

**COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK**

GENERAL ORDER JAIL BUREAU	DATE OF ISSUE May 30, 2023	EFFECTIVE DATE May 30, 2023	No. 007-23
SUBJECT: GENERAL ORDER Incarcerated Individual Disciplinary Procedures		DISTRIBUTION Jail Bureau Personnel	AMENDS
REFERENCE: 9NYCRR PART 7006, 7031, 7032, 7075, 7076 & 7077) JBGO-058, JBGO-026 & JBGO-031			RESCINDS 007-19

Purpose: To familiarize members and employees with the policies and procedures governing the administration of Incarcerated Individual (II) discipline within the Monroe County Jail (MCJ) and the Andrew P. Meloni Star Academy (MSA).

Policy: The Monroe County Sheriff's Office (MCSO) will institute and maintain a system for administering incarcerated individual discipline, which provides reasonable regulation of incarcerated individual behavior through the fair and consistent enforcement of rules for incarcerated individual conduct; which ensures the humane treatment of incarcerated individuals and set standards of appropriate behavior, encourage self-control and punish misbehavior fairly, impartially and consistently. This system will protect the health, safety, and security of all persons within the facility, while promoting incarcerated individual welfare and correctional treatment through the demonstration of acceptable standards for behavior.

Definitions: Facility shall mean Monroe County Jail (MCJ) and the Andrew P. Meloni Star Academy (MSA)

Essential Service shall mean any right, service; item or article guaranteed an incarcerated individual by the provisions of the Minimum Standards and facility General Orders.

Segregation (Punitive Segregation) shall mean the involuntary confinement of an incarcerated individual to an individual occupancy housing unit, or to the sleeping area of a multiple occupancy housing unit, for any duration. Segregation shall not include such confinement during established sleep hours, confinement for purposes of medical or mental health treatment, confinement to a housing unit designated for classification purposes, confinement for the purpose of providing constant supervision, routine confinement necessary for a change of shift, conducting an incarcerated population count, or the provision of routine services, or temporary confinement necessary to quell a disturbance or incident.

Segregated Incarcerated Individual shall mean any incarcerated individual subject to segregation.

Administrative Segregation shall mean any segregation that does not constitute a disciplinary sanction, or segregation pending a disciplinary hearing.

Segregated Confinement shall mean the confinement of an incarcerated individual to an individual occupancy housing unit, in any form, for more than seventeen (17) hours a day, other than in a facility-wide emergency or for the purpose of providing medical or mental health (MH) treatment.

Special Population shall mean any incarcerated individual who is twenty-one (21) years of age or younger, fifty-five (55) years of age or older. An incarcerated individual with a disability. An incarcerated individual who is pregnant in the first (8) eight weeks of post-partum recovery period or caring for a child in the facility.

Residential Rehabilitation Unit (RRU) shall mean a separate housing unit used for therapy, treatment and rehabilitative programming of incarcerated individuals who have been determined to require more than (15) fifteen days of segregated confinement pursuant to facility proceedings.

Special Housing Unit (SHU) shall mean any incarcerated individual housing area or subdivision thereof, used principally for punitive or other Administrative Segregation.

Chief Administrative Officer (CAO) shall mean the highest-ranking facility official present during the time period in which a determination must be rendered.

Major Infraction shall mean conduct of an incarcerated individual that constitutes a violent felony act:

- A. Causing/Attempt to cause serious physical injury/death to another or making a threat of serious physical injury/death and such person has a history of such and MH determines strong likelihood they will do so.
- B. Compel or force another in a sexual act.
- C. Extorting by force/threat for property or money.
- D. Coercing another by force/threat to violate any rule.
- E. Leading, organizing or inciting a riot resulting in major property damage, a hostage or physical harm to another (intent).
- F. Procuring deadly weapons or dangerous contraband that causes a threat to the facility.
- G. Escape / attempted escape (intent).
- H. Committing a violent felony offense within the facility.

Minor Infraction shall mean any other infraction that does not fall under the definition of a major infraction.

Maximum Facility Capacity, Individual Occupancy Housing Unit, Multiple Occupancy Housing Unit, Medical Housing Unit, Dayroom Space and Sleeping Area shall each have the same meaning as provided in JBGO 066-Maximum Facility Capacity.

I. Standards for Incarcerated Individual Behavior

- A. The CAO has developed written rules of incarcerated individual conduct, which will be contained in the Incarcerated Individual Handbook. It will contain the following and will be used at both MCJ and MSA:
 - 1. All chargeable offenses;

2. The range of punishments that may be imposed for each violation, consistent with the seriousness of the conduct prohibited, and;
 3. A detailed description and an explanation of the facility's disciplinary procedures.
- B. Each incarcerated individual will be provided with a legible copy of the Incarcerated Individual Handbook during the admission process via the facility issued tablet. Non-English speaking and illiterate incarcerated individuals will be assisted with translation to understand the rules of incarcerated individual conduct.
- C. All incarcerated individuals will be required to acknowledge that they have been provided the handbook by signing their name on the Tablet Waiver Form (JB-454). The deputy issuing this form will also sign his/her full name and IBM# in the space provided.
- D. Staff will become thoroughly familiar with the Incarcerated Individual Handbook and what is expected of an incarcerated individual in custody, according to these regulations, and will enforce incarcerated individual compliance with jail/correctional facility rules.

II. Initiating Incarcerated Individual Disciplinary Proceedings

- A. When a staff member observes or has belief/information that an incarcerated individual has violated Jail Bureau rules and regulations or committed a criminal offense, she/he will notify their immediate supervisor and document the incident in the housing area's electronic log.
- B. The supervisor will determine if the misbehavior warrants an infraction or may be resolved informally (counseling, cooling off period in confinement). If the supervisor determines that formal correction is required, he/she will order an infraction and incident report. The Duty Sergeant will be notified. Report(s) will document the event fully and provide the following information and in accordance with JBGO 058-Incident Report.
1. Name of incarcerated individual infringed with misconduct.
 2. Date(s) and time(s) and location(s) of the incident/alleged activity and when reported;
 3. The reporting staff member's printed name and signature.
 4. Specific rule(s) or law(s) allegedly violated;
 5. A description of the alleged violation activity;
 6. Identification of witnesses, if any;
 7. Source(s) of the information provided, which, if confidential in nature, shall be listed on a separate Addendum Report (Categorized as a Restricted Distribution) to the hearing officer.
 8. Description of any force used.
 9. If applicable, the corrective action initiated or taken by staff.
- C. If two or more violations are involved, all may be incorporated in a single report, separately

stated within the incident report. Each violation will be considered by the hearing officer and disposed of separately.

- D. If more than one incarcerated individual is involved in any incident, the facts and circumstances surrounding each incarcerated individual's involvement shall be separately stated in the misbehavior report.
- E. The incarcerated individual charged with the violation shall be issued a copy of the incident report as soon as practicable, but in no event later than twenty-four (24) hours prior to a hearing based upon the incident giving rise to such report. The incarcerated individual will sign for and receive form JB-245A, Notification of Infraction Hearing Disposition, and a copy of the incident report.
- F. When an investigation is deemed necessary, the investigation shall be conducted by a staff member not involved in the incident. An investigation report will be submitted prior to any disciplinary hearing. Staff will be guided by provisions of **JBGO 054, Criminal Investigation of Incidents Occurring in MCJ/MSA**, in responding to and handling incidents involving the possibility of criminal charges
- G. The completed incident package will be submitted to the duty sergeant for review at the conclusion of the investigation.
- H. The duty sergeant/shift supervisor will review the incident package and note any further action(s) taken in the Sergeant Review. The entire report package will be routed up the chain-of-command to Jail Administration in a timely manner.
- I. The CAO or his/her designee will review all incident report packages and determine the appropriate action (i.e., Disciplinary Hearing, Further Investigation, Criminal review, Internal Affairs Review, Informal Resolution or No Further Action).
- J. A disciplinary hearing will be held for all infractions committed unless the infraction is dismissed by a supervisor within fifteen (15) business days. The incarcerated individual shall be given at least 24 hours prior written notice of the hearing. They may waive the twenty-four (24) hour waiting period by signing the waiver located on the Notification of Infraction in the presence of the hearing officer or a staff witness. This waiver will not require the disciplinary hearing be held within twenty-four (24) hours.

III. Conducting Incarcerated Individual Disciplinary Proceedings

- A. The CAO and/or his designee shall appoint one (1) or more impartial persons to serve as a hearing officer or as a member of a hearing panel. Prior to presiding over any hearings, a hearing officer shall undergo a minimum of thirty-seven (37) hours of training, with one additional day of training annually thereafter, on relevant topics, including but not limited to, the physical and psychological effects of segregated confinement, procedural and due process rights of the accused, and restorative justice remedies as provided in section 7006.8(b) of Title 9NYCRR.
- B. The incarcerated individual shall be present at the hearing unless the individual has waived his/her right to be present or the hearing officer has determined that the incarcerated individual's presence will jeopardize the safety, security, or good order of the facility. Anytime an incarcerated individual is not present for the hearing, a waiver of the right to be present shall be made in writing and signed by the incarcerated individual. Should the incarcerated individual refuse to sign, it will be so noted on the hearing record and the hearing officer will:

1. Document the reason(s) for the absence or exclusion of the incarcerated individual in the incarcerated individual statement section of the hearing.
 2. Conduct the hearing with all other pertinent provisions of this General Order. An incarcerated individual absence from proceedings will not be construed as an admission of guilt on his/her part.
 3. Document testimony from the facility MH provider, if an incarcerated individual is unable to participate in the hearing due to MH complications.
 4. Document testimony from the facility medical provider, if an incarcerated individual is unable to participate in the hearing due to mental health complications.
 5. Determine guilt or innocence based on facts presented during the hearing.
- C. The hearing officer will provide the incarcerated individual an opportunity to explain his/her behavior and any mitigating circumstances for it. In addition:
1. The incarcerated individual may call witnesses on his/her behalf and present evidence in his/her defense provided these items are relevant, not redundant and do not jeopardize the safety, security and good order of the facility. If permission to call a witness or introduce evidence is denied, the hearing officer will document such in the hearing record.
 2. If the hearing officer calls witnesses, the incarcerated individual may submit questions directed toward such witnesses to the hearing officer. The hearing officer shall pose such questions to the witness if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. The hearing officer may restate such question if it is unclear or in improper form. A hearing officer's determination that a particular question is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility shall be documented in the hearing record.

Note: If the hearing officer calls witnesses, the incarcerated individual may be excluded from the hearing during the interview of such witnesses. The contents of such interview shall be provided to the incarcerated individual, except for such information that, if provided, would jeopardize the safety, security, or good order of the facility.
 3. No charges other those contained in the incident report shall be presented during the course of the hearing. Any additional charges presented will be treated as new charges and subjected to the requirements of this General Order.
- D. The hearing officer will make his/her determination within five (5) business days after conclusion of the hearing and a copy of the determination shall be provided to the incarcerated individual. This determination must be supported by substantial evidence, be in writing, and contain the following:
1. A finding of guilt or innocence on each charge of misbehavior.
 2. The evidence relied upon by the hearing officer in reaching such finding.

3. The disciplinary action imposed, if any.

Disciplinary Sanctions

- A. If the charges are affirmed, the hearing officer may recommend imposition of one or more, of the disciplinary sanctions listed below based upon the incarcerated individual past record and the severity of offense.

1. Verbal reprimand.
2. Confinement to a cell, room or special housing unit. Confinement shall include 7-hours of out-of-cell time and follow JBGO-67-22, Inmate Confinement & Essential Service Deprivation.

Note: The facility will not use Segregated Confinement as a sanction. If the CAO determines that Segregated Confinement is necessary, refer to **JBGO-068, Segregated Confinement and Residential Rehabilitation Units**, regarding hearing representation.

3. Loss of up to one hour of weekly visitation for a specified period of time.
4. Loss of a specified amount of good time (specific to local sentences).
5. Loss of one or more specified privileges for a specific time period.
- * 6. Restitution for loss or damage of property made from existing or future funds in the incarcerated individuals commissary account. All moneys collected shall be deposited in the county general fund and not specifically allocated to the facility.
7. A surcharge not to exceed \$25.00 may be applied for each infraction. All moneys collected shall be deposited in the county general fund and not specifically allocated to the facility. Any surcharge will be deducted from the incarcerated individual's commissary account. If there is insufficient funds in the account, a debit will be placed on the account and remain there until the debt is paid.
8. Loss of good time if locally sentenced.

Note: The hearing officer may suspend a sanction for a period of up to thirty (30) days in order to assess the behavioral adjustment of the incarcerated individual. At the conclusion of this period, the hearing officer will determine if the sanction shall commence in whole or in part or be suspended in whole or in part.

- B. The CAO and/or designee will review and approve all hearing disposition recommendations. He/she may reduce the recommended sanction or dismiss the charge(s) in the interest of justice.
- C. As soon as possible after conclusion of the hearing, the hearing officer will inform the incarcerated individual of the disposition by forwarding him/her form **JB-245A Notification of Infraction Hearing Disposition**. If the disposition will necessitate action by a housing area or a program area supervisor, (i.e., Incarcerated Individual Visitation), the affected area supervisor will be provided with a copy of the disposition form. In such instances, information relating to restrictions, loss of privileges, or any other action taken in accordance with the

infraction disposition will be recorded in the housing/program area logbook. The incarcerated individual will receive a copy of the Hearing Officer Statement attached to the JB-245A form.

- D. The bottom portion of the Notification of Infraction Hearing Disposition will be signed and dated by the staff member delivering the notification to the incarcerated individual. The incarcerated individual will sign to acknowledge receipt of the disposition. The signed copies will be forwarded to Jail Administration for placement in the incarcerated individuals file. A copy of the hearing disposition will be maintained by the housing area and a copy will be issued to the incarcerated individual.
- E. Confidential Informants
 - 1. It will be the responsibility of the hearing officer to use information from the confidential informant and verify the credibility.
 - 2. Information from the confidential informant will be documented, but not distributed to any incarcerated individual for the safety and security of the confidential informant.

IV. Assistance to Incarcerated Individuals

- A. If an incarcerated individual is non-English speaking, illiterate or for any other reason is unable to prepare a defense, assistance will be provided to the incarcerated individual by a person designated by the CAO and/or designee at least twenty-four (24) hours prior to the incarcerated individuals disciplinary hearing. Such assistance shall include:
 - 1. Interviewing witnesses;
 - 2. Obtaining evidence and/or written statements.
 - 3. Providing assistance at the disciplinary hearing.
 - 4. Providing assistance understanding administrative segregation decisions
 - 5. Providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken;
 - 6. Providing assistance understanding the waiver of any rights provided by this General Order and 9 NYCRR Part 7006, and
 - 7. Providing assistance in filing an appeal.
- B. The CAO and/or designee may limit the number of witnesses interviewed and the evidence and/or written statements obtained where it is determined that such witnesses, evidence and/or statements are irrelevant or redundant. This determination will be documented in the hearing record.

V. Loss of Good Time

- A. If the infraction disposition involves any loss of good time, the hearing officer will forward a Loss of Good Time Report to Jail records to recalculate a new out-date for the incarcerated individual.
- B. The Notification of Hearing Disposition will reflect the adjusted outdate prior to being issued

to the incarcerated individual.

- C. Any incarcerated individual who loses good time may petition the CAO for the restoration of the time. This will be done by completing form **JB-351 Request for Good Time Restoration** up to fourteen (14) calendar days before his/her original release date.
- D. The facility will not operate an RRU unless the CAO makes the determination to do so, and loss of good time, relating to RRU Admission, will be done so in accordance with **JBGO-068, Segregated Confinement & Residential Rehabilitation Units**.

VI. Incarcerated Individual Appeals Process

- A. An incarcerated individual may appeal the hearing officer's disposition and any sanction imposed to the CAO by submitting a **JB-235 Internal Communication Form** within two (2) business days of being served with the disposition. All appeals shall be decided within five (5) business days after receipt and the incarcerated individual shall be notified in writing of the decision. The CAO may reduce or suspend all or part of the sanction, but not increase it.
- B. Pursuant to 9NYCRR Part 7032.2, dispositions and sanctions resulting from disciplinary hearings shall not be the subject of a grievance to the New York State Commission of Correction.

VII. Infraction Record-keeping

- A. A chronological log of infraction hearings will be maintained at MCJ/MSA. Every infraction written will be recorded in this log, to include the following information:
 - 1. The incident report and investigation if necessary.
 - 2. A completed hearing disposition detailing the sanctions imposed.
 - 3. Any appeals documents.

Note: Records generated pursuant to a disciplinary hearing in which an incarcerated individual is found not guilty of charges brought against him/her, after either the hearing or an appeal, will be kept confidential and will not be considered in making decisions pertaining to the incarcerated individual participation in programs, services, or local conditional release, or in the granting or withholding of good behavior credits.

- B. At the conclusion of the disciplinary process, the completed incident package and infraction hearing paperwork, along with all documentary evidence, will be placed in the incarcerated individuals file maintained in the Jail Administration Office.

VIII. Incarcerated Individual Confinement in Administrative Segregation Pending Disciplinary Hearings

- A. An incarcerated individual who threatens the safety, security and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing, and may be retained in administrative segregation until the completion of the disciplinary process. An administratively segregated incarcerated individual will only be confined in special housing upon a determination the incarcerated individual's presence in the facility's general housing would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individual, and/or the facility; or would present an unreasonable risk of escape.

Any such determination shall be made by the CAO in writing, and shall state the specific facts and reasons underlying the determination.

1. No Administratively Segregated incarcerated individual will be held in Segregated Confinement pending a disciplinary hearing, unless the CAO makes the determination to do so in accordance with JBG0-068.
2. All Administratively Segregated incarcerated individuals will be provided 7 hours of out-of-cell time in accordance with JBG0-68.
3. Within twenty-four (24) hours of such confinement, the incarcerated individual will be provided with a written statement **JB-153 Notification of Confinement** setting forth the reason(s) for such confinement. The staff member issuing the Notification of Confinement will document the time the notification was issued in the housing area log and on **JB-152 Incident Report Cover Sheet**.
4. Upon receipt of the Notification of Confinement, the incarcerated individual will be provided with an opportunity to respond to such statement orally or in writing to the CAO or designee. Should the incarcerated individual provide an oral statement, such statement will be fully documented by staff in a Special Report and forwarded to the CAO in a timely manner.
5. The CAO or designee will review the administrative confinement within twenty-four (24) hours to determine if continued confinement is warranted and document this on the **JB-153 Notification of Confinement**. If continued confinement is warranted, a space for comments will be used detailing the reason.
6. The CAO or his/her designee, along with clinical and rehabilitative staff, will review each administratively segregated, and all segregated incarcerated individuals on intervals not to exceed seven (7) days.

Note: The above requirements for written/verbal notification and administrative review shall not apply in cases where administrative segregation is ordered for the safety, security and good order of the facility. This period of confinement is not to exceed twenty-four (24) hours (i.e., cooling off, pending investigation, classification review, etc.).

IX. Corporal Punishment

Corporal punishment of any nature is strictly prohibited. No member or employee shall inflict any type of physical force whatsoever, upon any incarcerated individual, as a form of punishment. Only force authorized by law will be utilized within the jail/correctional facility.

By Order of the Sheriff,



Todd K. Baxter