Inter-Office
MEMORANDUM

DEPARTMENT OF PUBLIC SAFETY

No. _____

Suspense: _____

June 24, 2015

TO: ALL CONCERNED

FROM: Nolan P. Espinda, Director

SUBJECT: AMENDMENTS TO COR.13.03 ADJUSTMENT PROCEDURES GOVERNING SERIOUS MISCONDUCT VIOLATIONS AND THE ADJUSTMENT OF MINOR MISCONDUCT VIOLATION

The following are the significant changes to COR.13.03, effective June 25, 2015:

1) Definition of Adjustment Hearings Officer, due to the change to allow a one (1) person adjustment hearing.
2) Increased the timeframe for the adjustment process from thirty (30) days to a firmly set forty-five (45) days. An exception to this requirement was added for stayed or tolled periods.
3) Added language that criminal complaint should be filed if there is a corresponding HRS Criminal Offense.
4) Amendments to Misconduct Violations.
    a. 6 (18) for community based furlough program inmates requires authorization from the IDA.*
    b. 7 (9) removed exception for community based furlough program.
    c. 7 (15) for community based furlough program inmates requires authorization from the IDA.*
    d. 7 (16) added the application of 3 or more deviations.
    e. 7 (18) added consensual sexual acts to high category. This required numerical changes to the high category numerical sequence from 7 (19).
    f. 8 (1) deleted consensual sexual acts by moving it to the high category and left horseplay of a sexual nature. This required numerical changes to the moderate category from 8 (21), deleted drug exception for community based furlough program.
    g. 8(22) changed to no more than two deviations in a six month period.
    h. Changed the low moderate numerical sequence from 9 (4), due to the deletion of the charge related to malingering or feigning illness.
5) Other minor grammar changes.

If you required any clarification, please contact Shelley Nobriga at 808-587-1415 or shelley.d.nobriga@hawaii.gov.

*Request for authorization must include: 1) all reports submitted; 2) a thorough justification explaining why the alleged misconduct rises to a High or Greatest category; and 3) a summary of the inmate's programming and misconduct record, while in the Community Based program.

	DEPARTMENT OF PUBLIC SAFETY CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: June 25, 2015	POLICY NO.: COR.13.03
		SUPERSEDES (Policy No. & Date): COR.13.03, effective 11/28/14	
	SUBJECT: ADJUSTMENT PROCEDURES GOVERNING SERIOUS MISCONDUCT VIOLATIONS AND THE ADJUSTMENT OF MINOR MISCONDUCT VIOLATIONS		Page 1 of 22

1.0 PURPOSE

To provide guidelines and procedures for adjustment of misconducts for rule/directive violations.

2.0 REFERENCES AND DEFINITIONS

.1 References

a. Section 26-14.6, Department of Public Safety; and Section 353C-2 of Hawaii Revised Statutes, Director of Public Safety, Powers and Duties.

b. Standards for Adult Correctional Institutions (4th Edition), American Correctional Association, Part 3, Section C, Rules and Discipline.

c. Department of Public Safety, Policy and Procedures, COR.10.1E.09: Segregated Inmates.

d. Department of Public Safety, Policy and Procedures, COR.11.01: Administrative Segregation and Disciplinary Segregation.

e. Department of Public Safety, Policy and Procedures, COR.13.02: Adjustment Committee Composition was rescinded effective November 28, 2014.

f. United Public Workers and State of Hawaii, Department of Public Safety, Stipulated Arbitration Award: Class Grievance on ACO Participation on Inmate Adjustment Committees (December 23, 1993).

.2 Definitions

a. Adjustment Hearings Officer: A staff member who is not biased against the inmate/detainee and who will ensure that impartial and professional hearings are conducted in a manner that recognizes the importance of due process. In serious misconducts this person is identified as the adjustment hearings officer and in minor misconducts this person is identified as hearings officer.

b. Administrative Segregation: Inmates may be segregated on a temporary basis from the general inmate population on the order of a watch commander or higher authority, when their continued presence in general population

presents an immediate threat to the safety of self or others, jeopardizes the integrity of an investigation of alleged serious misconduct or criminal activity, or endangers institutional security. The terminology "administrative segregation" is not applicable to general population maximum custody or general population protective custody inmates housed in a segregation unit.

c. Counsel Substitute: A staff member who did not actively participate in the process by which the inmate/detainee was brought before the Adjustment Hearings Officer. Counsel substitute is necessary when it is apparent that an inmate/detainee is not capable (i.e. mentally deficient, unable to read or write, deaf, blind, etc.) of collecting and presenting evidence effectively on his or her behalf. Pursuant to departmental policy COR.12.08.

d. Directives: Departmental, facility, and residency unit policies, procedures, orders, memoranda, and other administrative directions for conduct and process. Directives are often informally called "rules."

e. Disciplinary Segregation: Placement of an inmate/detainee in a designated segregation housing unit in a cell separated from the general population, after being found guilty of a misconduct violation and issued a sanction by the Adjustment Hearings Officer through a formal process. Disciplinary segregation includes the loss of certain privileges consistent with PSD policy and as authorized by the Warden or his designee.

f. Fighting: A mutual affray, altercation, or physical struggle by two or more inmates/detainees. If the evidence shows that one inmate/detainee acted in self-defense throughout the whole incident, then this inmate/detainee is not guilty of fighting.

g. Minor Misconduct Adjustment (Informal Adjustment Process): The resolution of minor infractions of a conduct rule or directive between the inmate/detainee and a staff member, other than the one who reports the infraction, through a process which enables appropriate sanctions for minor infractions and enables prompt and fair disposition of minor offenses.

h. Minor Rule or Directive Violation (Informal Hearings Officer): A misconduct that poses no serious threat to safety, security, or welfare of the staff, other inmates/detainees, or the institution. Any violation of low moderate category (9) misconduct handled by the informal adjustment process shall be considered a minor violation.

i. Privileges: A right, benefit, or permission granted by a Warden or his designee, such as visitation, personal phone calls, personal correspondence, access to commissary, community recreation, etc. Pursuant to COR.15.02.

j. Security Threat Group (STG): Two (2) or more individuals having the same identifying name, tattoo, common interest, or disruptive behavior, who engage in illegal activities, which poses a threat to the good government or security of the facility. Including but not limited to, gangs and disruptive/deviant groups or individuals.

k. Serious Misconduct: A serious rule violation in the moderate or above category misconduct, which are considered to pose a serious threat to the safety, security or welfare of the staff, other inmates/detainees, or the institution, and subjects the inmate/detainee to the imposition of serious penalties such as segregation for longer than four (4) hours.

m. Serious Misconduct Adjustment (Formal Adjustment Hearings Officer): A serious misconduct shall be addressed through the formal Adjustment Hearings Officer process. A serious misconduct is a charge that ranges from a greatest category (6) to moderate category (8) misconduct charge.

n. Threatening: A communicated intent to inflict physical or other harm on any person or on property.

o. Violation or Misconduct: Breaking, or failing to follow, laws, rules, policies and procedures, or other directives, whether willfully or unintentionally, knowingly or unknowingly.

3.0 POLICY

.1 Behavior which is, or appears to be, a violation of a misconduct must be reported and brought to the attention of the appropriate authorities. Any employee who witnesses, or has a reasonable belief of, an occurrence of a violation or misconduct shall prepare an Incident Report Form, DOC 8214 (see attachment).

.2 Nothing in this policy and procedure relieves any staff member(s) from their responsibility to direct and correct day-to-day behavior of an inmate/detainee in the attempt to prevent the occurrence of misconduct.

.3 The Department shall have a system of inmate discipline that serves to protect the public, inmates, staff, and maintains order in the facility, through the impartial application of a set of rules and regulations and a hearing procedure that incorporates due process requirements.

.4 The adjustment process tailors sanctions for a specific rule violation or misconduct to the seriousness of the violation or misconduct and the inmate's institutional adjustment and recommended program needs. The goal is to maintain facility order and ensure respect for the rules and the rights of others.

.5 To ensure the integrity of the adjustment process and the constitutional right of due process, inmates/detainees charged with misconducts shall receive a hearing with the disposition finalized inclusive of the signature and date of the Adjustment Hearings Officer entered within forty-five (45) days of the facility administration being notified of a misconduct violation committed by the inmate/detainee.

.6 The forty-five (45) day time frame may be "stayed or tolled" if any inmate leaves the facility due to a release or transfer to a non-PSD facility. This includes but shall not be limited to movement to the Hawaii State Hospital, Court on another island, or contracted facility.

.7 Any misconduct violation with a corresponding Hawaii Revise Statutes Criminal Offense should be referred for the filing of a criminal complaint and prosecuted at the discretion of the relevant authority.

4.0 MISCONDUCT RULE VIOLATIONS AND SANCTIONS

.1 The following is a list of misconduct violations. Misconduct violations can be categorized as serious misconducts and/or minor violations. In the event that an inmate/detainee is charged with a minor misconduct violation concurrently with a serious misconduct, then the serious misconduct adjustment procedures shall be initiated.

.2 Greatest Misconduct Violations (6).

a. 6 (1) Sexual Assault or Sexual Abuse of another inmate/detainee, staff member, contractor, volunteer or visitor.
6 (2) Homicide.
6 (3) Assaulting any person, with or without a dangerous instrument, causing bodily injury.

6 (4) The use of force on, or threats to, a correctional worker or the worker's family.

6 (5) Escape:
(A) From closed confinement, with or without threat of violence;
(B) From an open facility or program involving the use of violence or threat of violence.

6 (6) Setting a fire.

6 (7) Destroying, altering or damaging government property or the property of another person resulting in damage of $1,000 or more, or damage to irreplaceable documents.

6 (8) Adulteration of any food or drink, that results in serious bodily injury or death.

6 (9) Possession, introduction or manufacture of explosives or ammunition.

6 (10) Possession, introduction or manufacture of any firearm, weapon, sharpened instrument, knife or other dangerous instrument.

6 (11) Rioting.

6 (12) Encouraging others to riot.

6 (13) The use of force or violence resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant, which requires facts related to the conduct and does not require that the conduct was an intentional act.

6 (14) Possession, tampering, compromising or manufacturing of any security equipment or locking mechanism, such as, but not limited, to handcuffs, handcuff keys, or any tool designed to lock or unlock any type of locking mechanism.

6 (15) Throwing or attempting to throw feces, urine, blood, or other types of bodily fluids (including spitting) at or on staff.

6 (16) Attempting, tampering, or obstructing the lawful collection of a urine sample.

6 (17) Extortion, blackmail, protection, or demanding or receiving anything of value (goods, services, or money directly or indirectly) in return for protection against others, to avoid bodily harm, or under threat of informing.

6 (18) Possession of electronics by an inmate/detainee not authorized for purchase through regular institutional channels. (Cell phones, PDA's, computers, two-way radios, GPS, CD players, MP3s, digital devices, e-cigarettes, vapor devices, etc.) This does not apply to inmates in a community based furlough program, unless authorized by the Institutions Division Administrator (IDA).

6 (19) Any act of vandalism that specifically includes STG specific phrases, signs, or symbols, including STG related tattooing or possession of tattooing tool/implements for STG related purposes.

6 (20) Any act of recruiting or participating in the initiation process of prospective STG members and/or participating in any event that can be determined to be STG related, including but not limited to fights, assaults, work stoppage, etc.

6 (21) The use of physical interference or obstacle to an investigation, including refusal to cooperate with an ongoing investigation and/or lying during the course of the ongoing investigation that results in the obstruction, hinderance, or impairment of the investigation.

6 (22) Any lesser and reasonably included offense of the acts in paragraph (1) to (21).

6 (23) Any other criminal act which the Hawaii Penal Code classifies as a class A felony.

b. Sanctions that may be imposed as punishment for acts listed above shall include one or more of the following:

1) Disciplinary segregation for up to sixty (60) days.

2) Any sanctions other than disciplinary segregation.

.3 High Misconduct Violations (7).

a. 7 (1) Fighting with another person.

7 (2) Threatening another person, other than a correctional worker, with bodily harm, or with any other offense against the person or the person's property.

7 (3) Assaulting any person without a weapon or dangerous instrument.

7 (4) Escape from an open institution or program, conditional release center, work release center or work release furlough, which does not involve the use or threat of violence.

7 (5) Attempting, planning, aiding or abetting an escape, including creating or possessing a dummy or dummy-like object.

7 (6) Destroying, altering or damaging government property or the property of another person resulting in damages between $500-$999.99.

7 (7) Adulteration of any food or drink, which could or does result in bodily injury or sickness.

7 (8) Possession of an unauthorized tool.

7 (9) Possession, introduction, manufacturing or use of any narcotic paraphernalia, drugs, intoxicants, synthetic drug composition or alcoholic beverages not prescribed for the individual by the medical staff, which includes any form of being intoxicated.

7 (10) Possession of any staff member's clothing or equipment.

7 (11) Encouraging or inciting others to refuse to work or to participate in work stoppage.

7 (12) The use of physical interference or obstacle resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant, which requires facts related to the conduct and does not require that the conduct was an intentional act.

7 (13) Giving or offering any public official, contractor, volunteer, visitor, or staff member a bribe.

7 (14) Flooding, plugging, or attempting to flood or plug an apparatus, which causes a potentially unsanitary or unsafe environment.

7 (15) Possession, introduction, or use of any tobacco/nicotine, tobacco/nicotine product, or tobacco/nicotine paraphernalia. This does not apply to inmates in a community based furlough program, unless authorized by the Institutions Division Administrator (IDA).

7 (16) Any deviation from the following: date of validity, time expiration, destination, and purpose/intent of any furlough pass resulting in additional misconduct violations, the filing of a criminal complaint, or three (3) or more deviations within a six (6) month period.

7 (17) Creation, distribution, or possession of STG paraphernalia.

7 (18) Sexual harassment based on unwelcomed sexual advances, request for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature towards another inmate/detainee, staff member, contractor, visitor, or volunteer.

7 (19) Engaging in consensual sexual acts or similar conduct with another inmate/detainee.

7 (20) Any lesser and reasonably included offense of paragraphs (1) to (19).

7 (21) Any other criminal act which the Hawaii Penal Code classifies as a class B felony.

b. Sanctions that may be imposed as punishment for acts listed above shall include one or more of the following:

1) Disciplinary segregation for up to thirty (30) days.

2) Any sanction other than disciplinary segregation.

.4 Moderate Misconduct Violations (8).

a. 8 (1) Engaging in horseplay of a sexual nature with another inmate/detainee.
8 (2) Using abusive or obscene language to a staff member, contractor, visitor, or volunteer.
8 (3) Indecent exposure.
8 (4) Wearing a disguise or a mask.
8 (5) Destroying, altering or damaging government property or the property of another person resulting in damages between $50-$499.99.
8 (6) Theft.
8 (7) Misuse of authorized medication.
8 (8) Possession of unauthorized money or currency.
8 (9) Loaning of property or anything of value for profit or increased return.
8 (10) Possession of anything not authorized for retention or receipt by the inmate/detainee and not issued to the inmate/detainee through regular institutional channels.
8 (11) Refusing to obey an order of any staff member, which may include a failure to comply with violations in the low moderate category.
8 (12) Failing to perform work as instructed by a staff member.
8 (13) Lying or providing false statements, information, or documents to a staff member, government official, or member of the public.
8 (14) Counterfeiting or unauthorized reproduction of any document, article, or identification, money, security, or official paper.
8 (15) Participating in an unauthorized meeting or gathering.
8 (16) Being in an unauthorized area.
8 (17) Failing to stand count or interfering with the taking of count.
8 (18) Gambling, preparing or conducting a gambling pool, or possession of gambling paraphernalia.
8 (19) Unauthorized contacts with the public or other inmates/detainees.
8 (20) Giving money or anything of value to or accepting money or anything of value from an inmate/detainee, a member of the inmate's/detainee's family or friend.
8 (21) Possession or introduction of any tobacco/nicotine product, electronic cigarette, or electronic devices within a community based furlough program by an inmate.
8 (22) No more than two (2) deviations from the following: date of validity, time expiration, destination, and purpose/intent of any furlough pass within a six (6) month period not resulting in additional misconduct violations or the filing of a criminal complaint.

8 (23) Tattooing or self-mutilation, or possession of tattooing tools/implements.
8 (24) Harassment of employees.
8 (25) Any lesser and reasonably included offense of paragraphs (1) to (24)
8 (26) Any other criminal act which the Hawaii Penal Code classifies as a class C felony and misdemeanor.

b. Sanctions that may be imposed as punishment for acts listed above shall include one or more of the following:

1) Disciplinary segregation for up to fourteen (14) days.

2) Any other sanction other than disciplinary segregation.

.5 Low Moderate Misconduct Violations (9).

a. 9 (1) Destroying, altering or damaging government property or the property of another person resulting in damages less than $50.
9 (2) Possession of property belonging to another person.
9 (3) Possession of unauthorized clothing.
9 (4) Using abusive or obscene language to a staff member, contractor or volunteer (informal adjustment process only).
9 (5) Unauthorized use of mail or telephone.
9 (6) Correspondence or conduct with a visitor in violation of rules.
9 (7) Violating a condition of any community release or furlough program.
9 (8) Unexcused absence from work, or other authorized assignment.
9 (9) Failure to follow safety or sanitary rules.
9 (10) Using any equipment or machinery not specifically authorized, or contrary to instructions or posted safety standards.
9 (11) Being unsanitary or untidy; failing to keep one's person and one's quarter in accordance with posted safety standards.
9 (12) A minor deviation from the following: date of validity, time expiration, destination, and purpose/intent of any furlough pass (no prior incidents in six (6) months) not resulting in additional misconduct violations.
9 (13) Any lesser and reasonably included offense of paragraphs (1) to (12).
9 (14) Any other criminal act which the Hawaii Penal Code classifies as a petty misdemeanor or violation.

b. Sanctions that may be imposed as punishment for acts listed above shall include one or more of the following:

1) Four (4) hours or less of general population controlled in cell time, which is not considered disciplinary segregation.

2) Monetary restitution.

3) Loss of privileges (i.e., community recreation, commissary, snacks, personal visits, personal correspondence, personal phone calls for no longer than fifteen (15) days.)

4) Impound inmate's/detainee's personal property.

5) Extra duty.

6) Reprimand.

7) Any sanction other than disciplinary segregation.

.6 Attempting to commit any of the above acts, aiding another person to commit any of the above acts and conspiring to commit any of the above acts shall be considered the same as a commission of the act itself.

5.0 PROCEDURES FOR SERIOUS MISCONDUCTS

.1 The Warden or his/her designee shall appoint and assign a staff member (one person) as the hearings officer for the adjustment hearing, who is impartial and professional as a means to ensure that the hearing is conducted in a manner that recognizes the importance of due process.

.2 The Adjustment Hearings Officer shall not include any person who investigated the incident, determined or prepared the violation or charges, or anyone who was directly involved in the incident leading to the alleged violation

.3 The Adjustment Hearings Officer may be a Major, Captain, Lieutenant, Non-uniform Corrections Supervisor, and a counselor/case manager.

.4 Adjustment Hearings Officer

a. The Adjustment Hearings Officer ensures compliance with all procedural requirements listed in the Departmental Policies and Procedures governing the adjustment hearings process utilizing a tone of respect and professional decorum during the hearing.

b. The Adjustment Hearings Officer shall review all misconducts reported on an Incident Report Form, DOC 8214 and investigations to determine if the evidence can substantiate the charge(s) and if an adjustment hearing is warranted.

c. If the misconduct report or investigation does not appear complete, the Adjustment Hearings Officer can forward the misconduct for further investigation through the appropriate chain of authority.

d. The Adjustment Hearings Officer will review all evidence presented at the hearing and make a determination about an inmate's/detainee's guilt or innocence.

e. The Adjustment Hearings Officer may rely on any form of evidence, documentary or testimonial that it believes is reliable. Formal rules of evidence shall not apply (i.e. Hawaii Rules of Evidence or the Federal Rules of Evidence).

.5 Upon receipt of an Incident Report Form, DOC 8214, the Warden or his/her designee shall have a staff member conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the inmate/detainee committed the misconduct.

If the investigator/staff member finds sufficient cause to believe that a misconduct violation has occurred, the adjudication procedures may be initiated. If the investigator/staff member has included a minor misconduct violation with a serious misconduct violation, then the serious misconduct adjustment procedures shall be initiated.

.6 Notice

a. The inmate/detainee shall receive prior notice that an adjustment committee hearing will be held regarding the inmate/detainee.

b. Within a reasonable time, not less that twenty-four (24) hours before the hearing, the charged inmate/detainee shall be served with written notice of the time and place of the adjustment committee hearing, what the specific charges are, including a brief notation of the facts on DOC 8210A. If the inmate/detainee waives twenty-four (24) hours notice, the waiver shall be reduced to writing and signed by the inmate/detainee on DOC 8210A.

c. The inmate/detainee or counsel substitute shall have the opportunity to review all relevant non-confidential reports of the misconduct during the period between the notice and the hearing. If an inmate/detainee submits a written request for copies of the non-confidential reports, then the inmate/detainee will be charged the cost of copying and his/her inmate trust account will be debited.

d. The misconduct report should contain the following:

1) The specific rule violated.

2) The facts supporting the charge.

3) Any unusual inmate/detainee behavior.

4) Any staff or inmate/detainee witnesses; the disposition of any physical evidence.

5) Any immediate action taken.

.7 Hearing

a. The inmate/detainee has a right to appear at the adjustment hearing, except where institutional safety or the good government of the facility would be jeopardized. If the individual is excluded from the hearing, the reasons shall be noted in the adjustment committee's disposition and on the Facility Adjustment Hearing Script (PSD 8291). If the inmate/detainee declines to attend the hearing, it shall be held regardless of the inmate's/detainee's absence.

b. The Adjustment Hearings Officer shall explain the reason for the hearing and the nature of the charge(s) against the inmate/detainee. The inmate/detainee shall plead guilty or not guilty to the charges; however, a failure to enter a plea shall be accepted as a plea of not guilty.

1) A plea of guilty does not eliminate the need to consider other evidence against the inmate/detainee, who shall then be given an opportunity to explain the actions or offer evidence of mitigation.

2) A plea of not guilty necessitates the consideration of evidence against the inmate/detainee.

c. The inmate/detainee shall be advised of the right to remain silent, but that silence may be used as a permissible inference of guilt. An inmate/detainee cannot be compelled to testify against oneself without the granting of immunity and may not be required to waive that immunity.

d. The inmate/detainee shall be advised that criminal charges may be pursued, if warranted by the offense.

e. Formal rules of evidence shall not apply (i.e. Hawaii Rules of Evidence or the Federal Rules of Evidence). The Adjustment Hearings Officer may rely on any form of evidence, documentary, or testimonial, which it believes is reliable.

f. Confrontation and cross-examination is at the discretion of the Adjustment Hearings Officer.

1) The inmate/detainee may be given privileges to confront and cross-examine adverse witnesses.

2) The Adjustment Hearings Officer may deny the confrontation, cross-examination, and/or the identification of adverse witnesses, if in its judgment such a confrontation would:

a) Subject the witness to potential reprisal;

b) Jeopardize the security or good government of the facility;

c) Be unduly hazardous to the facility's safety or correctional goals; or

d) Otherwise reasonably appear to be impractical or unwarranted.

3) If confrontation, cross examination, and/or identification of adverse witnesses are denied, the committee shall enter it in their written

disposition, and on the Facility Adjustment Hearing Script (PSD 8291), and provide an explanation for the denial to the inmate/detainee.

4) The inmate/detainee may be given an oral or written summary of the confidential evidence against the inmate/detainee and provided with an opportunity to respond.

g. The inmate/detainee shall be given an opportunity to respond to evidence against the inmate/detainee, explain the alleged misconduct, or offer evidence of mitigation.

1) The inmate/detainee may be permitted to call witnesses and present evidence in his/her defense as long as it will not be unduly hazardous to institutional safety or correctional goals.

2) The Adjustment Hearings Officer may deny the inmate's/detainee's calling of certain witnesses or presentation of certain evidence, after being given an offer of proof as to the nature of the evidence, for reasons such as:

a) Irrelevance;

b) Lack of necessity;

c) The hazards presented in the inmate's/detainee's case; or

d) Any other justifiable reason.

3) The Adjustment Hearings Officer shall notate the justification for denying the inmate's/detainee's request for witnesses in their disposition and on the Facility Adjustment Hearing Script (PSD 8291).

4) The Adjustment Hearings Officer may keep the hearing within reasonable limits and refuse the presentation of evidence or the calling of witnesses, while keeping in mind the right of the inmate/detainee to be heard. The Adjustment Hearings Officer shall state the reason for the refusal in their disposition and on the Facility Adjustment Hearing Script (PSD 8291).

h. An inmate/detainee shall be permitted to employ counsel substitute as defined by COR.12.08, by submitting a written request to the Warden. An inmate/detainee, who is not capable of collecting and presenting evidence effectively on his/her behalf, should have substitute counsel appointed.

A counsel substitute shall be a member of the facility staff, who did not actively participate in the misconduct or adjustment process for which the inmate/detainee was brought before the committee.

i. Inmates/detainees shall not have the right to be represented by legal counsel before an Adjustment Hearings Officer.

.8 Disposition and Findings

a. The inmate/detainee has a right to be apprised of the disposition and findings of the adjustment committee.

b. Upon completion of the adjustment hearing, the Adjustment Hearings Officer may take the matter under advisement and render a decision based upon evidence presented at the hearing to which the inmate/detainee had an opportunity to respond or any other cumulative evidence which may subsequently come to light, including evidence which may lead to a permissible inference of guilt. However, a finding of guilt and disciplinary action shall be based upon more than mere silence.

c. A finding of guilty by the Adjustment Hearings Officer shall be made based on a preponderance of the evidence, which should not be confused with the criminal trial standard of beyond a reasonable doubt or when an inmate/detainee admits the violation or pleads guilty. The Adjustment Hearings Officer has the discretion to amend the misconduct violations that are substantiated by the facts in the reports and investigation for misconduct violations in the same or lower category (See original misconduct violations on the 8210A).

d. The inmate/detainee shall be given a brief written summary or disposition of the hearings officer's findings, which shall be entered into the case file. The findings will briefly set forth the evidence relied upon and the reasons for the action taken. The findings may properly exclude certain items of evidence, if necessitated by personal or institutional safety and correctional goals.

e. The fact that evidence has been omitted and the reason(s) for the omission must be included in the disposition, findings, or on the Facility Adjustment Hearing Script (PSD 8291).

f. In the event the inmate/detainee is found not guilty of the violation or misconduct, all information and documentation pertaining to the incident shall be expunged from the inmate's/detainee's institutional file.

.9 Sanctions

a. The Adjustment Hearings Officer may render sanctions commensurate with the gravity of the misconduct, the severity of the violation, and the inmate's/detainee's needs. It is important to note that corporal punishment is prohibited. The Adjustment Hearings Officer may render the following types of punishment:

1. Temporary loss of privileges.

2. Segregation should not exceed sixty (60) days; however, a longer period may be imposed with the express written approval of the Institutions Division Administrator. The Warden or his designee shall review the inmate's/detainee's confinement at least every thirty (30) days and initiate a referral to the facility mental health unit team to conduct an evaluation of the inmate's/detainee's adjustment to segregation confinement.

3. The Watch Commander/Corrections Supervisor or higher authority shall immediately notify healthcare staff of the placement of an inmate in disciplinary segregation.

4. At any facility without twenty-four (24) hour on site health care, the inmate's placement in disciplinary segregation shall be reviewed immediately when health care next reports for duty. The facility shall ensure that the inmate has more frequent observations (15 minute checks or constant observation), until reviewed by health care staff and/or mental health staff. It should be noted that a facility is able to schedule placement when health care staff is on duty.

5. The designated health care staff shall assess the inmate's placement in disciplinary segregation prior to his/her assignment to the segregation unit. At any facility without twenty-four (24) on site health care the assessment shall occur when health care staff next reports for duty to determine whether physical health or mental health issues exist that contraindicate the inmate's placement in disciplinary segregation. The health care staff must immediately notify a mental health professional if there are any indications that the inmate has mental health issues.

6. Inmates/detainees under Mental Health observation in specialized housing may be placed on disciplinary lockdown within the specialized housing, when sanctioned to segregation. Mental Health professionals on a daily basis shall monitor the inmate/detainee until such time that the inmate/detainee is rendered mentally fit for the general population. At such time the inmate/detainee shall finish segregation in the facility's segregation unit. Segregation time in any Mental Health disciplinary lockdown shall be counted towards the disciplinary sanction time.

7. If Medical or Mental Health professionals recommend to the Warden that an inmate/detainee be removed from segregation, if his/her health or mental stability deteriorates, or if segregation becomes detrimental to the inmate's/detainee's health, segregation shall be discontinued. The segregation may be reinstated when medical or mental health professionals indicate that the inmate/detainee's mental health has improved and the inmate/detainee can continue with the sanction imposed by the Facility Adjustment Committee.

8. Any other punishment deemed necessary by the adjustment committee.

b. The Adjustment Hearings Officer may also refer the matter to the program committee for further action. Refer to COR.11.01 for disciplinary segregation review requirements.

.10 Review

a. An inmate/detainee has the right to seek administrative review of the decision of the Adjustment Hearings Officer and the adjustment process (inclusive of incident reports, investigations, and relevant staff members etc.) through the grievance process. The inmate/detainee shall initiate a review on the prescribed form within fourteen (14) calendar days of the date of receipt of the committee's decision. Refer to COR.12.03 for specifics.

b. Based on COR.12.03, an Adjustment Hearings Officer's decision may be modified or remanded for a new hearing or a rehearing by the appropriate grievance respondent.

c. The Warden/designee may also initiate review of the Adjustment Hearings Officer's decision and it shall be within the Warden's discretion to modify any committee findings or decisions. The Warden may remand any matter to the

Adjustment Hearings Officer for further hearing or rehearing, if the Warden believes it to be in the interest of justice.

6.0 PROCEDURES FOR MINOR MISCONDUCTS (INFORMAL ADJUSTMENT HEARING PROCESS)

.1 For those facilities that do not operate under the unit team management concept, the Warden or his/her designee, shall be responsible for carrying out the functions of the Residency Unit Manager as prescribed in these procedures.

.2 Hearings Officers

a. Residency Unit Managers, Captains, or Lieutenants shall appoint a staff member from the Second and Third Watches to act as a Hearings Officer for the adjustment of minor rule or directive violations.

b. The Hearings Officer cannot also be an originating reporter. If a Hearings Officer is the originating reporter, the Unit Manager, Captain or Lieutenant or in his/her absence the Hearings Officer, shall designate another staff member to act as a Hearings Officer.

.3 Upon receipt of the Misconduct report (DOC 8210), the Unit Manager, Captain, Lieutenant, or the Hearings Officer shall determine the category of the alleged misconduct by referring to the appropriate Departmental Rules or Departmental Policies & Procedures. For low moderate category (9) of misconducts, the Hearings Officer shall:

a. Meet with the inmate/detainee as soon as possible.

b. Inform the inmate/detainee that he/she is accused of committing the minor misconduct.

c. Provide the inmate/detainee with a brief opportunity to respond, to admit he/she is guilty, to offer an explanation or defense in his behalf, or otherwise show that he/she is not guilty of the alleged misconduct or that there are mitigating factors.

d. If necessary, conduct brief interviews of staff, inmates/detainees, and witness(es).

e. Determine what appears to have happened and/or who appears to be in the right. Judicial certainty is not required. On this basis, determine whether the inmate/detainee is:

1) Guilty of the charge, with or without mitigating factors.

2) Guilty of a lesser-related or same category related charge.

3) Not guilty.

.4 Disposition

a. Not guilty finding, the Hearings Officer shall:

1) Inform the inmate/detainee by providing a copy of the not guilty finding to the inmate/detainee.

2) Ensure that all copies of the misconduct report are not placed in the inmate/detainee's institutional file.

b. Guilty finding, the Hearings Officer shall:

1) Determine the appropriate sanction(s) for the violation or misconduct in accordance with appropriate Departmental Rules or Departmental Policies & Procedures.

2) List sanction(s) on misconduct report (DOC 8210) for low moderate category (9) misconducts which shall indicate one or more of the following:

a) Four (4) hours or less of general population controlled in cell time, which is not considered disciplinary segregation;

b) Privileges(s) withdrawn and period of loss;

c) Number of hours of extra duty;

d) Item(s) of personal property to be impounded;

e) Nature of reprimand;

f) Whether all or part of any sanction is suspended, condition(s) for re-imposition, and length of time after which suspended sanction(s) cannot be imposed.

3) Inform the inmate/detainee of the guilty finding:

a) The Unit Manager, Captain, Lieutenant, or Hearings Officer will review the finding and the sanction(s);

b) The inmate/detainee has a right to administrative review of the decision, via the grievance process.

4) Acceptance by the inmate/detainee of a guilty finding, the Hearings Officer shall:

a) Have the inmate/detainee sign the Misconduct Report;

b) Impose or arrange the imposition of the sanction(s);

c) Submit the Misconduct report to the Unit Manager, Captain, or Lieutenant who shall:

(1) Review the report to assure that the findings and the sanction(s) are appropriate;

(2) Take corrective action, if required;

(3) Sign or initial the report;

(4) Have a copy of the report placed into the detainee's or inmate's institutional file and residency file;

(5) Provide the Hearings Officer with a copy of the report.

d) Give a copy of the report signed by the Unit Manager, Captain, or Lieutenant to the inmate/detainee.

5) Disagreement by the inmate/detainee with a guilty finding and/or sanction(s). The Hearings Officer shall:

a) Note on the misconduct report that the inmate/detainee does not accept the findings and/or sanction(s);

b) Impose or arrange the imposition of the sanction(s);

c) Submit the misconduct report to the Unit Manager, Captains, or Lieutenants who shall:

(1) Review the report to assure the findings and the sanction(s) are appropriate;

(2) Take corrective action, if required;

(3) Sign or initial the report;

(4) Have a copy of the report placed into the detainee's or inmate's institutional file and residency file;

(5) Provide the Hearings Officer with a copy of the report.

d) Inform the inmate/detainee that they may request an administrative review via the grievance procedure, and give the copy of the report signed by the Unit Manager, Captain, or Lieutenant to the inmate/detainee.

.5 Whenever sanctions are imposed that affect units or programs other than the living unit, a copy (copies) shall be made, or a Memorandum shall be typed, and distributed to the affected parties, examples:

a. Loss of store order: Inmate Store and Business Office.

b. Loss of Visit: Visiting Officer

c. Restricted from program: Section Administrator, school, workline, supervisor, etc.

7.0 SCOPE

This policy shall apply to all correctional facilities of the Department.

APPROVAL RECOMMENDED:

DEPUTY DIRECTOR FOR CORRECTIONS — DATE: 6/25/15

APPROVED:

DIRECTOR — DATE: 6/25/25

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

FACILITY ADJUSTMENT HEARING PROCESS

Inmate Name: _____ ID# _____

Housing: _____ Case No: _____ Hearing Date: _____

Administrative Segregation Credit Time: _____

1. [ ] The Facility Adjustment Hearings Officer is:
   Hearings Officer: _____
   Additional Member: _____
   Additional Member: _____

2. [ ] Were you given written notice of this hearing and a description of the charges against you at least 24 hours prior to this hearing?
   [ ] Yes [ ] No If yes, ask inmate to verify his signature and if no:

   a) Do you waive your 24 hours notice [ ] Yes [ ] No
   b) If not your hearing will be rescheduled and you will be notified of the new date.

3. [ ] As this is not a judicial proceeding, you do not have the right to legal counsel; however you may retain a substitute counsel by following the facility's guidelines.

   a) If an inmate did not submit a written request and obtain prior authorization (as required by facility guidelines) for substitute counsel, he will not be allowed to have substitute counsel.
   b) If request has been approved by Warden/designee, please list the name of the substitute counsel _____.
   c) If substitute counsel was approved and is not present for the hearing, please state the action taken by the adjustment hearings officer,
      _____.

4. [ ] You have the right to remain silent. You do not have to say anything or answer any questions, however, your silence may be used as a permissible inference of guilt to the charge(s) heard by the hearings officer. The formal rules of evidence shall not apply. The hearings officer may rely on any form of evidence, documentation, or testimonial that it believes to be reliable.

   Do you understand what I have told you? [ ] Yes [ ] No

5. [ ] You have the right to provide testimony/evidence to the hearings officer to support your case. However, anything you present may be used against you in this hearing or in the court of law. You are hereby informed that if your violation rises to the level of criminal charges, this matter may be pursued in court.
   Do you understand what I have told you? [ ] Yes [ ] No

FACILITY ADJUSTMENT HEARING PROCESS

6. [ ] You have the privilege to call relevant witness(es) on your behalf provided that this will not threaten the good government and orderly running of the facility, staff and other inmates.

   a) Do you request to call any witness(es)? [ ] Yes [} No
   b) If yes, name the witness(es) and have the inmate explain the offer of proof as to the nature/relevancy of the evidence the witness(es) will testify to:

   _____
   _____.

   c) If the hearings officer denied witness(es) testimony, please identify your justification:
      [ ] Irrelevance or redundancy of testimony.
      [ ] Lack of necessity.
      [ ] Unduly hazardous/threatens the facility safety or correctional goals.
      [ ] Others _____

7. [ ] You have the privilege of confronting adverse witness providing that such confrontation does/would not: i) subject the witness to potential reprisal; ii) jeopardize the security or good government of the facility; iii) be unduly hazardous to the facility's safety or correctional goals; or iv) otherwise reasonably appear to be impractical or unwarranted.

   a) Do you request to confront such witness(es)? [ ] Yes [ ] No
   b) The hearings officer shall:
      [ ] Grant you this privilege.
      [ ] Deny you this privilege because _____
      _____.

8. [ ] The hearings officer shall explain the reason for the hearing, the nature of the charge(s) against the inmate, identify the date of incident and the charging staff member . You are being charged with, read the charges as listed on DOC 8210A.

9. [ ] How do you plead to each of the charges against you? (Name the charge and identify as #1...). A failure to plead shall be accepted as a plea of not guilty. A plea of guilty eliminates the need to consider other evidence against the inmate who shall then be given an opportunity to explain the actions or offer evidence of mitigation.

Charge #1 _____	[ ] Guilty	[ ] Not Guilty
Charge #2 _____	[ ] Guilty	[ ] Not Guilty
Charge #3 _____	[ ] Guilty	[ ] Not Guilty
Charge #4 _____	[ ] Guilty	[ ] Not Guilty
Charge #5 _____	[ ] Guilty	[ ] Not Guilty
Charge #6 _____	[ ] Guilty	[ ] Not Guilty

NOTE: A plea of not guilty necessitates the consideration of evidence against the inmate.

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

FACILITY ADJUSTMENT HEARING PROCESS

10. [ ] Were you placed in administrative segregation as a result of this incident?
[ ] Yes [ ] No If yes, how many days and when _____.

11. [ ] You may now present your testimony/evidence to the hearings office.

_____
_____
_____
_____
_____
_____
_____

12. [ ] The hearings officer has heard your testimony/evidence supporting your case. A final decision by this hearings officer shall be made based upon all relevant reports, testimony, evidence presented, and any cumulative evidence that may subsequently come to light before this hearings officer.

13. [ ] This completes this portion of the hearing, but not necessarily the hearing itself. You will be given a written summary of the hearings officer's findings within a reasonable period of time.

14. [ ] If you should disagree with the result of the hearing, you have 14 calendar days to file for an administrative review of your case through the grievance process (DOC 8215) at the second step.

15. FINDINGS & SANCTIONS

A finding of guilt shall be made where the inmate admits the violation or pleads guilty or the charge is supported by substantial evidence. The inmate shall be given a brief written summary of the hearings officer's findings on DOC 8210A. The finding will briefly set forth the specific evidence relied upon and the reason for the action taken. The findings may properly exclude certain items of evidence if warranted by facility safety and goals, but the reasons for omission must be set forth in the findings.

Charge #1 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

Charge #2 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

Charge #3 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

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DEPARTMENT OF PUBLIC SAFETY

FACILITY ADJUSTMENT HEARING PROCESS

Charge #4 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

Charge #5 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

Charge #6 Guilty/Not Guilty
Sanctions: ( ) days lockdown, _____.
Justification: _____
_____.

16. DISPOSITION

[ ] a. ( ) days lockdown with ( ) days to be credited for Administrative Segregation. The remaining ( ) days to be served in Special Holding.
[ ] b. ( ) days lockdown to be served in Special Holding. (No credit time.)
[ ] c. ( ) days LOSS OF ALL PRIVILEGES in assigned housing unit.
[ ] d. ( ) days lockdown with ( ) days credited for Administrative Segregation. The remaining ( ) days to be suspended for a period of ( ) days/months provided no infractions/violation occur within this time period.
[ ] e. Other sanctions: _____
_____.
[ ] f. No sanction or sanction time served or case dismissed. (Please circle.)

17. [ ] If lockdown sanctions exceeds a period of sixty (60) consecutive days, then authorization from the Institutions Division Administrator is required.

18. Due to the seriousness of the offense(s), referred to the Facility Program Committee for reprogramming and/or reclassification. [ ] Yes [ ] No

_____
Facility Adjustment Hearings Officer

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
CORRECTIONS DIVISION

Facility: _____

Prepared On:
Date: _____ Time: _____

NOTICE OF REPORT OF MISCONDUCT AND HEARING

TO: _____
NAME SID NO. HOUSING UNIT

You are herein notified that a written report of misconduct was filed against you on _____.
A copy of the charge(s) is listed below.

A hearing on the charge(s) has been scheduled and you are to be present at _____
(LOCATION)

_____ , on _____ .
(TIME) (DATE)

As required by Department of Public Safety procedure, this hearing has been scheduled to determine the facts and administer just corrective action. You have the right to: 1) Have any charge explained to you; 2) Explain any written material concerning the charge; 3) Request charge(s):

_____
CHAIRMAN

Received notice of charges and rights:

I knowledge receipt of the Notice of Report of Misconduct and Hearing. I understand I may have counsel substitute. The Adjustment Committee must be notified as to who your counsel substitute is within a reasonable time, not less than 12 hours prior to the hearing.

I do ☐ I do not ☐ waive my right to 24 hour prior notice.

Date: _____ Signature: _____
RESIDENT

Findings and Disposition of Corrective Action with evidence relied upon for decision:

_____ _____
COMMITTEE CHAIRPERSON DATE

Findings and disposition:

_____ _____
INMATE DATE

ORIGINAL: Inmate Active File
COPY: Committee Chairperson; Inmate

PSD 8210A (12/2009)

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
MISCONDUCT REPORT

Facility: _____

Prepared On: _____

TO: _____ FROM: _____
(SUPERVISOR/HEARING OFFICER) (NAME, TITLE OF REPORTING OFFICER)

RE: _____ SSN: _____
(NAME OF VIOLATOR) (ID NO)

FACTS CONCERNING THE MISCONDUCT: (Give time occurred/discovered, rule(s) violated, location, what happened and time the incident ceased or was corrected.)

_____
(SIGNATURE OF REPORTER)

INVESTIGATION: (by Supervisor - statements of violator, witness(es))

FINDINGS:	CHARGE(S)	RULE #
☐ Guilty		
☐ Not Guilty		
☐ Referred to Facility/ Unit Adjustment Committee		

FORMAL ADJUSTMENT BY SUPERVISOR/HEARING OFFICER:

☐ Withdrawal of: _____

☐ Extra work assigned

☐ Confinement

PERIOD OF CORRECTIVE ACTION:

Beginning _____
(Time/Date)

and ending _____
(Time/Date)

BY: _____ DATE: _____
(INVESTIGATOR /HEARING OFFICER) (TITLE)

Acceptance of findings and disposition:

_____
(INMATE) (DATE)

Receipt witnessed by:

_____
(NAME) (TITLE) (DATE)

Reviewed by: _____
(NAME, SUPERVISOR) (TITLE) (DATE)

Original: Inmate Active File
Copy: Adjuster; Inmate

PSD 8210 (12/2009)

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

INCIDENT REPORT

Facility: _____
Prepared on: _____

TO: _____ THRU: _____
(Administrator/Section Supervisor) (Watch Supervisor)

DATE	TIME	NARRATIVE (Specify inmate name & ID and location if related to misconduct)

By: _____
Reporting Officer/Employee Title

ORIG - FACILITY ADMINISTRATOR
CANARY - CONTROL OFFICER
PINK - ATTACH TO MISCONDUCT REPORT

PSD 8214 (5/2009)