold, the Commanding Officer shall forward the appeal to Writ Court.
 - b. If the Commanding Officer determines that additional documentation or information is needed to adequately respond to the individual's appeal, the time limit shall be extended and the reason for the delay noted on the individual's appeal.
4. A penalty may remain the same or be lowered as a result of an appeal, but it cannot be increased.
5. If, as a result of an appeal, an individual's conviction is reversed or an individual's penalty is decreased by the Commanding Officer or in Court, the individual's record (IIS and legal folder) and the infraction logbook shall be corrected to reflect that action.

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H. RECORDKEEPING

1. The facility shall maintain and file separately for each individual, a record of the following disciplinary due process forms/reports:
 - a. “Report and Notice of Infraction”: Form 6500A (Attachment A)
 - b. “Investigation Report”: Form 6500B (Attachment B)
 - c. “Notice of Pre-Hearing Detention”: Form 6500C (Attachment C) (if applicable)
 - d. “Hearing Report and Notice of Disciplinary Disposition”: Form 6500D (Attachment D)
 - e. “Inmate Witness Statement”: Form 6500E (Attachment E) (if applicable)
 - f. “Infracted Inmate Refusal to Testify/Inmate Refusal to Testify as a Witness”: Form 6500F (Attachment F) (if applicable)
 - g. “Staff Witness Statement”: Form 6500G (Attachment G) (if applicable)
 - h. “Notice of Appeal of Disciplinary Disposition”: Form 6500H (Attachment H) (if applicable)
 - i. “Notice of Determination of Punitive Segregation 45 Day Review”: Form 6500I (Attachment I) (if applicable)

IV. REFERENCES

- A. [Directive 4016R, “Mental Health Referral of Inmates Awaiting Disciplinary Action,” dated 8/2/99.](#)
- B. [Directive 4501R-D “Pre-Hearing Detention and Punitive Segregation Status Individuals,” dated 5/27/21.](#)
- C. [Directive 5011R-A, “Elimination of Sexual Abuse and Sexual Harassment,” dated 5/31/19.](#)
- D. [SCOC Minimum Standards and Regulations.](#)

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- E. Board of Correction, Restrictive Housing Rulemaking.

V. ATTACHMENTS

- A. [Form 6500A, "Report and Notice of Infraction," dated 07/09/21.](#)
- B. [Form 6500B, "Investigation Report," dated, 8/4/15.](#)
- C. [Form 6500C, "Notice of Pre-Hearing Detention," dated 8/4/15.](#)
- D. [Form 6500D, "Hearing Report and Notice of Disciplinary Disposition," dated 07/09/21.](#)
- E. [Form 6500E, "Inmate Witness Statement," dated 8/4/15.](#)
- F. [Form 6500F, "Infracted Inmate Refusal to Testify/Inmate Refusal to Testify," dated 10/4/17.](#)
- G. [Form 6500G, "Staff Witness Statement," dated 8/4/15.](#)
- H. [Form 6500H, "Notice of Appeal of a Disciplinary Disposition," dated 8/4/15.](#)
- I. [Form 6500I, "Notice of Determination of Punitive Segregation 45-Day Review," dated 7/28/16.](#)
- J. ["Inmate Rule Offenses, Grades, and PSEG Level Placement," dated 1/22/16.](#)
- K. ["Audiotaping Procedures," dated 8/4/15.](#)

VI. SUPERSEDES

- A. Directive 6500R-F, "Inmate Disciplinary Due Process," dated 7/9/19.
- B. Any Directives or Operation Orders that conflict with this Directive.