

410.03 AD SEG PLACEMENT
FEEDBACK & DOC RESPONSE

COMMENT PERIOD: FEBRUARY 13 – MARCH 8, 2012

I'm not sure what the solution to this problem is, but I find it embarrassing that we actual have in I do not understand why we would use a notice of hearing for the thirty day review. I believe this might give the inmate a feeling that there is going to be another hearing.

Could we add a space on the 24 hour notice of review for the outcome of the review. ¹

————— DOC's Response

¹ Thank you. We changed the Notice of Review form by adding a Part II with this information.

I would like to suggest that there should be specific, department wide standards for protective custody. The “preponderance of evidence” clause is too open to interpretation. The inmate as well as the hearing officer would benefit greatly from specific guidelines that have to be met in order for protective custody to be granted by any DOC Facility. ¹

————— DOC's Response

¹ The burden of proof is established by the due process clause of the United States Constitution and the Vermont State Constitution as interpreted by the courts. A preponderance of the evidence is the amount of proof that the courts require the state (DOC) to meet before an offender can be placed in segregation and thus, lose his/her liberty interest in being in the general population. The preponderance of evidence standard is a specific standard that must be met in all cases. It is the weightier evidence or proof that a fact is more likely established than not established.

The proposed directive uses the words offender and inmate interchangeably. The proposed Directive uses the word offender on pages 13 and 14, then uses the word inmate on page 15.

The proposed Directive does not define the word offender.

In many other published DOC Directives and Policies, it is clear that an offender is a convicted criminal. Vermont DOC detains unconvicted pretrial detainees- who are certainly not offenders- as well as convicted criminals.

The misuse of the word offender, and its application to unconvicted pretrial detainees, who are presumed innocent, and have more rights than convicts, causes DOC staff to often ignore the rights of those who are inmates but not offenders.

The general failure to define important phrases in a Directive is also a failing. ¹

————— DOC's Response

¹ Thank you. We have added definitions for inmate and offender and have edited the directive.

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COMMENT PERIOD: February 13 – March 8, 2012

As a law librarian, I see many women who receive DR's, they are put in ad-seg. They are left there four or five days without any word about their DR. When they are approached they are offered a waiver, time served and told they can go back to population if they sign it. After sitting in ad-seg several days, they are quick to waive their hearings to get out. What they are not told is that in waiving their hearing that they may no longer be eligible for day for day or their six months window. The officers are not providing wrong information just not full information to the women. Most often, their time to appeal is expired before they know how the DR affects them.

We do not receive a rule/facility handbook here or have orientations as we did in the St. Albans facility. I would like that to change. I believe it would make rules and expectations more clear if we are issued handbooks and have some kind of orientation. More importantly, I would like to have women receive some kind of rights notice when they are given a DR or at least before they sign a waiver letting them know first hand how this behavior is going to affect their stay and departure from the facility. We are told after the damage is already done. I am aware that even if they opt for a hearing they may still be convicted and lose their day for day or window but they should at least have a chance.¹

_____ DOC's Response

¹ Thank you. This does not pertain to this directive.

Lines 39 & 145: Both say you cannot have an attorney as a hearing assistant, and this seems wrong to exclude attorneys from a hearing. To me this sounds like an appropriate person, similar to a shoe salesman to purchase shoes from.¹

_____ DOC's Response

¹ The Supreme Court in *Wolff v. McDonnell* held that attorneys were not required and that inmates had no right to appointed or retained counsel in prison disciplinary proceedings.

Whole document: States many times that the superintendent and Commissioner will respond in a certain number of days, but my experience is that they do not do this because there is no watchdog for them. What would be the next appropriate measure to take when they do not respond. Please include this in the directive.¹

_____ DOC's Response

¹ It is the DOC's belief that to allow inmates to be represented by an attorney at administrative due process hearings would unduly complicate the proceedings and potentially create an adversarial climate at cross purposes to the rehabilitative objectives of the administrative proceedings.

You can file an action in Superior Court challenging the DOC decision and response.

FEEDBACK ON 410.01 DISCIPLINE & DOC RESPONSE

May 27 – June 17, 2011

Page 13 of 27, line 391 – To further ease use of this Waiver Process, as it pertains to placement on administrative segregation, other language should be inserted for staff use instead of (Alleged Furlough Violation.) Instead, it should read something like “(Placement in segregation.)¹

_____ DOC’s Response

¹ We have modified the forms. Thank you.