UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODERICK WALKER, et al,

Plaintiffs,

-vs-

CA No. 81-71998
Hon. Stewart Newblatt

PERRY JOHNSON, et al,

Please Do Not
Add Any Pleading
Open A New Folder

1. ...t exist prior

2.

3. ...ccused and ...n May 26,

4. ...persons on Green Card status were provided a hearing (or opportunity for hearing) on the charged major misconduct.

5. That the accused inmate received a misconduct ticket which provided notice to him of what specific charge he was accused of, e.g., "rioting."

6. That subsequent to a finding of guilt on a charge of major misconduct, the matter was referred to the Security Classification Committee for re-classification of the inmate.

7. The SCC is comprised of department administration officials and consists of two persons, one of whom is usually the deputy warden in charge of security.

8. That no inmate found guilty of a major misconduct received a Notice of Intent to Conduct an Administrative Hearing on the issue of re-classification to administrative segregation or Green Card. There is a statement in the resident guidebook that indicates an inmate is subject to reclassification upon a finding of guilt of major misconduct. It is Department policy to provide a resident guidebook to each inmate upon entry to the prison system.

9. That an inmate found guilty of a major misconduct does not receive a hearing on classification to administrative segregation or Green Card if the re-classification is based solely on the misconduct.

10. That the only summary of factual findings given to those inmates who are re-classified based on a finding of major misconduct are those findings relative to the misconduct.

11. That persons placed in administrative segregation for longer than 60 days must be given a monthly review which inquires, among other things, into reasons for continued segregation. Adm. Rule 791.4405.

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Defendants.
_____/

STIPULATED FACTS PERTAINING TO
PLACEMENT IN GREEN CARD STATUS AND
ADMINISTRATIVE SEGREGATION

1. The status of "Administrative Lay-In (Green Card)" did not exist prior to May 26, 1981.

2. That the status is used only at Marquette Branch Prison.

3. That Green Card status has only been assigned to persons accused and found guilty of misconduct during the disturbance at MBP on May 26, 1981.

4. That all of the persons on Green Card status were provided a hearing (or opportunity for hearing) on the charged major misconduct.

5. That the accused inmate received a misconduct ticket which provided notice to him of what specific charge he was accused of, e.g., "rioting."

6. That subsequent to a finding of guilt on a charge of major misconduct, the matter was referred to the Security Classification Committee for re-classification of the inmate.

7. The SCC is comprised of department administration officials and consists of two persons, one of whom is usually the deputy warden in charge of security.

8. That no inmate found guilty of a major misconduct received a Notice of Intent to Conduct an Administrative Hearing on the issue of re-classification to administrative segregation or Green Card. There is a statement in the resident guidebook that indicates an inmate is subject to reclassification upon a finding of guilt of major misconduct. It is Department policy to provide a resident guidebook to each inmate upon entry to the prison system.

9. That an inmate found guilty of a major misconduct does not receive a hearing on classification to administrative segregation or Green Card if the re-classification is based solely on the misconduct.

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11. That persons placed in administrative segregation for longer than 60 days must be given a monthly review which inquires, among other things, into reasons for continued segregation. Adm. Rule 791.4405.

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12. Inmates on Green Card Status are not permitted to engage in educational, religious, or treatment (other than medical) activities carried on outside their cells.

13. At MBP, there are various levels of Administrative Segregation. They are: Red Card "000"; Blue Card "000"; Blue Card "00".

14. Green Card inmates are permitted dining hall privileges, but are not permitted outside exercise.

15. An inmate may be classified to Administrative Segregation only in accordance with Michigan Administrative Rule 791.4405, a copy of which is annexed hereto.

16. Pursuant to Rule 791.4405, a hearing must be conducted pursuant to Rule 791.3315, a copy of which is annexed hereto.

17. That annexed hereto are the following duly-issued Policy Directives of the Michigan Department of Corrections:

PD-DWA-60.01
PD-BCF-60.01
PD-DWA-62.01
PD-DWA-30.02.

These Directives relate to impositions of Administrative Segregation and standards for housing.

18. That the Michigan Department of Corrections treats the hearing on a major misconduct ticket as the hearing required by R791.4405, if an inmate is being placed in Administrative Segregation solely as a result of the misconduct ticket. This was implemented by Director's Office Memorandum, dated February 1, 1980. Prior to that date, separate hearings were instituted.

19. At a major misconduct hearing, the only relevant evidence is on the issue of guilt or innocence of the charged offense.

20. The hearings officer must make factual findings on the issue of guilt relative to the charged misconduct.

21. Mitigating circumstances are relevant to the punishment imposed for the misconduct, but factual findings on why a particular sentence is imposed are not made.

22. Mitigating circumstances which do not go to the issue of guilt on the major misconduct are not relevant nor admissible at the hearing.

23. That the Michigan Department of Corrections treats the hearing on a major misconduct ticket as the hearing required by M.C.L.A. 791.252; M.S.A. 28.2320(52), if an inmate is being placed in Administrative Segregation solely as a result of the misconduct ticket.

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R 791.4405. Administrative segregation status; criteria for imposition; hearing; status review; monthly report; privileges; showers; daily inspection.

Rule 405. (1) Administrative segregation may be imposed only when:

(a) A resident demonstrates inability to be managed with group privileges.

(b) A resident needs protection from other prisoners.

(c) A resident is a serious threat to the physical safety of staff or other residents or to the good order of the facility.

(d) A resident is a serious escape threat.

(2) A resident shall be afforded an opportunity for a hearing pursuant to rule 315 before being classified to administrative segregation; however, a resident may be temporarily held in segregation status pending a hearing upon order of the institutional head, or at the resident's request. This temporary period may not exceed 4 weekdays.

(3) A resident classified to administrative segregation shall be interviewed and have security status reviewed at least monthly. This review shall be written, and a copy shall be given to the resident and to the security classification committee. The interviewers may initiate a request for security reclassification at any time that it appears that administrative segregation is no longer required in light of all of the following:

(a) The resident's behavior and attitude in segregation.

(b) Reappraisal of the circumstances necessitating segregation.

(c) An evaluation of the resident's potential for honoring the trust implicit in a less restrictive status.

(4) In every instance where a resident is confined in administrative segregation longer than 60 days, a monthly report shall be submitted to the deputy director of the bureau of correctional facilities, which shall include the reasons for continued segregation, alternative solutions considered, the date classified to segregation, and prospects for reclassification in the immediate future.

(5) A resident placed in administrative segregation shall be afforded all privileges that are administratively feasible and which can be safely allowed, including, but not limited to, participation in educational, religious, and treatment activities.

(6) A resident in administrative segregation shall be afforded opportunity for at least weekly showers.

(7) Department staff shall daily inspect each administrative segregation unit and visit each resident so segregated. A record shall be maintained of all such inspections and visits.

Commentary to R 791.4405. Administrative segregation status

This rule recognizes that a part of security classification is the authority to assign prisoners to administrative segregation. Subsection (1) incorporates the generally recognized grounds of administrative segregation: to maintain security and order in the prison and to protect the prisoner [e.g., Bloeth v Montanye, 514 F2d 1192 (2d Cir 1975), Christman v Skinner, 468 F2d 723 (2d Cir 1972); Breeden v Jackson, 457 F2d 578 (4th Cir 1972); Perez v Turner, 462 F2d 1056 (10th Cir 1972), cert denied 410 US 944].

The hearing guarantee of subrule (2) and periodic evaluations of subrules (3) and (4) insure that a prisoner will not be left in segregation longer than is warranted by the circumstances [accord, Kelly v Brewer, 525 F2d 394 (8th Cir 1975)].

Subsection (5) illustrates the nonpunitive nature of administrative segregation by insuring that, not only will a segregated prisoner not be deprived of the basic necessities, neither will he or she lose privileges unless the security and order of the facility necessitate their denial [Mims v Shapp, 399 FSupp 818 (WD Pa 1975)].

The inspections and visitations provided for in subsection (7) are in furtherance of the department's duty to confine prisoners in a safe environment, including protection from self-inflicted injury [e.g. People v Harmon, 53 Mich App 482, 220 NW2d 212 (1974); Wayne County Jail Inmates v Wayne County Bd of Comm'rs, Civil No 173-217 (Cir Ct Wayne County, Mich, May 18, 1971); Holt v Sarver, 309 FSupp 362 (ED Ark 1970), aff'd 442 F2d 304 (8th Cir 1971)].

MICHIGAN DEPT. OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE	NUMBER
October 23, 1977	PD-DWA-60.01
Bureau of Correctional Facilities, Bureau of Field Services	SUPERSEDES: NO. PD-DWA-60.01
	DATED 4/19/76

SUBJECT
RESIDENT DISCIPLINARY POLICY

OBJECTIVE: To provide a means of maintaining discipline and enforcing necessary rules within correctional facilities; to insure that residents are provided fair, timely, and impartial disposition of charges alleging violation of rules or criminal statutes, and that such disposition is based on proceedings that conform to due process requirements for institutional disciplinary matters; and to establish the nature and limits of punitive sanctions that may be imposed.

APPLICATION: All residents of BCF facilities, Corrections Centers and Resident Homes.

POLICY: Alleged violations of written rules are classified as "major misconduct" or "minor misconduct" and defined on the list following this policy. (Slightly different categories and examples apply to community residential programs.)

The structure of the disciplinary process is one of progressive sanctions. The least drastic method of seeking compliance with the rules will be utilized. Counseling and summary action should be attempted to correct minor violations. Since the possible sanctions are more severe for major misconduct, greater procedural safeguards are provided.

Summary Action: The reporting employee may impose summary punishment not to exceed 24 hours top lock, 8 hours extra duty, or one (1) week loss of privileges for minor misconduct provided the resident signs a waiver of his or her right to a minor misconduct hearing. Nondangerous contraband may be confiscated in conjunction with any of these summary punishments. A record of this action must be on file at the program manager, deputy or supervisory level. If the resident does not sign an offered summary action, the resultant misconduct report shall be processed and heard as a "minor," regardless of the charge or the resident's disciplinary record.

Minor Misconduct: Alleged violations of written rules defined as "minor misconduct" are subject to the following safeguards and procedures:

1. The resident will be given advance written notice of the charge unless he or she waives this in favor of an informal summary action.

2. A hearing before a hearing team or employee who has had no previous direct involvement in the matter under consideration.

3. Provision for timely appeal to supervisory staff at the level of program manager, camp supervisor or center supervisor.

Hearing officer(s) in minor misconduct cases shall be satisfied that all pertinent and relevant evidence has been presented and the client has had adequate time and opportunity to prepare his or her defense. Hearing investigator services are not available at this level but it is incumbent upon the hearing team to make reasonable and necessary investigation and to assist those residents who have limited intelligence or education. Decisions of this body shall be based upon a preponderance of evidence.

In BCF institutions, two members of the Resident Housing Unit Team shall serve as the Hearing Committee but either one of the committee members may accept a plea of guilty and waiver of a minor misconduct hearing. In Corrections Centers, a single hearing officer will be allowed; waivers of hearings may be accepted by either the hearing officer or reviewing officer.

Minor misconduct hearing teams may impose the following sanctions upon the finding of guilt:

1. Confinement to quarters or top lock, not to exceed five (5) days.

2. Loss of privileges or assignment of extra duty not to exceed two (2) weeks.

3. Suspended sentence, contigent upon no further misconduct, to be in effect no more than ninety (90) days.

4. Counsel and reprimand.

Property determined to be nondangerous contraband at a minor misconduct hearing should be confiscated and turned over to the appropriate institution official for disposition.

No report of minor misconduct proceedings will be filed in the prisoner's record office folder, however, a summary report of these proceedings must be on file at the deputy or supervisory level for control and monitoring purposes and to provide the basis for establishing a pattern of minor reports if more drastic action becomes necessary.

Major Misconduct

In addition to the violations defined as "major misconduct," a misconduct report that is the second or more in a 30 day period or fourth or more in a year (excluding all summary actions) will be handled as "major."

Alleged behavior that constitutes a felony will also be referred to the local prosecutor. In all cases of assaults, prosecution will be sought and, if the assault is established at an administrative hearing, good time forfeiture will be ordered in accordance with MCLA 800.33.

Residents charged with major misconduct are entitled to the opportunity to have a formal hearing. In addition to the rights and procedures set forth in PD-DWA-62.01, the following shall apply in all cases of alleged major misconduct:

1. Supervisory staff shall conduct a preliminary review for every major misconduct report. In medium, close, and maximum security institutions, this shall include a personal interview with the charged resident. After this review, the supervisory staff may order the resident to be confined in segregation pending a formal hearing, if there is a reasonable showing that failure to do so would constitute a threat to the security or good order of the institution. The formal hearing must be within four working days of placement in segregation, on top lock or other temporary institutional confinement. For a "bond" case, and those in community residential programs, the hearing must be held within 10 working days of review. Exceptions to these time limits may be made only with the authorization of the appropriate Deputy Director.

2. A resident who is found guilty by the hearing authority may appeal the finding of guilt or alleged violations of rights to the institution head in BCF institutions or area manager or higher authority in community residential programs. The sentence may not be appealed.

   (a) The resident must state his or her intention to appeal at the time of the hearing and follow it with a written basis for appeal within 24 hours after the resident's receipt of the written decision.

   (b) Following the resident's statement of intention to appeal, the hearing authority shall determine whether the ordered sanction will be held in abeyance until the appeal is resolved. The punishment will not be held in abeyance where the hearing authority finds that:

      (1) To do so would present a potential danger to the institution; or

      (2) The appeal is clearly without arguable merits or is taken primarily for purposes of delay.

(c) The appellate officer shall have authority to reverse or uphold any action of the hearing authority, or remand for rehearing where there is procedural error.

3. Alleged violations of rights may be further appealed to the Director's Office.

Decisions and Dispositions: The hearing authority shall insist that all pertinent and relevant evidence and testimony has been presented; that the resident has had adequate time and opportunity to prepare a response; and that a reasonable and impartial investigation has been conducted. In making a decision as to guilt or innocence, the hearing authority shall consider only that evidence which relates to guilt or innocence of the specific charge or charges or their lesser included violations. Decisions shall be based upon a preponderance of evidence, i.e., they shall decide whether it is more likely than not that the evidence supports the decision. All decisions of three member committees will be by majority vote.

The formal hearing shall not be treated as an "adversary proceeding", but as a fact-finding process in which all parties involved have a responsibility to reveal all relevant evidence whether supportive or damaging to the person charged. Fairness is to be the paramount consideration of this hearing process.

Upon a finding of guilt, the hearing authority may consider all relevant information in determining disposition. When the facts of the violation (guilt) are not in dispute, it is proper to consider evidence of mitigating or compounding circumstances in determining the disposition.

The following sanctions, singly or in combination, may be imposed upon a finding of guilt in major misconduct cases:

1. Detention (punitive segregation) not to exceed seven (7) days, with the maximum range reserved for only the most serious or persistent violators.

2. Confinement to quarters or "top lock" not to exceed five (5) days, but not to be combined with a detention sentence.

3. Loss of privileges not to exceed thirty (30) days.

4. Restitution for property damage.

5. Recommendation to the institution head for forfeiture of good time or denial of special good time.

6. Suspended sentence, contingent upon no further misconduct, to be in effect no more than six (6) months. If a resident is found guilty of a subsequent major misconduct during the suspension period, the suspended sentence shall be picked up and served consecutively to the new sanction.

7. Extra duty, not to exceed two weeks, in minimum custody and community facilities.

A finding of "not guilty" shall result in no sanction being imposed and no report filed in the resident's record files; however, a record of all "not guilty" findings must be retained for statistical and monitoring reasons.

The resident may also be referred to other appropriate agents or services such as the psychiatric clinic, program classification committee, security classification, or counseling team.

AUTHORITY: MCL 791.203, .206, Corrections Commission, October 2, 1974 March 25, 1976.

APPROVED: Perry M. Johnson, Director — Date 10-5-77

PMJ:stf
9/27/77

MAJOR AND MINOR MISCONDUCT

Following are descriptions of resident behavior which is prohibited and subject to disciplinary sanctions. The left-hand column lists and defines the violations - any behavior that fits the definition is misconduct. In the right-hand column are specific common examples of behavior fitting under the rule violation. These are just examples; other actions that fit the violation definition are also misconduct even though they are not mentioned in the right-hand column. The violations are divided into major and minor misconduct. However, repeated misconduct will always be handled as major.

In addition to the violations which follow, three other kinds of charges are possible: accomplice, attempt, or conspiracy to commit a specific violation.

1) ACCOMPLICE - A resident who assists another to commit a specific misconduct. The charge should be "accomplice to assault," etc. Then describe what the resident allegedly did. Examples of this include: "Jiggering," lookout, holding down a victim, allowing use of cell/room for commission of a violation.

2) ATTEMPT - A resident intends to commit a specific rule violation and does something towards committing it, even though he or she may not have succeeded.

3) CONSPIRACY - A resident intends to commit a specific violation and agrees with at least one other person to commit the violation. No action is necessary.

Many rule violations necessarily include other less serious violations. This is where the violations are similar and have common facts or elements. For example, the "lesser included" violations of escape are: Attempted escape, out of place, missing count and late furlough return. Being insolent to an officer is a lesser included violation of threatening an officer; fighting may be a "lesser included" of assault. When a resident is charged with misconduct and the evidence does not support the particular violation charged but does establish a lesser included violation, the hearing officer or committee does have the authority to find the resident guilty of the lesser included violation.

Violations with an asterisk (*) are mandatory "nonbondable" charges.

MAJOR RULE VIOLATIONS	COMMON INSTITUTIONAL EXAMPLES
001 *Escape; Attempt to Escape Leaving or failing to return to lawful custody without authorization. Failure to return within two hours after designated time from furlough or pass will be charged as ESCAPE. ESCAPE is a felony and will always be referred to the prosecutor.	Leaving from hospital trip or while housed at hospital; hiding from authorities even if still on prison property.
002 Felony Any act that would be a felony if prosecuted under Michigan law is also a major misconduct violation.	Extortion; receiving stolen property; fraud.
ASSAULTIVE OR VIOLENT VIOLATIONS	
010 *Homicide Causing the death of another person by any means.	
011 *Assault Physical confrontation where one party is the victim and the other is the assailant. Injury is not necessary, but contact is.	Attack by one or more persons; striking with feces or other objects; physical resistance of, or interference with, an employee.
012 *Intimidating or Threatening Behavior Words, actions, or other behavior expressing an intent to injure, which place another in fear of being physically harmed or assaulted. Includes attempted assault.	
013 *Sexual Assault Physical confrontation for sexual purposes, where one party is the victim and the other is the assailant. Nonconsensual physical contact for sexual purposes.	
014 *Fighting Mutual physical confrontation, including a swing and miss, even where not done in anger.	Fight between residents, whether with fists, broom handles or other weapons.

...S OF SERIOUS INSUBORDINATI...

020 Disobey a Direct Order
Refusal or failure to follow a valid, reasonable order.

Refusal to obey an order or instruction; failure to answer call; failure to report to assignment.

021 Possession of Forged Documents; Forgery
Knowingly possessing a falsified document; altering or falsifying a document with the intent to deceive or defraud.

A fake pass, application, furlough papers, etc. which is represented to be true.

022 *Incite to Riot or Strike; Rioting or Striking
Encouragement of action to disrupt or endanger the institution, persons or property. Participation in such action.

023 Interference with the Administration of Rules
Acts intending to impede, disrupt or mislead the institutional disciplinary processes.

Intimidating or tampering with an informant or witness; tampering with evidence; destroying or discarding a disciplinary action (flimsey); interfering with an employee writing a misconduct report; making false accusations of misconduct.

024 Bribery of an Employee
Offering to give or withhold anything to persuade an employee to neglect duties or perform favors.

025 Lying to an Employee
Knowingly providing false information to an employee.

026 Insolence
Behavior, including touching, gestures and language, which intends to harass annoy, show disrespect, or cause alarm in an employee.

Cursing; abusive language, writing or gesture directed to an employee.

027 Destruction or Misuse of State Property
Any destruction, removal, alteration tampering, or other misuse of state property, including state clothing and food.

Alteration of earphones; tampering with locking device; door plug; throwing brakes; burning mattress.

THREATS TO THE GOOD ORDER AND SECURITY OF THE INSTITUTION

030	*Dangerous Contraband Possession of weapon, explosives, acids, caustics, materials for incendiary devices, escape materials. Possession of "critical" tools.	Gasoline, sulphuric acid, lye, prison-made knives, pipe bomb, rope and grappling hook.
031	Possession of Money Possession of unauthorized amounts of money or money from unauthorized sources.	In institutions, any money other than 50 pennies is contraband.
032	Creating a Disturbance Actions of a resident resulting in disruption or disturbance, but not endangering persons or property.	Excessive noise.
033	Sexual Misconduct Consensual touching of the sexual or other intimate parts of another person, done for the purpose of gratifying the sexual desire of either party. Indecent Exposure. Imitating the appearance of the opposite sex. (NOTE: The embrace authorized at the beginning of a visit is not misconduct.)	Kissing, hugging, intercourse, sodomy. Clothing of the opposite sex; men wearing make-up.
034	Substance Abuse Possession, selling or providing to others, or under the influence of any intoxicant, inhalant, controlled substance or marijuana. Unauthorized possession of restricted medication; possession of narcotics paraphernalia.	
035	Two in a Cell/Room No resident may be in another's cell or room unless specifically authorized.	
036	Out of Place or Bounds/AWOL Being anywhere without the proper authorization; being absent from where required to be. ("Skating" in own housing unit during the day is a minor.)	"Skating" in another block; no pass or I.D. card; misuse of pass; missing count failure to return on time from furlough but returned within two hours of deadline.

037 Theft
Any unauthorized taking of another person's property. — Cell theft.

038 Gambling; Possession of Gambling Paraphernalia
Playing games or making bets for money or anything of value. — Betting slips.

MINOR RULE VIOLATIONS[1]

Misdemeanor
Any act that would be a misdemeanor if prosecuted under Michigan law is also a minor misconduct violation, unless specified elsewhere as a major.

Abuse of Privileges
Intentional violation of any department or institutional regulation dealing with resident privileges, unless it is specified elsewhere as a major. — Violations of rules or regulations, regarding visits, mail or telephone; improper fund transfer; unauthorized legal assistance.

Contraband
Possession or use of nondangerous property which a resident has no authorization to have, where there is no suspicion of theft or fraud. — Unauthorized items; anything with someone else's name or number on it; excessive store items.

Health, Safety or Fire Hazard
Creating one of the above dangers by act or omission. — Dirty cell; smoking in unauthorized areas; lack of personal hygiene.

Temporary Out of Place/Bounds
In own housing unit during the day. Out of place for a brief time or adjacent to where supposed to be. — Tardy for count or assignment; on gallery outside own cell.

Unauthorized Communications
Any contact, by letter, gesture or verbally, with an unauthorized person or in an unauthorized manner. — Love letters to another resident; passing property on a visit either directly or through a third person.

Violation of Posted Rules
For example, of housing unit, dining room, work or school assignment which are not covered elsewhere. — Violation of kitchen sanitary regulations; wasting food; excessive noise in housing unit; playing TV or radio without earphone.

049 [1]The second violation within 30 days or fourth within a year's time (from the third preceding violation, not calendar year) shall be charged and processed as a MAJOR.

MICHIGAN DEPT. OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE: January 22, 1975

Bureau of Correctional Facilities

NUMBER: PD-BCF-60.01

SUPERSEDES: NO BCF B-14

DATED: 11-9-72

SUBJECT

STANDARDS FOR SEGREGATION HOUSING

OBJECTIVE: To ensure that prisoners assigned to "Administrative Segregation" are treated as humanely as possible considering supervisory and security requirements, and to limit the sanctions that can be imposed in punitive segregation.

APPLICATION: Marquette Branch Prison, Michigan Intensive Program Center, Michigan Reformatory and the State Prison of Southern Michigan.

POLICY:

Detention (Punitive Segregation)

Residents with psychiatric history or a significant medical problem must be cleared by the psychiatric staff or medical director before they are compelled to begin detention sentences. Residents in detention will be examined daily by a member of the medical staff. They shall receive a minimum of three (3) regular meals each day.

Sanctions imposed for punitive or disciplinary reasons shall not include deprivation of:

a) Normal meals
b) Mattress
c) Clothing
d) Smoking materials
e) Heat, light and ventilation
f) Basic writing material
g) Visits

Each facility will develop specific rules and procedures applying to all aspects of punitive segregations. These rules and procedures must have prior approval of the office of BCF Deputy Director.

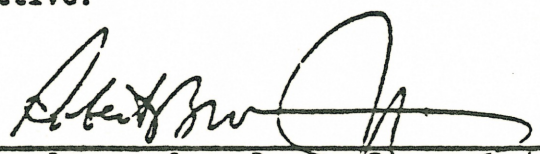
Administrative Segregation

The Security Classification Committee may place individuals in segregation only because their behavior has demonstrated that they cannot be managed with general group privileges, because they need protection from other prisoners, because they are a threat to members of the staff or other residents, or because they have demonstrated that they are a serious escape threat. Residents in administrative segregation, therefore, shall be afforded all privileges that are administratively feasible that can be safely allowed. Several grades of

custody are appropriate for segregation and flexibility within these grades should be encouraged. When practicable, residents should be given opportunities to engage in educational, religious and treatment activities. Daily out of cell movement must be afforded each person and showers should be allowed as often as administratively possible, but at least weekly. Each individual is entitled to three (3) regular meals each day.

A supervisory officer of Captain rank or above, shall inspect each segregation and detention unit daily and such visits shall be recorded in the respective segregation or detention log book. Some member of the segregation housing unit team shall visit each resident in segregation and detention daily and a record confirming such visits shall be maintained. Visiting and mail privileges will be continued with mail being handled according to provisions of the Resident Mail Policy Directive.

AUTHORITY: Bureau of Correctional Facilities Organization and Responsibility Policy Directive, Resident Security Classification Policy Directive.

APPROVED:  1-21-75

Robert Brown, Jr., Deputy ~~Director~~ in Charge of Bureau of Correctional Facilities — Date

RBJ:mml
1-14-75

MICHIGAN DEPT. OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE	NUMBER
February 1, 1980	PD-DWA-30.02
Bureau of Correctional Facilities, Bureau of Field Services	SUPERSEDES: NO PD-DWA-30.0 PD-BCF-34.01
	DATED 12/1/78 6-27-77

SUBJECT

RESIDENT SECURITY CLASSIFICATION

OBJECTIVE: To provide a means for classifying prisoners according to their security requirements within the limits of available housing.

APPLICATION: All residents of BCF facilities, Corrections Centers, Resident Homes, and furloughees.

POLICY: Residents shall be classified according to security requirements necessary for their protection, the safety of others, protection of the general public, prevention of escape, and maintenance of control and order. The least restrictive form of control consistent with these requirements shall be utilized. Security classification shall be based upon the resident's behavior, attitude, circumstances, and the likelihood of honoring the trust implicit with the level of security prescribed. While security classification shall take precedence over program classification, reductions in custody may be delayed as follows:

When the same or similar programs are available at the less secure facility, transfers will not be delayed. Transfer will be delayed for program completion if the program is not available at the transfer destination and either of the following conditions exist:

a. There has been a considerable investment of resources and completion of program is imminent.

b. The program is required by the Parole Board.

Transfers of residents involved in the following programs should be made only as a last resort, and then only with the approval of the regional administrator. They are listed in order of priority for non-transfer.

1. Psychotherapy recommended by R&GC or the Parole Board.

2. Related trades instruction (apprenticeship programs).

3. Community college vocational "Night Owl" programs.

4. Department operated vocational programs.

5. Community college academic programs (for balance of term).

Staff responsible for assignment to these programs must review custody reduction eligibility dates before residents are enrolled.

Categories and qualifications for security classification are as follows: Exceptions for cause may be authorized by the Deputy Director, BCF, or his designate on a case by case basis.

I. Community Status:

Offenders who qualify for minimum custody and whose backgrounds are free from patterns of assaultive behavior, and from predatory or assaultive sex offenses, involvement in organized crime, professional criminal activity, narcotics traffic, recent acute mental disturbance, serious institutional misconduct or other behavior which would make them an unwarranted risk to the public may be classified to community status from their respective institution. All CRP placements will be pursuant to R 791.4410.

II. Minimum Custody:

A. Residents who meet all of the following qualifications shall be placed in minimum custody according to the guidelines for placement noted under "B" below.

1. Has no history of misconduct designated by policy as non-bondable during past two years. (Misconduct while in community status may be excepted.)

2. Not serving an escape sentence and has not escaped nor attempted escape within past five years from a county jail, or an adult or youth facility.

3. Does not have a juvenile criminal arrest record, combined with history of escape from a juvenile or adult institution in past ten years.

4. Has not established a pattern of "flight" from custody (i.e., three or more instances of AWOL, escape, absconding, and/or walkaway in past ten years).

5. Has no detainer (for felony prosecution or felony sentence) with release date later than his/her current SGT minimum date.

6. Not a known homosexual (unless living units are equipped with individual cells or rooms).

7. Medically and psychiatrically clear for minimum security placement.

8. Has demonstrated sufficient capacity and appropriate motivation for participation in work or school programs.

9. Not served at MIPC in last six (6) months.

B. With the exception of those classified as very high assaultive risk, any prisoner meeting provisions above shall qualify for minimum custody one (1) year prior to eligibility for placement in community residential programming (see PD-DWA-43.01). Those who will not be eligible for CRP will be placed according to the following limits:

Risk Classification Limits:

1. Very high assaultive risk must have established parole date or 180 days or less remaining to the SGT maximum.

   Those who are potentially very high assaultive risk (i.e., crime fits robbery, sex assault or murder and experienced first criminal arrest prior to age 15), may not be placed in minimum custody until one year after arrival at R&GC.

2. High assaultive or high property risk must have twelve (12) months or less remaining to the SGT minimum.

3. Middle or low assaultive risk must have twenty-four (24) months or less remaining to the SGT minimum. This category includes prisoners serving for designated assaultive offenses even though they are not eligible for CRP placement until 180 days prior to SGT minimum.

4. Very low assaultive risk must have thirty-six (36) months or less remaining to the SGT minimum.

III. Medium Custody:

All residents who do not qualify for minimum custody and who meet all the following conditions, shall qualify for medium custody.

1. Has no more than sixty (60) months to SGT minimum.

2. Has no charges pending for sexual assault or attempted sexual assault by force or threat of force, robbery, kidnapping, or murder.

3. Has no history of misconduct designated by policy as non-bondable during the past six (6) months. (Misconduct while in community status or minimum status may be excepted.)

4. Has not demonstrated escape proneness from medium (or more restrictive) custody within past three years.

5. Not identified as a homosexual predator.

IV. Close Custody:

All residents not qualified for either minimum or medium custody who meet the following conditions shall be placed in close custody:

1. Has no more than 15 calendar years to SGT minimum.

2. Is manageable within general population status.

3. Has not demonstrated escape proneness from close (or more restrictive) custody.

V. Maximum Custody:

All residents who do not qualify for minimum, medium, or close custody shall be placed in maximum custody (or administrative segregation). It is the policy of the Department of Corrections to routinely separate parties to prolonged resident feuds, and codefendants with minimum sentences longer than 7-1/2 calendar years. In such cases it may be necessary to place one or more of the parties involved in maximum security.

VI. Administrative Segregation:

The Security Classification Committee may place individuals in segregation only pursuant to Rule 791.4405.

Classification Process

1. Security classification shall be determined at each correctional institution by a committee comprised of the Deputy Warden/Superintendent and the Treatment Director or appropriate surrogates. Security classification involving community programs (Corrections Centers, Resident Homes and those on extended furlough) requires the concurrence of the Assistant Deputy Director for Community Programs, BFS or

his/her designate. Security classification for the Work-Pass Program requires the concurrence of the Deputy Director of the Bureau of Correctional Facilities, or his/her designate.

2. Any resident may request review of his or her security classification. The Program Classification Committee, Housing Unit Team members, hearings officer and institutional head may also recommend review to the Security Classification Authority.

3. A fact-finding hearing conducted pursuant to Rule 791.3310 shall be ordered by the security classification authority when the resident is being considered for (a) an improved (reduced) level of security if circumstances indicate that public safety may be at issue; or, (b) reclassification to a more restrictive level of custody, except placement in administrative segregation (reclassification to administrative segregation requires a formal hearing, pursuant to Rule 791.3315).

4. A resident is not entitled to a hearing where a more restrictive security classification is necessitated by an inter-facility transfer made for any of the reasons contained in Rule 791.405(6).

5. All inter-institutional transfers must be pursuant to PD-BCF-34.01.

Administrative Segregation: Prisoners shall be classified to administrative segregation pursuant to Rule 791.4405.

NOTE: Please see related Policy Directive entitled "Resident Disciplinary Procedure" - DWA 60.01, "Segregation Housing Standards" - BCF 60.01, "Administrative Hearing Policy" - DWA 62.01, "Community Residential Programs" - DWA 43.01, "Temporary Releases from Correctional Facilities" - DWA 44.01, "Work/Pass Program" - DWA 41.01.

AUTHORITY: MCL 791.203, .206, R 791.4401, 791.4405.
Corrections Commission, October 2, 1974, March 25, 1976, May 18, 1977

APPROVED: Perry M. Johnson JAN - 2 1980
Perry M. Johnson, Director Date

PMJ:RB:cjr
1/2/80

Segregation on specific grounds, the Due Process Clause of the United States Constitution also prevents transfer without a hearing to establish the appropriate finding. Wright v. Enomoto, 462 F Supp 397 (ND Cal, 1976), Aff'd 434 US 1052 (1978); Bills v. Henderson, 631 F 2d 1287 (6th Cir, 1980); Walker v. Hughes, 558 F 2d 1247 (6th Cir, 1977).

The Michigan Department of Corrections, by Director's Office Memorandum 1980-3 (annexed), has decided that:

> "If a person is found guilty of a major misconduct violation, he or she may be classified to administrative segregation without a further hearing if that classification is based solely upon the finding of guilt on the major misconduct violation."

The official position of the Michigan Department of Corrections is that the hearing on the misconduct ticket satisfies the hearing requirements for placement in Administrative Segregation.

The Defendants do not dispute that placement in Administrative Segregation triggers procedural due process protections. The question in this case, then, is what process is due. See, e.g., Walker v. Hughes, supra, 558 F 2d at 1256. The touchstone of due process is protection of the individual from arbitrary action of the government. Wolff v. McDonnell, 418 US 539 at 558 (1974). It is fair to state that Defendants will concede that this protection would include, at the very minimum, an adequate hearing on the matter at issue. There is disagreement only in what is adequate.

The fundamental reason why due process requires an adequate hearing is to provide an opportunity to be heard in a meaningful manner. Matthews v. Eldridge, 424 US 319 at 333 (1976); Armstrong v. Manzo, 380 US 545 at 552 (1965). The procedure utilized by Defendants negates this most important function. Particularly, the hearing on a misconduct ticket is directed only to the issue of guilt or innocence on the charged conduct. Michigan Department of Corrections policy specifically states, "In making a decision as to guilt or innocence, the hearing officer shall consider only that evidence which relates to guilt or innocence of the specific charge or charges or their lesser included violations." PD-DWA-60.01, Pg. 4 of 5. Thus, mitigating circumstances surrounding the event; past behavior; the isolated nature of an event; and other relevant evidence

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probative of the various findings which can result in placement in Administrative Segregation are not permissible evidence at the one hearing granted an inmate.

A meaningful hearing is not the only protection which due process affords.[1/] Some advance notice of the charges at issue must be given "in order to inform him of the charges and enable him to marshal the facts and prepare a defense," Wolff v. McDonnell, supra, 418 US at 564; and to insure that an inmate will not have to guess about the nature and source of the evidence against him. Pugliese v. Nelson, 472 F Supp 992 at 997 (D. Conn, 1979), reversed on other grounds, 617 F 2d 916 (2d Cir, 1980). Under the Michigan Department of Corrections policy there is no notice to an inmate that he is even being considered for Administrative Segregation.

Assuming an inmate is put on notice by an inter-office memo that a hearing can be automatic, the inmate is not given notice as to what ground he is being considered for Administrative Segregation under. Nor is the inmate told why the conduct indicates behavior within defined grounds.

A third protection afforded by due process is the provision of a post-hearing statement of findings. This protection provides a means of subsequent review; protects the inmate from collateral consequences; and helps insure prison personnel will act fairly. Wolff, supra, 418 US at 564-65. The findings must include a statement of the evidence relied upon and reasons for the action taken.

This is critical in the Administrative Segregation context. Administrative Segregation in Michigan prisons is served under conditions similar to punitive detention, the only difference being that punitive detention lasts the maximum of 7 days, while Administrative Segregation lasts indefinitely. An inmate can be removed from Administrative Segregation only after a review which includes, "Reappraisal of the circumstances necessitating segregation." R791.4405(3)(b). If those circumstances are not fully set forth in a post-hearing statement, a productive review cannot

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1/ There is some conflict on what precise procedures must be afforded. That will be treated later in this Brief.

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be undertaken.

To this point, Plaintiffs have dealt only generally with the requirements of due process. (Notice, hearing and post-hearing statement.) The exact procedures to be followed have been extensively discussed in several cases. In addition, Michigan statutes and administrative regulations set forth a series of protective procedures. Not all of these sources are in agreement.

The seminal case is Wolff v. McDonnell. The most significant case, however, is Wright v. Enomoto, 462 F Supp 397 (ND Cal, 1976), Aff'd 434 US 1052 (1978). The procedures ordered therein are set forth at Page 404 of the Opinion. The importance of Wright lies in its direct application of Wolff (a goodtime/punitive detention case) to Administrative Segregation.

The Sixth Circuit has also dealt with Administrative Segregation in Bills v. Henderson, 631 F 2d 1287 (6th Cir, 1980). Bills set forth a dual approach to transfers. If the transfer is based on a finding of guilt of specific misconduct, Wolff procedures must be followed. If based on a general "prediction" of behavior, then less protection need be afforded. Id, at 1295-96. In reference to Michigan procedures, the "no hearing" policy is only to be applied to determinations based on specific misconduct. Thus, the greater protections of Wolff are mandated by Bills.

Even if this were not the case, the Bills Opinion, in ordering lesser protections for "predictive" transfers, ignored the impact of the United States Supreme Court's affirmance of Wright v. Enomoto. The Wright decision was reached by a 3-judge panel sitting in California. An appeal by right was taken to the Supreme Court, which issued a summary affirmance. The decision, then, became, binding, precedential authority on all lower courts. Whitlow v. Hodges, 539 F 2d 582 (6th Cir, 1976); Thoven v. Jenkins, 517 F 2d 3 at 7 (4th Cir, 1975). See, generally, Mandel v. Bradley, 432 US 173, 176 (1977); Hicks v. Miranda, 422 US 332. Thus, it is submitted that this Court must, at the very least, apply Wolff standards to all transfers to Administrative Segregation, despite the holding of Bills. 2/

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2/ In an as yet unpublished Opinion, the Honorable Ralph Freeman of this District ruled that transfers to Administrative Segregation are governed

In addition to the case law, Michigan statutes and policy set forth certain procedures to be followed. M.C.L.A. 791.252; M.S.A. 28.2320(52); R791.3315. It is Plaintiff's contention that these published procedures create a justifiable expectation rooted in state law that the procedures will be followed. See, Lamb v. Hutto, 467 F Supp 562, 566 (ED, Va, 1979); Prince v. Bridges, 537 F 2d 1269, 1272 (4th Cir, 1976). However, in a part of the Opinion undisturbed by Wright, Bills ruled that state procedures do not set due process requirements (the Constitution does), and create no independent due process expectations. The Plaintiffs seek only to preserve that issue in the event this matter reaches the Sixth Circuit.

There is an issue in this case as to whether the Wolff due process rights attach to placement on Green Card status. The facts will show that this status is the virtual equivalent of Administrative Segregation. Each status has the same school, educational, religious, visiting and property entitlements. Green Card inmates do not get exercise, while Administrative Segregation inmates did before the riot, but do not now. Green Card inmates eat in the dining hall, while only the least restrictive Administrative Segregation did before the riot (and no inmate in Administrative Segregation does now.)

Obviously, Green Card inmates have suffered,

> "a severe impairment of the residuum of liberty he retains as a prisoner - an impairment which triggers the requirement for due process safeguards. (Citations omitted.)"
> Wright v. Enomoto, supra, 462 F Supp at 402.

This alone would entitle Green Card inmates to due process procedures. But the mere fact that inmates are "labelled" by the State as being Green Card does not necessarily mean that they are not Administrative Segregation. This Court's task is to look at the substance of the treatment, not the label. If the treatment is virtually the same, then the Court should and must disregard the label. See, e.g., Carlo v. Gunter, 520 F 2d 1293, 1295

2/ (Cont.) by Wright (and Wolff) and not Bills. Simon v. Sholes, et al, CA No. 9-71320, decided June 5, 1981. A copy of the Court's Findings of Facts and Conclusions of Law is attached. The Third Circuit recognized Wright's binding authority in Helms v. Hewitt, ___F 2d___, 29 CrL 2429 (3rd Cir, June 30, 1981).

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(1st Cir, 1975); Mawhinney v. Henderson, 542 F 2d 1 (2d Cir, 1976); Walker v. Mancusi, 467 F 2d 51 (2d Cir, 1972). Plaintiffs contend that the treatment (and purpose) of Green Card is the same as Administrative Segregation inmates, entitling those placed on that status to the due process rights set forth in Wolff and Wright.

Plaintiffs also attack, on due process grounds, the lack of any systematic review for release of inmates from Green Card status. It appears their status will last indefinitely. Such treatment is clearly unconstitutional. Adams v. Carlson, 488 F 2d 619 (7th Cir, 1973); Bono v. Saxbe, 450 F Supp 934 (ED, Ill, 1978).

Respectfully submitted,

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MICHIGAN DEPT. OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE: January 22, 1975

Bureau of Correctional Facilities

NUMBER: PD-BCF-60.01

SUPERSEDES: NO BCF B-14

DATED: 11-9-72

SUBJECT

STANDARDS FOR SEGREGATION HOUSING

OBJECTIVE: To ensure that prisoners assigned to "Administrative Segregation" are treated as humanely as possible considering supervisory and security requirements, and to limit the sanctions that can be imposed in punitive segregation.

APPLICATION: Marquette Branch Prison, Michigan Intensive Program Center, Michigan Reformatory and the State Prison of Southern Michigan.

POLICY:

Detention (Punitive Segregation)

Residents with psychiatric history or a significant medical problem must be cleared by the psychiatric staff or medical director before they are compelled to begin detention sentences. Residents in detention will be examined daily by a member of the medical staff. They shall receive a minimum of three (3) regular meals each day.

Sanctions imposed for punitive or disciplinary reasons shall not include deprivation of:

a) Normal meals
b) Mattress
c) Clothing
d) Smoking materials
e) Heat, light and ventilation
f) Basic writing material
g) Visits

Each facility will develop specific rules and procedures applying to all aspects of punitive segregations. These rules and procedures must have prior approval of the office of BCF Deputy Director.

Administrative Segregation

The Security Classification Committee may place individuals in segregation only because their behavior has demonstrated that they cannot be managed with general group privileges, because they need protection from other prisoners, because they are a threat to members of the staff or other residents, or because they have demonstrated that they are a serious escape threat. Residents in administrative segregation, therefore, shall be afforded all privileges that are administratively feasible that can be safely allowed. Several grades of

custody are appropriate for segregation and flexibility within these grades should be encouraged. When practicable, residents should be given opportunities to engage in educational, religious and treatment activities. Daily out of cell movement must be afforded each person and showers should be allowed as often as administratively possible, but at least weekly. Each individual is entitled to three (3) regular meals each day.

A supervisory officer of Captain rank or above, shall inspect each segregation and detention unit daily and such visits shall be recorded in the respective segregation or detention log book. Some member of the segregation housing unit team shall visit each resident in segregation and detention daily and a record confirming such visits shall be maintained. Visiting and mail privileges will be continued with mail being handled according to provisions of the Resident Mail Policy Directive.

AUTHORITY: Bureau of Correctional Facilities Organization and Responsibility Policy Directive, Resident Security Classification Policy Directive.

APPROVED: 1-21-75

Robert Brown, Jr., Deputy ~~Director~~ in Charge of Bureau of Correctional Facilities — Date

RBJ:mml
1-14-75

R 791.4405. Administrative segregation status; criteria for imposition; hearing; status review; monthly report; privileges; showers; daily inspection.

Rule 405. (1) Administrative segregation may be imposed only when:

(a) A resident demonstrates inability to be managed with group privileges.

(b) A resident needs protection from other prisoners.

(c) A resident is a serious threat to the physical safety of staff or other residents or to the good order of the facility.

(d) A resident is a serious escape threat.

(2) A resident shall be afforded an opportunity for a hearing pursuant to rule 315 before being classified to administrative segregation; however, a resident may be temporarily held in segregation status pending a hearing upon order of the institutional head, or at the resident's request. This temporary period may not exceed 4 weekdays.

(3) A resident classified to administrative segregation shall be interviewed and have security status reviewed at least monthly. This review shall be written, and a copy shall be given to the resident and to the security classification committee. The interviewers may initiate a request for security reclassification at any time that it appears that administrative segregation is no longer required in light of all of the following:

(a) The resident's behavior and attitude in segregation.

(b) Reappraisal of the circumstances necessitating segregation.

(c) An evaluation of the resident's potential for honoring the trust implicit in a less restrictive status.

(4) In every instance where a resident is confined in administrative segregation longer than 60 days, a monthly report shall be submitted to the deputy director of the bureau of correctional facilities, which shall include the reasons for continued segregation, alternative solutions considered, the date classified to segregation, and prospects for reclassification in the immediate future.

(5) A resident placed in administrative segregation shall be afforded all privileges that are administratively feasible and which can be safely allowed, including, but not limited to, participation in educational, religious, and treatment activities.

(6) A resident in administrative segregation shall be afforded opportunity for at least weekly showers.

(7) Department staff shall daily inspect each administrative segregation unit and visit each resident so segregated. A record shall be maintained of all such inspections and visits.

Commentary to R 791.4405. Administrative segregation status

This rule recognizes that a part of security classification is the authority to assign prisoners to administrative segregation. Subsection (1) incorporates the generally recognized grounds of administrative segregation: to maintain security and order in the prison and to protect the prisoner [e.g., Bloeth v Montanye, 514 F2d 1192 (2d Cir 1975), Christman v Skinner, 468 F2d 723 (2d Cir 1972); Breeden v Jackson, 457 F2d 578 (4th Cir 1972); Perez v Turner, 462 F2d 1056 (10th Cir 1972), cert denied 410 US 944].

The hearing guarantee of subrule (2) and periodic evaluations of subrules (3) and (4) insure that a prisoner will not be left in segregation longer than is warranted by the circumstances [accord, Kelly v Brewer, 525 F2d 394 (8th Cir 1975)].

Subsection (5) illustrates the nonpunitive nature of administrative segregation by insuring that, not only will a segregated prisoner not be deprived of the basic necessities, neither will he or she lose privileges unless the security and order of the facility necessitate their denial [Mims v Shapp, 399 FSupp 818 (WD Pa 1975)].

The inspections and visitations provided for in subsection (7) are in furtherance of the department's duty to confine prisoners in a safe environment, including protection from self-inflicted injury [e.g. People v Harmon, 53 Mich App 482, 220 NW2d 212 (1974); Wayne County Jail Inmates v Wayne County Bd of Comm'rs, Civil No 173-217 (Cir Ct Wayne County, Mich, May 18, 1971); Holt v Sarver, 309 FSupp 362 (ED Ark 1970), aff'd 442 F2d 304 (8th Cir 1971)].

MICHIGAN DEPT. OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE	NUMBER
February 1, 1980	PD-DWA-30.02
Bureau of Correctional Facilities, Bureau of Field Services	SUPERSEDES: NO PD-DWA-30.0 PD-BCF-34.01 DATED 12/1/78 6-27-77

SUBJECT

RESIDENT SECURITY CLASSIFICATION

OBJECTIVE: To provide a means for classifying prisoners according to their security requirements within the limits of available housing.

APPLICATION: All residents of BCF facilities, Corrections Centers, Resident Homes, and furloughees.

POLICY: Residents shall be classified according to security requirements necessary for their protection, the safety of others, protection of the general public, prevention of escape, and maintenance of control and order. The least restrictive form of control consistent with these requirements shall be utilized. Security classification shall be based upon the resident's behavior, attitude, circumstances, and the likelihood of honoring the trust implicit with the level of security prescribed. While security classification shall take precedence over program classification, reductions in custody may be delayed as follows:

When the same or similar programs are available at the less secure facility, transfers will not be delayed. Transfer will be delayed for program completion if the program is not available at the transfer destination and either of the following conditions exist:

a. There has been a considerable investment of resources and completion of program is imminent.

b. The program is required by the Parole Board.

Transfers of residents involved in the following programs should be made only as a last resort, and then only with the approval of the regional administrator. They are listed in order of priority for non-transfer.

1. Psychotherapy recommended by R&GC or the Parole Board.

2. Related trades instruction (apprenticeship programs).

3. Community college vocational "Night Owl" programs.

4. Department operated vocational programs.

5. Community college academic programs (for balance of term).

Staff responsible for assignment to these programs must review custody reduction eligibility dates before residents are enrolled.

Categories and qualifications for security classification are as follows: Exceptions for cause may be authorized by the Deputy Director, BCF, or his designate on a case by case basis.

I. Community Status:

Offenders who qualify for minimum custody and whose backgrounds are free from patterns of assaultive behavior, and from predatory or assaultive sex offenses, involvement in organized crime, professional criminal activity, narcotics traffic, recent acute mental disturbance, serious institutional misconduct or other behavior which would make them an unwarranted risk to the public may be classified to community status from their respective institution. All CRP placements will be pursuant to R 791.4410.

II. Minimum Custody:

A. Residents who meet all of the following qualifications shall be placed in minimum custody according to the guidelines for placement noted under "B" below.

1. Has no history of misconduct designated by policy as non-bondable during past two years. (Misconduct while in community status may be excepted.)

2. Not serving an escape sentence and has not escaped nor attempted escape within past five years from a county jail, or an adult or youth facility.

3. Does not have a juvenile criminal arrest record, combined with history of escape from a juvenile or adult institution in past ten years.

4. Has not established a pattern of "flight" from custody (i.e., three or more instances of AWOL, escape, absconding, and/or walkaway in past ten years).

5. Has no detainer (for felony prosecution or felony sentence) with release date later than his/her current SGT minimum date.

6. Not a known homosexual (unless living units are equipped with individual cells or rooms).

7. Medically and psychiatrically clear for minimum security placement.

8. Has demonstrated sufficient capacity and appropriate motivation for participation in work or school programs.

9. Not served at MIPC in last six (6) months.

B. With the exception of those classified as very high assaultive risk, any prisoner meeting provisions above shall qualify for minimum custody one (1) year prior to eligibility for placement in community residential programming (see PD-DWA-43.01). Those who will not be eligible for CRP will be placed according to the following limits:

Risk Classification Limits:

1. Very high assaultive risk must have established parole date or 180 days or less remaining to the SGT maximum.

   Those who are potentially very high assaultive risk (i.e., crime fits robbery, sex assault or murder and experienced first criminal arrest prior to age 15), may not be placed in minimum custody until one year after arrival at R&GC.

2. High assaultive or high property risk must have twelve (12) months or less remaining to the SGT minimum.

3. Middle or low assaultive risk must have twenty-four (24) months or less remaining to the SGT minimum. This category includes prisoners serving for designated assaultive offenses even though they are not eligible for CRP placement until 180 days prior to SGT minimum.

4. Very low assaultive risk must have thirty-six (36) months or less remaining to the SGT minimum.

III. Medium Custody:

All residents who do not qualify for minimum custody and who meet all the following conditions, shall qualify for medium custody.

1. Has no more than sixty (60) months to SGT minimum.

2. Has no charges pending for sexual assault or attempted sexual assault by force or threat of force, robbery, kidnapping, or murder.

3. Has no history of misconduct designated by policy as non-bondable during the past six (6) months. (Misconduct while in community status or minimum status may be excepted.)

4. Has not demonstrated escape proneness from medium (or more restrictive) custody within past three years.

5. Not identified as a homosexual predator.

IV. Close Custody:

All residents not qualified for either minimum or medium custody who meet the following conditions shall be placed in close custody:

1. Has no more than 15 calendar years to SGT minimum.

2. Is manageable within general population status.

3. Has not demonstrated escape proneness from close (or more restrictive) custody.

V. Maximum Custody:

All residents who do not qualify for minimum, medium, or close custody shall be placed in maximum custody (or administrative segregation). It is the policy of the Department of Corrections to routinely separate parties to prolonged resident feuds, and codefendants with minimum sentences longer than 7-1/2 calendar years. In such cases it may be necessary to place one or more of the parties involved in maximum security.

VI. Administrative Segregation:

The Security Classification Committee may place individuals in segregation only pursuant to Rule 791.4405.

Classification Process

1. Security classification shall be determined at each correctional institution by a committee comprised of the Deputy Warden/Superintendent and the Treatment Director or appropriate surrogates. Security classification involving community programs (Corrections Centers, Resident Homes and those on extended furlough) requires the concurrence of the Assistant Deputy Director for Community Programs, BFS or

his/her designate. Security classification for the Work-Pass Program requires the concurrence of the Deputy Director of the Bureau of Correctional Facilities, or his/her designate.

2. Any resident may request review of his or her security classification. The Program Classification Committee, Housing Unit Team members, hearings officer and institutional head may also recommend review to the Security Classification Authority.

3. A fact-finding hearing conducted pursuant to Rule 791.3310 shall be ordered by the security classification authority when the resident is being considered for (a) an improved (reduced) level of security if circumstances indicate that public safety may be at issue; or, (b) reclassification to a more restrictive level of custody, except placement in administrative segregation (reclassification to administrative segregation requires a formal hearing, pursuant to Rule 791.3315).

4. A resident is not entitled to a hearing where a more restrictive security classification is necessitated by an inter-facility transfer made for any of the reasons contained in Rule 791.405(6).

5. All inter-institutional transfers must be pursuant to PD-BCF-34.01.

Administrative Segregation: Prisoners shall be classified to administrative segregation pursuant to Rule 791.4405.

NOTE: Please see related Policy Directive entitled "Resident Disciplinary Procedure" - DWA 60.01, "Segregation Housing Standards" - BCF 60.01, "Administrative Hearing Policy" - DWA 62.01, "Community Residential Programs" - DWA 43.01, "Temporary Releases from Correctional Facilities" - DWA 44.01, "Work/Pass Program" - DWA 41.01.

AUTHORITY: MCL 791.203, .206, R 791.4401, 791.4405.
Corrections Commission, October 2, 1974, March 25, 1976, May 18, 1977

APPROVED: Perry M. Johnson, Director — JAN - 2 1980 Date

PMJ:RB:cjr
1/2/80

CSO-219

R 791.4401. Security classification; criteria; security classification committee; levels of custody; additional criteria for certain classifications; right to hearing; reclassification; transfer; grievance.

Rule 401. (1) Each resident shall be classified according to his or her behavior, attitude, circumstances, and the likelihood that the trust implicit with the level of security prescribed will be honored. A security classification is not a punitive or disciplinary action on the part of the department. Residents shall be classified according to security requirements necessary for their protection, the safety of others, the protection of the general public, prevention of escape, and maintenance of control and order.

(2) Security classifications shall be determined at each institution by a committee authorized by the director.

(3) After examination by the classification committee of all information on the resident, the resident shall be assigned one of the following categories of security classification which is the least restrictive level of custody consistent with the requirements of subrule (1):

(a) Administrative segregation, subject to rule 405.

(b) Maximum custody.

(c) Close custody.

(d) Medium security.

(e) Minimum security.

(f) Community status, with the concurrence of the appropriate department official in charge of community programs and subject to rules 410, 415, 420, and 425.

(4) A resident under consideration for minimum security or community status classification shall receive psychological or psychiatric evaluation before the classification decision is made if the resident meets the requirements of subrule (1) and has a history of:

(a) Hospitalization for mental illness within the past 2 years.

(b) Predatory or assaultive sex offenses.

(c) Serious or persistent assaultiveness within the institution.

(5) A resident being considered for reclassification to a more restrictive level of security is entitled to an opportunity for a hearing pursuant to rule 310, except as provided in subrule (6).

(6) A resident is not entitled to a hearing where a more restrictive security classification is necessitated by an inter-facility transfer made for 1 of the following reasons:

(a) The transfer is part of the initial classification process.

(b) The transfer is necessary to prevent overcrowding.

(c) Appropriate medical treatment may not be obtained at the transferring facility.

(d) The custody level of the facility is changed so that the security classification of the resident is inconsistent with that of the facility.

(e) The resident was placed in the facility in order to participate in programming for which that resident no longer qualifies.

(f) There is reliable evidence that the resident is in immediate physical danger, which may not be averted by a less burdensome alternative.

(g) The transfer is requested by the resident.

(h) The transfer is approved by a security classification committee or other designated authority after review of findings made at a misconduct hearing pursuant to rule 310 or 315.

(7) The head of a facility may order an immediate increase in security status on a temporary basis pending a hearing pursuant to rule 310. The hearing shall be held within 10 calendar days of the increased security, except that placement in administrative segregation is governed by rule 405.

(8) A resident who objects to being reclassified is entitled to file a grievance under rule 325.

Commentary to R 7[illegible] 4401. Security classificatio[illegible] generally

This rule implements the mandate of MCLA 791.264 which requires the department to classify prisoners. Courts recognize the propriety of classifying prisoners to different security levels and generally will not interfere with a particular administrative classification decision, unless the classification appears to be without any foundation or is discriminatory. Therefore, so long as classification decisions are not arbitrary, they likely will be upheld.

Although the law does not require a specific reason to reclassify or transfer a prisoner (see MCLA 791.264-.265 on following pages), there must be a rational basis for making these decisions. Thus, to establish and articulate these bases, a resident may be entitled to notice and opportunity to be heard regarding proposed reclassification to a more restrictive level of security. A hearing is not provided where the reclassification is incident to one of the overriding administrative purposes enumerated in subrule (6). These provisions are in accord with the recent United States Supreme Court decisions in Meachum v Fano [19 CrL 3167 (June 25, 1976)] and Montanye v Haymes [19 CrL 3174 (June 25, 1976)] which held that the Constitution does not require a hearing prior to a transfer between penal institutions.

MICHIGAN DEPT. OF CORR TIONS

POLICY DIRECTIVE

EFFECTIVE DATE	NUMBER
October 23, 1977	PD-DWA-60.01
Bureau of Correctional Facilities, Bureau of Field Services	SUPERSEDES: NO. PD-DWA-60.01
	DATED 4/19/76

SUBJECT
RESIDENT DISCIPLINARY POLICY

OBJECTIVE: To provide a means of maintaining discipline and enforcing necessary rules within correctional facilities; to insure that residents are provided fair, timely, and impartial disposition of charges alleging violation of rules or criminal statutes, and that such disposition is based on proceedings that conform to due process requirements for institutional disciplinary matters; and to establish the nature and limits of punitive sanctions that may be imposed.

APPLICATION: All residents of BCF facilities, Corrections Centers and Resident Homes.

POLICY: Alleged violations of written rules are classified as "major misconduct" or "minor misconduct" and defined on the list following this policy. (Slightly different categories and examples apply to community residential programs.)

The structure of the disciplinary process is one of progressive sanctions. The least drastic method of seeking compliance with the rules will be utilized. Counseling and summary action should be attempted to correct minor violations. Since the possible sanctions are more severe for major misconduct, greater procedural safeguards are provided.

Summary Action: The reporting employee may impose summary punishment not to exceed 24 hours top lock, 8 hours extra duty, or one (1) week loss of privileges for minor misconduct provided the resident signs a waiver of his or her right to a minor misconduct hearing. Nondangerous contraband may be confiscated in conjunction with any of these summary punishments. A record of this action must be on file at the program manager, deputy or supervisory level. If the resident does not sign an offered summary action, the resultant misconduct report shall be processed and heard as a "minor," regardless of the charge or the resident's disciplinary record.

Minor Misconduct: Alleged violations of written rules defined as "minor misconduct" are subject to the following safeguards and procedures:

1. The resident will be given advance written notice of the charge unless he or she waives this in favor of an informal summary action.

2. A hearing before a hearing team or employee who has had no previous direct involvement in the matter under consideration.

CSO-216

Alleged behavior that constitutes a felony will also be referred to the local prosecutor. In all cases of assaults, prosecution will be sought and, if the assault is established at an administrative hearing, good time forfeiture will be ordered in accordance with MCLA 800.33.

Residents charged with major misconduct are entitled to the opportunity to have a formal hearing. In addition to the rights and procedures set forth in PD-DWA-62.01, the following shall apply in all cases of alleged major misconduct:

1. Supervisory staff shall conduct a preliminary review for every major misconduct report. In medium, close, and maximum security institutions, this shall include a personal interview with the charged resident. After this review, the supervisory staff may order the resident to be confined in segregation pending a formal hearing, if there is a reasonable showing that failure to do so would constitute a threat to the security or good order of the institution. The formal hearing must be within four working days of placement in segregation, on top lock or other temporary institutional confinement. For a "bond" case, and those in community residential programs, the hearing must be held within 10 working days of review. Exceptions to these time limits may be made only with the authorization of the appropriate Deputy Director.

2. A resident who is found guilty by the hearing authority may appeal the finding of guilt or alleged violations of rights to the institution head in BCF institutions or area manager or higher authority in community residential programs. The sentence may not be appealed.

   (a) The resident must state his or her intention to appeal at the time of the hearing and follow it with a written basis for appeal within 24 hours after the resident's receipt of the written decision.

   (b) Following the resident's statement of intention to appeal, the hearing authority shall determine whether the ordered sanction will be held in abeyance until the appeal is resolved. The punishment will not be held in abeyance where the hearing authority finds that:

      (1) To do so would present a potential danger to the institution; or

      (2) The appeal is clearly without arguable merits or is taken primarily for purposes of delay.

(c) The appellate officer shall have authority to reverse or uphold any action of the hearing authority, or remand for rehearing where there is procedural error.

3. Alleged violations of rights may be further appealed to the Director's Office.

Decisions and Dispositions: The hearing authority shall insist that all pertinent and relevant evidence and testimony has been presented; that the resident has had adequate time and opportunity to prepare a response; and that a reasonable and impartial investigation has been conducted. In making a decision as to guilt or innocence, the hearing authority shall consider only that evidence which relates to guilt or innocence of the specific charge or charges or their lesser included violations. Decisions shall be based upon a preponderance of evidence, i.e., they shall decide whether it is more likely than not that the evidence supports the decision. All decisions of three member committees will be by majority vote.

The formal hearing shall not be treated as an "adversary proceeding", but as a fact-finding process in which all parties involved have a responsibility to reveal all relevant evidence whether supportive or damaging to the person charged. Fairness is to be the paramount consideration of this hearing process.

Upon a finding of guilt, the hearing authority may consider all relevant information in determining disposition. When the facts of the violation (guilt) are not in dispute, it is proper to consider evidence of mitigating or compounding circumstances in determining the disposition.

The following sanctions, singly or in combination, may be imposed upon a finding of guilt in major misconduct cases:

1. Detention (punitive segregation) not to exceed seven (7) days, with the maximum range reserved for only the most serious or persistent violators.

2. Confinement to quarters or "top lock" not to exceed five (5) days, but not to be combined with a detention sentence.

3. Loss of privileges not to exceed thirty (30) days.

4. Restitution for property damage.

5. Recommendation to the institution head for forfeiture of good time or denial of special good time.

6. Suspended sentence, contingent upon no further misconduct, to be in effect no more than six (6) months. If a resident is found guilty of a subsequent major misconduct during the suspension period, the suspended sentence shall be picked up and served consecutively to the new sanction.

7. Extra duty, not to exceed two weeks, in minimum custody and community facilities.

A finding of "not guilty" shall result in no sanction being imposed and no report filed in the resident's record files; however, a record of all "not guilty" findings must be retained for statistical and monitoring reasons.

The resident may also be referred to other appropriate agents or services such as the psychiatric clinic, program classification committee, security classification, or counseling team.

AUTHORITY: MCL 791.203, .206, Corrections Commission, October 2, 1974 March 25, 1976.

APPROVED: Perry M. Johnson, Director — Date 10-27-77

PMJ:stf
9/27/77

MAJOR AND MINOR MISCONDUCT

Following are descriptions of resident behavior which is prohibited and subject to disciplinary sanctions. The left-hand column lists and defines the violations - any behavior that fits the definition is misconduct. In the right-hand column are specific common examples of behavior fitting under the rule violation. These are just examples; other actions that fit the violation definition are also misconduct even though they are not mentioned in the right-hand column. The violations are divided into major and minor misconduct. However, repeated misconduct will always be handled as major.

In addition to the violations which follow, three other kinds of charges are possible: accomplice, attempt, or conspiracy to commit a specific violation.

1) ACCOMPLICE - A resident who assists another to commit a specific misconduct. The charge should be "accomplice to assault," etc. Then describe what the resident allegedly did. Examples of this include: "Jiggering," lookout, holding down a victim, allowing use of cell/room for commission of a violation.

2) ATTEMPT - A resident intends to commit a specific rule violation and does something towards committing it, even though he or she may not have succeeded.

3) CONSPIRACY - A resident intends to commit a specific violation and agrees with at least one other person to commit the violation. No action is necessary.

Many rule violations necessarily include other less serious violations. This is where the violations are similar and have common facts or elements. For example, the "lesser included" violations of escape are: Attempted escape, out of place, missing count and late furlough return. Being insolent to an officer is a lesser included violation of threatening an officer; fighting may be a "lesser included" of assault. When a resident is charged with misconduct and the evidence does not support the particular violation charged but does establish a lesser included violation, the hearing officer or committee does have the authority to find the resident guilty of the lesser included violation.

Violations with an asterisk (*) are mandatory "nonbondable" charges.

MAJOR RULE VIOLATIONS	COMMON INSTITUTIONAL EXAMPLES
001 *Escape; Attempt to Escape Leaving or failing to return to lawful custody without authorization. Failure to return within two hours after designated time from furlough or pass will be charged as ESCAPE. ESCAPE is a felony and will always be referred to the prosecutor.	Leaving from hospital trip or while housed at hospital; hiding from authorities even if still on prison property.
002 Felony Any act that would be a felony if prosecuted under Michigan law is also a major misconduct violation.	Extortion; receiving stolen property; fraud.
ASSAULTIVE OR VIOLENT VIOLATIONS	
010 *Homicide Causing the death of another person by any means.	
011 *Assault Physical confrontation where one party is the victim and the other is the assailant. Injury is not necessary, but contact is.	Attack by one or more persons; striking with feces or other objects; physical resistance of, or interference with, an employee.
012 *Intimidating or Threatening Behavior Words, actions, or other behavior expressing an intent to injure, which place another in fear of being physically harmed or assaulted. Includes attempted assault.	
013 *Sexual Assault Physical confrontation for sexual purposes, where one party is the victim and the other is the assailant. Nonconsensual physical contact for sexual purposes.	
014 *Fighting Mutual physical confrontation, including a swing and miss, even where not done in anger.	Fight between residents, whether with fists, broom handles or other weapons.

ACTS OF SERIOUS INSUBORDINATION

020 Disobey a Direct Order
Refusal or failure to follow a valid, reasonable order.

Refusal to obey an order or instruction; failure to answer call; failure to report to assignment.

021 Possession of Forged Documents; Forgery
Knowingly possessing a falsified document; altering or falsifying a document with the intent to deceive or defraud.

A fake pass, application, furlough papers, etc. which is represented to be true.

022 *Incite to Riot or Strike; Rioting or Striking
Encouragement of action to disrupt or endanger the institution, persons or property. Participation in such action.

023 Interference with the Administration of Rules
Acts intending to impede, disrupt or mislead the institutional disciplinary processes.

Intimidating or tampering with an informant or witness; tampering with evidence; destroying or discarding a disciplinary action (flimsey); interfering with an employee writing a misconduct report; making false accusations of misconduct.

024 Bribery of an Employee
Offering to give or withhold anything to persuade an employee to neglect duties or perform favors.

025 Lying to an Employee
Knowingly providing false information to an employee.

026 Insolence
Behavior, including touching, gestures and language, which intends to harass annoy, show disrespect, or cause alarm in an employee.

Cursing; abusive language, writing or gesture directed to an employee.

027 Destruction or Misuse of State Property
Any destruction, removal, alteration tampering, or other misuse of state property, including state clothing and food.

Alteration of earphones; tampering with locking device; door plug; throwing brakes; burning mattress.

THREATS TO THE GOOD ORDER AND SECURITY OF THE INSTITUTION

030	*Dangerous Contraband Possession of weapon, explosives, acids, caustics, materials for incendiary devices, escape materials. Possession of "critical" tools.	Gasoline, sulphuric acid, lye, prison-made knives, pipe bomb, rope and grappling hook.
031	Possession of Money Possession of unauthorized amounts of money or money from unauthorized sources.	In institutions, any money other than 50 pennies is contraband.
032	Creating a Disturbance Actions of a resident resulting in disruption or disturbance, but not endangering persons or property.	Excessive noise.
033	Sexual Misconduct Consensual touching of the sexual or other intimate parts of another person, done for the purpose of gratifying the sexual desire of either party. Indecent Exposure. Imitating the appearance of the opposite sex. (NOTE: The embrace authorized at the beginning of a visit is not misconduct.)	Kissing, hugging, intercourse, sodomy. Clothing of the opposite sex; men wearing make-up.
034	Substance Abuse Possession, selling or providing to others, or under the influence of any intoxicant, inhalant, controlled substance or marijuana. Unauthorized possession of restricted medication; possession of narcotics paraphernalia.	
035	Two in a Cell/Room No resident may be in another's cell or room unless specifically authorized.	
036	Out of Place or Bounds/AWOL Being anywhere without the proper authorization; being absent from where required to be. ("Skating" in own housing unit during the day is a minor.)	"Skating" in another block; no pass or I.D. card; misuse of pass; missing count failure to return on time from furlough but returned within two hours of deadline.

037 Theft
Any unauthorized taking of another person's property. — Cell theft.

038 Gambling; Possession of Gambling Paraphernalia
Playing games or making bets for money or anything of value. — Betting slips.

MINOR RULE VIOLATIONS[1]

Misdemeanor
Any act that would be a misdemeanor if prosecuted under Michigan law is also a minor misconduct violation, unless specified elsewhere as a major.

Abuse of Privileges
Intentional violation of any department or institutional regulation dealing with resident privileges, unless it is specified elsewhere as a major. — Violations of rules or regulations, regarding visits, mail or telephone; improper fund transfer; unauthorized legal assistance.

Contraband
Possession or use of nondangerous property which a resident has no authorization to have, where there is no suspicion of theft or fraud. — Unauthorized items; anything with someone else's name or number on it; excessive store items.

Health, Safety or Fire Hazard
Creating one of the above dangers by act or omission. — Dirty cell; smoking in unauthorized areas; lack of personal hygiene.

Temporary Out of Place/Bounds
In own housing unit during the day. Out of place for a brief time or adjacent to where supposed to be. — Tardy for count or assignment; on gallery outside own cell.

Unauthorized Communications
Any contact, by letter, gesture or verbally, with an unauthorized person or in an unauthorized manner. — Love letters to another resident; passing property on a visit either directly or through a third person.

Violation of Posted Rules
For example, of housing unit, dining room, work or school assignment which are not covered elsewhere. — Violation of kitchen sanitary regulations; wasting food; excessive noise in housing unit; playing TV or radio without earphone.

049 [1]The second violation within 30 days or fourth within a year's time (from the third preceding violation, not calendar year) shall be charged and processed as a MAJOR.

STATE OF MICHIGAN

WILLIAM G. MILLIKEN, GOVERNOR

DEPARTMENT OF CORRECTIONS

STEVENS T. MASON BUILDING, LANSING, MICHIGAN 48913

PERRY JOHNSON, DIRECTOR

February 1, 1980

DIRECTOR'S OFFICE MEMORANDUM - 1980 - 3 Effective Date: February 1, 1980

TO: Bureau Heads; Regional Administrators, BCF & BFS;
Wardens and Superintendents

FROM: Perry M. Johnson, Director

SUBJECT: Hearings Division

As mandated by PA 140 of 1979 (see attached), a Hearings Division has been established within the Executive Office. This division is under the direction and supervision of the Hearings Administrator, Marjorie VanOchten. She will be assisted by a Hearings Officer Supervisor who, under her direction, will be responsible for the day-to-day supervision of the hearing officers. The person who has been hired for this position is Ms. Kathryn Coulter. All full-time hearing officers are now employees of the Hearings Division, and are no longer under the supervision of the individual institution heads.

Attached is a draft of new procedures required to implement the provisions of PA 140. These procedures will be integrated into present Departmental rules and policies within the next few months. In the interim, where these procedures conflict with present Departmental policy directives, the new procedures will take precedence. If questions arise, please contact Ms. VanOchten or Ms. Coulter.

In addition to the procedures set forth in the attachment, you should also note the following changes brought about by the creation of the Hearings Division.

1. Effective immediately, the procedures for requesting a rehearing which are outlined in the attachment, are the only recourse for review within the Department for a prisoner found guilty of a major misconduct violation. Client appeals and limited appeals are no longer permitted. Also, those who object to the hearing decision on administrative segregation or to designation as a drug trafficker, professional criminal, or participant in organized crime should follow the rehearing procedures rather than the grievance procedure.

MICHIGAN
THE GREAT LAKE STATE

2. Each facility is responsible for scheduling hearings and compiling statistics on those hearings, as they have done in the past. The Hearings Division will be responsible only for conducting the hearings, rendering written decisions, and making a record of each hearing. The institution is also responsible for posting hearing results, as outlined in the attached procedures.

3. Attached are various forms which will be needed to implement these new procedures. Please ensure that your facility has an adequate supply by photocopying the required numbers until the forms can be made officially available through Forms Control.

4. If a prisoner is found guilty of a major misconduct violation, he or she may be classified to administrative segregation without a further hearing if that classification is based solely upon the finding of guilt on the major misconduct violation.

5. You should each develop procedures within your institution for determining referrals for loss of good time and security reclassification for those found guilty of major misconduct, as the hearing officers will no longer make referrals on these matters. Note that our new Administrative Rule 791.551 outlines the limits for forfeiture of regular good time.

During this period of transition, with our present hearing officers changing to supervision by the Central Office, and new hearing officers being added who are attorneys, it is important that we all work together to avoid problems. Please ensure that the lines of communication between you, your staff, and the Hearings Administrator and Hearings Officer Supervisor. Your cooperation and support will be appreciated.

PMJ:cjr 15

Attachments

PA 140 of 1979

STATE OF MICHIGAN
80TH LEGISLATURE
REGULAR SESSION OF 1979

Introduced by Reps. Virgil C. Smith, Henry, Dressel, Ballantine, Padden, Hollister and Vaughn

ENROLLED HOUSE BILL No. 4480

AN ACT to amend Act No. 232 of the Public Acts of 1953, entitled "An act to revise, consolidate and codify the laws relating to probationers and probation officers as herein defined, to pardons, reprieves, commutations and paroles, to the administration of penal institutions, correctional farms and probation recovery camps, to prison labor and prison industries, and the supervision and inspection of local jails and houses of correction; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions and officers, and to abolish certain boards, commissions and offices the powers and duties of which are hereby transferred; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," as amended, being sections 791.201 to 791.283 of the Compiled Laws of 1970, by adding chapter IIIA.

The People of the State of Michigan enact:

Section 1. Act No. 232 of the Public Acts of 1953, as amended, being sections 791.201 to 791.283 of the Compiled Laws of 1970, is amended by adding chapter IIIA to read as follows:

CHAPTER IIIA

Sec. 51. (1) There is created within the department a hearings division. The division shall be under the direction and supervision of the hearings administrator who is appointed by the director of the department.

(2) The hearings division shall be responsible for each prisoner hearing which the department conducts which may result in the loss by a prisoner of either a right or significant privilege, including but not limited to any 1 or more of the following matters:

(a) An infraction of a prison rule which may result in punitive detention or the loss of good time.

(b) A security classification which may result in the placement of a prisoner in administrative segregation.

(c) A special designation for the community placement of a person under the jurisdiction of the department.

(3) Each hearings officer of the department shall be under the direction and supervision of the hearings division. Each hearings officer hired by the department after October 1, 1979, shall be an attorney.

Sec. 52. The following procedures shall apply to each prisoner hearing conducted pursuant to section 51(2):

(a) The parties shall be given an opportunity for an evidentiary hearing without undue delay.

(b) The parties shall be given reasonable notice of the hearing.

(c) If a party fails to appear at a hearing after proper service of notice, the hearings officer, if an adjournment is not granted, may proceed with the hearing and make a decision in the absence of the party.

(d) Each party shall be given an opportunity to present evidence and oral and written arguments on issues of fact.

(e) A prisoner may not cross-examine a witness, but may submit rebuttal evidence. A prisoner may also submit written questions to the hearings officer to be asked of a witness or witnesses. The hearings officer may present these questions to and receive answers from the witness or witnesses. The questions presented and the evidence received in response to these questions shall become a part of the record. A hearings officer may refuse to present the prisoner's questions to the witness or witnesses. If the hearings officer does not present the questions to the witness or witnesses, the reason for the decision not to present the questions shall be entered into the record.

(f) The hearings officer may administer an oath or affirmation to a witness in a matter before the officer, certify to official acts, and take depositions.

(g) The hearings officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The reason for the exclusion of the evidence shall be entered into the record. An objection to an offer of evidence may be made and shall be noted in the record. The hearings officer, for the purpose of expediting a hearing and if the interest of the parties are not substantially prejudiced by the action, may provide for the submission of all or part of the evidence in written form.

(h) Evidence, including records and documents in possession of the department of which the hearings officer wishes to avail himself or herself, shall be offered and made a part of the record. A hearings officer may deny access to the evidence to a party if the hearings officer determines that access may be dangerous to a witness or disruptive of normal prison operations. The reason for the denial shall be entered into the record.

(i) The hearings conducted under this chapter shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearings officer, the department shall determine the matter as a part of the record of the hearing, and the determination shall be subject to judicial review at the conclusion of the hearing. If a hearings officer is disqualified or it is impracticable for the hearings officer to continue the hearing, another hearings officer may be assigned to continue the hearing unless it is shown that substantial prejudice to a party will result from the continuation.

(j) Except as otherwise authorized by subdivision (e), a hearings officer, after the notice of the hearing is given, shall not communicate, directly or indirectly, in connection with an issue of fact, with a person or party, except on notice and opportunity for all parties to participate. A hearings officer may communicate with other members of the department and may have the aid and advice of department employees other than employees which have been or are engaged in investigating or prosecuting functions in connection with the hearing or a factually related matter which may be the subject of a hearing.

(k) A final decision or order of a hearings officer in a hearing shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact, and shall state any sanction to be imposed against a prisoner as a direct result of a hearing conducted under this chapter. The final decision shall be made on the basis of a preponderance of the evidence presented. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by a party to the proceeding and as supported by and pursuant to competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to the prisoner. The final disposition shall be posted for the information of the reporting officer.

Sec. 53. (1) The department shall prepare an official record of a hearing which shall include:

(a) Questions and offers of proof, objections, and rulings on the objections.

(b) Matters officially noticed, except a matter so obvious that a record would not serve a useful purpose.

(c) A decision or order by the hearings officer.

(2) The official record shall not include evidence, access to which a hearings officer has determined would be disruptive of normal prison operations. However, on an appeal from a final decision made to a court of this state, that evidence shall be included in the official record.

Sec. 54. (1) The department may order a rehearing of a matter which was the subject of a hearing. The order may be made on the department's own motion or on request of a party.

(2) If, for justifiable reasons, the record of testimony made at the hearing is found by the department to be inadequate for purposes of judicial review, the department on its own motion or on request of a party shall order a rehearing.

(3) A request for a rehearing shall be filed within 30 days after the final decision or order is issued after the initial hearing. A rehearing shall be conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for department reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

(4) The department shall promulgate the rules necessary to implement this chapter within 180 days after the effective date of this chapter.

Sec. 55. A prisoner aggrieved by a final decision or order of a hearings officer or of the department may file a petition for judicial review of the decision or order pursuant to chapter 6 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.301 to 24.306 of the Michigan Compiled Laws.

Section 2. The procedures provided for in sections 52, 53, 54, and 55 shall take effect on February 1, 1980.

Section 3. This amendatory act shall not take effect unless House Bill No. 4105 of the 1979 regular session of the legislature is enacted into law.

This act is ordered to take immediate effect.

T. Ross Thatcher

Clerk of the House of Representatives.

Billie S. Farnum

Secretary of the Senate.

Approved_____

_____

Governor.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEROME SIMON,

Plaintiff,

v. Civil No. 9-71320

CONNIE JO STANTON, ET AL.,

Defendants.

_____/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Jerome Simon, while an inmate at the State Prison of Southern Michigan (SPSM or Jackson) filed this civil rights action for damages, alleging that he was placed in administrative segregation in February of 1979 in violation of his constitutional rights. Defendants are Connie Jo Stanton, Duane Sholes, and David Jamrog, employees of the Michigan Department of Corrections at SPSM. The jurisdiction of this court is invoked under 28 USC §1343(3) and 42 USC §§1983 & 1985. Plaintiff also asserts a pendent state claim for negligence.

This matter was tried by the Court without a jury. During the trial, the parties agreed to dismiss Stanton as a defendant. At the end of the trial, defendants' unopposed motion to dismiss plaintiff's §1985 conspiracy claim was granted. After careful consideration of the testimony and the exhibits introduced during the trial, as well as proposed findings of fact and conclusions of law submitted by the parties, this Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. Pro. 52.

Jerome Simon was serving a sentence for unarmed robbery and attempted rape at the State Prison of Southern Michigan during the months of February and March of 1979. He as incarcerated in the Central Complex. As of February 15, 1979, he was classified to the general population, the least

restrictive security status, and was housed in 4-Block. Defendant Connie Jo Stanton was the office manager, or secretary, for the principal of the Academic School at Jackson in February 1979. On February 15, 1979, she filed a misconduct report against plaintiff Simon, accusing him of touching her right buttock as they passed each other in a corridor in the prison at around 12:30 p.m. Later that day, after being notified of the misconduct report by a prison official, plaintiff sought out Stanton in her office and questioned her about the misconduct report she had filed.

The next day, February 16, 1979, Stanton filed a notice of intent to conduct a hearing to reclassify Jerome Simon to a more restrictive security classification. In the notice, Stanton reiterated her charge that Simon patted her buttocks on February 15 and added that when she encountered Simon again later that day, he "pushed his midsection into [her] buttocks." Stanton also asserted in the notice that Simon came to her office on February 15 after he learned that she had filed a misconduct report on him and asked her why she had done so. Stanton further claimed in the notice that when Simon tried to enter her office on the morning of February 16, he was found to be in possession of a pass, or detail, with her signature forged on it. Stanton concluded the notice with the statement: "Because of these two sexually intended encounters and his persistence to get to me, I feel physically threatened and emotionally intimidated."

Upon receiving the notice of intent from the shift commander on February 16, 1979, defendant Duane Sholes, the Assistant Deputy Warden in charge of security at SPSM, decided to place Simon in administrative segregation pending his security classification hearing. Sholes made this decision because he concluded that leaving Simon in general population after the February 15 misconduct report did not prevent the reoccurrence of incidents Stanton had complained about and he

feared for her safety. Simon was called to the "control center" later that day, where he was given the notice of intent as well as another misconduct report, which charged him with possession of forged documents. He was placed in administrative segregation in 5-Block West, pending his security classification hearing.

5-Block West is the punitive segregation area of SPSM. 5-Block East is the administrative segregation area. The cells in 5-Block are the same size and have the same equipment as those in 4-Block. Jackson Prison is an old building; there are mice and roaches throughout the whole complex, especially in the lower levels and where food is stored, prepared, and served, and including 4-Block and 5-Block East and West.

Inmates in 5-Block are provided with bedding, a sink, a toilet, pencils, paper, and cleaning supplies. However, inmates in 5-Block are not permitted personal belongings, with a few exceptions, and are confined to their cells at all times, including while eating their meals. As a result, they cannot participate in some of the activities available to inmates not in segregation, e.g., vocational or academic school, therapy sessions, or athletic pursuits. The conditions in 5-Block East are slightly less onerous than in 5-Block West. For example, inmates housed in 5-East are permitted one-hour exercise sessions outside their cells a few times a week, may be given a shower more frequently, and can watch a TV that is set up in the gallery.

Security classification hearings at SPSM were scheduled on Wednesdays. Overflow hearings were held on Thursdays and Fridays. Simon was placed in 5-West on Friday, February 16, 1979. On Wednesday, February 21, 1979, five days after being placed in 5-West, Simon was brought before a Security Classification Committee consisting of defendants Duane Sholes and David Jamrog. Jamrog was the resident unit manager in charge of the segregation unit at SPSM in February

of 1979. Sholes and Jamrog concluded that they did not have enough information to conduct a security classification hearing and told Simon that they would "pass over" or adjourn his reclassification hearing to await the outcome of his two pending disciplinary hearings on the February 15 and 16 misconduct reports. Simon remained in administrative segregation and was returned to 5-West.

The February 16 misconduct report charging Simon with possession of forged documents was dismissed on February 21, 1979. On February 23, 1979, a hearing officer found Simon not guilty of the sexual misconduct charged filed by Stanton on February 15. Also on February 23, Sholes received a note from Stanton requesting to be notified if Simon was released from segregation so she could take precautions to protect herself. Stanton added that she had been told by an officer that Simon threatened that he would "get" her.

On March 6, 1979, 18 days after he was placed in administrative segregation in 5-West, Simon was again brought before Sholes and Jamrog sitting as a Security Classification Committee. At this time, the Committee decided to increase plaintiff's security classification and place him in administrative segregation in 5-East. Simon was moved from 5-Block West to 5-Block East a few days later, where he remained until he was transferred to another prison on May 15, 1979.

A summary of the Security Classification Committee proceedings was prepared by the hearing officers and a copy was given to plaintiff. The report stated that the decision to place Simon in administrative segregation was based not only on Stanton's formal complaints, but also on her report that she was told that Simon told an officer that he would "get" her. The summary further noted that a review of Simon's folder revealed that he was serving in prison for a sex offense and had been identified as a "sexual predator" in prison parlance. Finally, the report indicated that although Simon

was found not guilty of the specific offense charged by Stanton, there were "other reports" that concerned the Committee to the point that they felt he should be placed in administrative segregation.

It is quite clear that plaintiff had a protected liberty interest in not being put in administrative segregation without certain due process rights. The due process clause of the Constitution does not, by itself, create such a protected liberty interest. However, state prison policy statements and regulations that limit prison officials' discretion by imposing specific prerequisites on placing inmates in administrative segregation can create a legitimate expectation on the part of the inmates of not being placed in segregation without some due process rights. Bills v. Henderson, 631 F.2d 1287, 1292-93, 1294 (6th Cir. 1980); Wright v. Enomoto, 462 F. Supp. 397, 401-03 (N.D. Cal. 1976) aff'd 434 U.S. 1052. See also Wolff v. McDonnell, 418 U.S. 539 555-58 (1974); Vitek v. Jones, 445 U.S. 480 (1980).

The Administrative Rules and Policy Directives of the Michigan Department of Corrections establish specific criterion and procedures for prison officials to apply to a decision to reclassify an inmate and place him in administrative segregation. Administrative Rule 791.4405 provides:

> (1) Administrative segregation may be imposed only when:
>
> a) A resident demonstrates inability to be managed with group privileges.
> b) A resident needs protection from other prisoners
> c) A resident is a serious threat to the physical safety of staff or other residents or to the good order of the facility.
> d) A resident is a serious escape threat.

See also Policy Directive PD-BCF-60.01.

This Rule clearly prohibits prison officials from placing an inmate in administrative segregation without finding that the inmate falls within one of the enumerated categories. Such a limitation on the prison officials' discretion creates a legitimate expectation on the part of the inmates that they

will not be transferred to administrative segregation without a finding that the transfer is for one of the purposes listed in Rule 791.4405.

As the court noted in Bills v. Henderson, supra, the next question to be answered is "what process is due prison inmates before they are deprived of this protected liberty interest?" Id. at 9, citing Walker v. Hughes, 558 F.2d 1247, 1256 (6th Cir. 1977). That question is the crux of the legal issues to be decided by this Court, because as plaintiff points out, the Sixth Circuit in Bills failed to directly address the impact of the Supreme Court's summary affirmance of Wright v. Enomoto, supra on the due process requirements for administrative segregation.

Aside from the question of the precedential value of Wright, it appears that Bills v. Henderson is on all fours with the matter before this Court. Bills held that an inmate being placed in administrative segregation to protect the safety of other inmates or the institution was not entitled to the full panoply of due process protections articulated by the Supreme Court in Wolff v. McDonnell, supra. In Wolff, the Supreme Court set forth the due process requirements necessary before an inmate can be deprived of good time as the result of a disciplinary hearing. The Court held that there must be: 1) a hearing; 2) written notice of the charges at least 24 hours prior to the hearing "to inform the inmate of the charges and enable him to marshal a defense;" and 3) a written statement of the evidence relied on and the reasons for the disciplinary action. Wolff v. McDonnell, supra at 564-65. The Court added that an inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence when to do so would not be unduly hazardous to institutional safety or correctional goals. Id. at 566. The Court also recommended that the aid of a fellow inmate or staff member to investigate and collect evidence should be provided to illiterate inmates or when the issues are complex.

The Sixth Circuit held in Bills that when administrative segregation is imposed for specific rule violations, an inmate must be afforded all the procedural protections described in Wolff. However, where administrative segregation is imposed to protect inmates or to maintain order, and is based on a "predictive judgment" considering the inmate's entire record, the Court distinguished Wolff and held that an inmate is entitled to lesser procedural safeguards. Id. at 1295-96. Inmates charged with being a threat to the security of the institution are entitled to "notice regarding the facts which triggered those charges." The notice "should be specific enough to enable inmates to marshal evidence in their behalf but "need not review all the items in the inmate's prior record" that the reviewing committee might consider in their decision to place the inmate in administrative segregation. Id. at 11-12. The inmate also must be given a written post-hearing statement containing "a general statement of the reasons behind the transfer, including a statement regarding the 'triggering event,' if one exists." However, "it is not necessary to provide the inmate with a summary of the evidence relied on." Id at 1296. The purpose of such a post-hearing statement is to "assist the inmate in modifying his behavior in the future so as to remain in general population." Id.

However, plaintiff directs the Court's attention to Wright v. Enomoto, supra, a decision of a three judge district court in the Northern District of California, where the court held that the procedural protections afforded to inmates placed in segregation for disciplinary reasons by Wolff fully extend to inmates confined to segregation for administrative reasons. Id. at 403-04. The court's decision in Wright was summarily affirmed by the Supreme Court. Plaintiff argues that it is therefore binding on all lower courts, despite the Sixth Circuit's decision in Bills that the Wolff protections are not fully available to inmates facing administrative segregation.

A summary dismissal by the Supreme Court constitutes a decision on the merits and is binding on lower courts. Hicks v. Miranda, 422 U.S. 332, 343-345 (1975); Witlow v. Hodges, 539 F.2d 582 (6th Cir. 1976); 12 Moore's Federal Practice ¶400.05-1 at 4-18 to 4-25. Although it may not have the same precedential value in the Supreme Court as does a full opinion of the Court after briefing and oral argument on the merits, a summary affirmance "prevent[s] lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided." Mandel v. Bradley, 432 U.S. 173, 176 (1977) per curiam. See also Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 182-83 (1979), Washington v. Yakima Indian Nation, 439 U.S. 463, 476-77 n. 20. (1979); Edelman v. Jordan, 415 U.S. 651, 670-71 (1974).

The court in Bills noted: "We see no distinction between the prison guidelines in the instant case and the prison guidelines in Enomoto which were found to create a due process right." Bills v. Henderson, supra at 1293. This court similarly fails to perceive, nor have defendants shown, the difference between the issues presented in Wright v. Enomoto and in Bills v. Henderson. Therefore, this Court is bound by the Supreme Court's summary affirmance of Wright and must apply the Wolff v. MacDonnell standards to determine whether plaintiff was afforded adequate procedural protections prior to being placed in administrative segregation.

The written notice must inform the inmate of the reasons prompting the administrative segregation hearing "in sufficient detail to enable [him] to prepare a response or defense." Wright v. Enomoto, supra at 404. The notice given to plaintiff described the alleged encounters between Simon and Stanton on February 15 and 16, 1979. However, in the summary of the reasons for disposition, the Security Classification Committee noted additional reports relied on in their consideration of Simon's security classification: Stanton's report that Simon told a guard he would "get" her and unspecified

"other reports." Although this Court is bound by the decision in Wright, the observations of the Court in Bills are helpful in ascertaining whether the notice was in sufficient detail to enable plaintiff to prepare a response. Bills required that the notice "must specify the triggering event, [but] it need not review all of the items in the inmate's prior record." Bills v. Henderson, supra at 1295. The decision to place an inmate in administrative segregation, unlike the punitive segregation at issue in Wolff, can be based on an inmate's overall prison record. As noted in Bills, it does indeed seem unduly burdensome to require prison officials to provide the inmate with a detailed list of prior offenses that the Security Classification Committee may be considering at his administrative segregation hearing. The fact that the notice to Simon did not inform him that "other reports" would be considered does not render it constitutionally defective.

However, the Court in Wolff warned that investigations made after the initial notice may reshape the nature of the charges and evidence relied upon. Stanton's report of Simon's threat to a guard occurred after the notice was given to plaintiff and he first learned of it at his March 6 hearing. Plaintiff therefore was unable to investigate her accusation in order to defend himself at his segregation hearing. He could do no more than baldly deny that he had threatened her. This appears to this Court to be exactly the reshaping of evidence and charges feared by the Court in Wolff. Stanton's report to the guard was not merely part of plaintiff's prior record at the institution; it was an additional, serious charge, intimately related to the issues to be considered by the Security Classification Committee. Because he did not know of the charge, plaintiff was denied the opportunity to marshal facts in his defense. The Court concludes that the omission of the threat report rendered the notice of the intent defective because it did not notify plaintiff of the reasons he was being considered for administrative segregation in

sufficient detail to enable him to prepare a defense.

Although the post-hearing statement provided to plaintiff did not specify which category of Administrative Rule 791.4405(1) the Security Classification Committee decided warranted placing him in administrative segregation, it did provide him with a summary of reasons for his transfer sufficient to meet constitutional muster. Wolff and Wright require a statement of the reasons for the transfer and the evidence relied on to protect the inmate against later misunderstanding of the nature of the proceeding. Wolff v. McDonnell, supra at 565. Bills adds that a statement of the reasons behind the transfer will assist the inmate to modify his behavior in the future and therefore remain in the general population. Bills v. Henderson, supra at 1296. Bills further held that it is not necessary to provide an inmate with a summary of the evidence. Id. However, the post-hearing statement given to plaintiff did mention several specific items of evidence relied on in making the segregation decision, e.e., Connie Stanton's misconduct report and her report of Simon's threat to "get" her. Thus, it is clear that the reason for the decision to segregate Simon was his offensive sexual contacts with Stanton. The Court is satisfied that the post-hearing statement adequately described the reasons for the segregation decision to fulfill the purpose of protecting plaintiff from future misunderstanding of the nature of the hearing and to provide him with guidance for future behavior.

Administrative Rule 791.4405 (2) permits an inmate to be held in administrative segregation for four days pending a hearing by order of the institution head or at the inmate's own request. The Michigan Department of Corrections Procedures for SPSM permit the "regional administrator or his surrogate" to authorize temporary administrative custody pending a formal hearing. OP-SMI-30.31. As Assistant Deputy Warden in charge of security, defendant Sholes made the decision to place plaintiff in administrative segregation on February 16, 1979

in the absence of his superiors, Deputy Warden William Grant and Regional Administrator Charles Anderson. This Court is satisfied that defendant Sholes had the authority to place Simon in segregation temporarily for four workdays pending his administrative segregation hearing. Plaintiff was given a hearing on February 21, 1979 within four workdays after he was placed in administrative segregation. However, Sholes and Jamrog "adjourned" the hearing until they could gather more information and plaintiff remained in segregation until his hearing was "reconvened" on March 6, 1979.

Defendants do not direct the Court to any provision in the prison regulations or caselaw that permits prison officials to temporarily hold an inmate in administrative segregation more than four workdays pending a hearing to impose administrative segregation. Wright v. Enomoto, supra required that an inmate be given a hearing within 72 hours of placement in administrative segregation unless he requests, in writing, additional time to prepare his defense. Michigan's four day limitation does not so far exceed Wright to be unreasonable. However, Simon was held in administrative segregation 13 days past the four workday limit before he was afforded a hearing that determined whether he should be reclassified and placed in administrative segregation. He did not request to remain in segregation or ask for more time to gather information. It was defendants who decided they needed more time. The Court concludes that retaining Simon in administrative segregation beyond the four workday limit without a hearing that determined his security classification was not authorized by prison procedures and violated plaintiff's constitutional rights to an adequate hearing prior to being placed in administrative segregation.

Having held that Simon's constitutional rights were violated, it remains for the Court to assess damages. Plaintiff requests compensatory and punitive damages. Punitive damages are not appropriate here. Defendants did not act with

actual knowledge that they were violating plaintiff's constitutional rights nor did their conduct amount to reckless disregard of whether they were violating his rights. See Adikes v. Cress & Co., 398 U.S. 144, 233 (1970) (Brennan concurring in part, dissenting in part); Cochetti v. Desmond, 572 F.2d 102, 105-07 (3d Cir. 1978).

Moving to the question of compensatory damages, the Court concludes that the decision of the Security Classification Committee on March 6, 1979 to place Simon in administrative segregation was justified, and would have been the same even if plaintiff had been given adequate notice. Simon clearly was a serious threat to the physical safety of Stanton within the meaning of Administrative Rule 791.4405(1). The Supreme Court in Carey v. Piphus, 435 U.S. 247 (1978) held that injury caused by a justified deprivation of rights is not compensable under §1983. Damages are not presumed to flow from every deprivation of procedural due process. Id. at 263-64. Awarding Simon damages for time spent in segregation because the hearing suffered from a procedural defect when the decision of the Committee was otherwise justified would yield a windfall recovery, a result that this Court would prefer to avoid. Of course, nominal damages are available for a denial of due process if compensatory damages are not warranted. Carey v. Piphus, supra at 254-67; U.S. ex rel. Tyrrell v. Speaker, 535 F.2d 823, 828-31 (ed Cir. 1976); Magnett v. Pelletier, 488 F.2d 33, 35 (1st Cir. 1973). Therefore, plaintiff will be awarded $1.00 nominal damages to signify that his right to adequate notice was technically invaded. Defendants will be held jointly and severally liable for this invasion.

Plaintiff suffered another violation of his constitutional rights besides inadequate notice of his administrative segregation hearing. Plaintiff spent 13 days, from February 22, 1979 to March 6, 1979 in administrative segregation in 5-West in violation of his right to due process.

Valuation of time spent in administrative segregation is a difficult task; plaintiff requests $25.00 for each day spent in 5-East and $50.00 for each day spent in 5-West. The Court concludes that the conditions of confinement in 5-West and 5-East are substantially similar and that $25.00 per day is a reasonable amount. Therefore, plaintiff will be awarded $325.00 for his 13 days of confinement in administrative segregation. See Mack v. Johnson, 430 F. Supp. 1139, 1150-51 (E.D. Pa. 1977) ($25.00/day for 30 days in segregation); United States ex rel. Neal v. Wolfe, 346 F. Supp. 569 (E.D. Pa. 1972) ($25.00/day for 16 days in solitary confinement); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970), rev'd in part, 442 F.2d 178 (2d Cir. 1971), cert. den. 404 U.S. 1049 (1972) ($25.00/day for 372 days in punitive segregation). Since it is undisputed that defendant Jamrog did not possess nor attempt to exercise the authority to keep Simon in temporary segregation past the four workday period, these damages will be assessed against defendant Sholes only.

For the reasons stated above, judgment will be entered for plaintiff. An appropriate order will be submitted.

RALPH M. FREEMAN
United States District Judge

Dated: June 5, 1981.