

## DISCIPLINE 410.01

### FEEDBACK & DOC RESPONSE

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I'm not sure what the solution to this problem is, but I find it embarrassing that we actual have in print that the sanction for killing someone is 30 days of Seg Time. I understand that lengthy segregation is destructive to the person, and I understand that the real sanction is that the person is charged with the crime of murder, but even knowing that, there is still something foolish about this sentence in our Directive:

1. Killing any Person. A02 (A, 30 days) <sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> Statute only allows 30 days of segregation. Obviously, this would also be dealt with through the criminal justice system.

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I was wondering from what source your statement that "Based on the premise that lengthy periods of segregation often causes levels of violence within a correctional facility..." comes from?

Is this from statistics right here in our own state, or from studies from other facilities? And, can you point me to a source where I can read more about this, please? <sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> Here's some information from 'The Commission on Safety and Abuse in America's Prisons authored in 2006, the same year that we increased our possible disciplinary segregation time from 15 days to 30 days. Page 4 speaks specifically to segregation.

Our DR records indicate an increase in Major A violations since that time despite an actual decrease in the average daily population.

Thanks for your interest in this important topic.

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The inmate population is not the same as what it used to be. The proposed change reduces the risk and increases the reward for the risk/reward ratio for anti- social behavior. This is not a good idea because it ultimately reduces the prevention of major rule infractions. <sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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The verbage on the Major B8 sounds as if it is only designed for threats of a sexual nature. The concern is that other threatening DR's could be dropped based on the wording that is presently in the directive.<sup>1</sup>

Threatening another with harm, bodily injury or an act with adverse consequences, to include the use of debt, threats of physical harm, peer pressure, deceit or personal favors to force or cajole sexual favors from another. B10 (A, 0-7 days)

————— DOC's Response

<sup>1</sup> We understand your point. We clarified the language.

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My only concern about the new Directive has to do with the amount of time an inmate can be segregated for.

I can only see more issues arising out of this. Most of the Major A violations were reduced from 30 days max to 14 days maximum. As it is now, one will occasionally hear an inmate say something along the lines of "I don't care if they send me to the hole for that it's only for a few days." This is only going to cause an inmate to be more troublesome for us, as well as create more work for us. The shorter hole times are also going to create quite a bit more inmate movement.

I am aware that not every facility in the State has the segregation housing set up like we do here in Springfield, but this will certainly affect this facility more so than others.

We are trained in the Academy to hold inmates accountable for their actions, whether it be through a 2 hour lock-in or through the DR process. However, I don't feel that the shorter times are doing such. Especially when the inmates in this state are allowed more and seem to get away with more than most other states.

Keep in mind, the above thoughts are the opinion and feelings of myself, and myself only. Someone who is not a Vermont native, and who comes from a State that if an inmates looks at an Officer wrong, they are held highly accountable. And, I am certainly not a "Hug-a-Thug" individual, like it seems many here are.<sup>1</sup>

————— DOC's Response

<sup>1</sup> [See our attached response.](#)

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My most significant concerns regarding this proposed directive is the sharp reduction in segregation time for many offenses, including many of our 'most serious' offenses. I have commented, at length, on this. Below that are a few proposed changes of more minor nature.<sup>1</sup>

I certainly agree with restricting more extensive segregation time to only those very serious offenses. However, sexual assault, inmate on inmate assault with a weapon, or assault causing serious bodily harm, lighting fires, escape, and starting a riot are (to my mind) all very serious offenses. Inmates have due process rights and DR sanctions are subject to multiple levels of review to ensure that sanctions are appropriately imposed, but the most serious violations should be dealt with in a manner

————— DOC's Response

<sup>1</sup> [See our attached response.](#)

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that acknowledges their seriousness, holds inmates accountable for these offenses, makes clear that the Department does not condone inmate on inmate violence (or serious disruptions).

Interestingly indecent exposure carries the same potential segregation time as sexual assault or escape, a juxtaposition that completely mystifies me.

It is my understanding that in drafting this revised directive; DOC was influenced by the findings and recommendations of the commission on safety and abuse in America's prisons.

However, in reading this report, it is not at all clear that Vermont is what the committee had in mind nor that our imposition of segregation would qualify as the 'torturous conditions that are proven to cause mental deterioration' which they reference. I have served on audit teams in every facility in the state except Northwest and have yet to find anything in Vermont that resembles 'complete isolation' or 'a lack of meaningful human contact.' Conditions in segregation, while more restrictive than general population are not torturous, we don't throw people in lightless holes, nor feed them stale bread and dirty water.

The committee simultaneously states that segregation should be a last resort, but also states that separating dangerous individuals from the general population is part of running a safe correctional facility.

The committee also spends a significant amount of time discussing the risks of inmate on inmate violence and sexual assault. Vermont runs an extraordinarily safe system, one where inmate on inmate violence is relatively rare and where inmates do not have to live in constant fear. Not only is this born out by our observations of inmates, but by the reports of inmates who have served time elsewhere. As one inmate who recently returned from Florida told me 'down there you always carry a shank... it's safer to carry it and risk staff finding you with it then it is to not carry and risk inmates finding you without it.' While understanding that cultural factors within the facilities (including continual staff-inmate engagement) drive much of this difference, lessening our sanctions and response to inmate on inmate violence will not create safer facilities.

It should also be noted that our low level of violence allows for a minimal use of restrictive housing for 'protective custody' inmates or the 'vulnerable populations.' Younger inmates, effeminate, physically smaller, and openly homosexual inmates can all generally live in general population, (often some careful consideration of their cellmate) without being subject to violence. Sex offenders, a notoriously disliked class within facilities across the country, also generally live in population without being subjected to violence. Even many inmates with the reputation of 'snitch' manage to reside in population without being assaulted.

Mr. Murphy, in his e-mail to staff regarding this states that 'lengthy periods of segregation often cause levels of violence to escalate within a correctional facility.' I have difficulty speaking to that, in part because Vermont does not regularly use lengthy periods of segregation. My own experience within facilities and dealing with some of the most violent and anti-social inmates that this state has to offer would suggest that violent inmates cause levels of violence to escalate within a facility. Properly identifying and segregating violent inmates appears to reduce levels of violence within the institution. Predatory behavior by a few inmates escalates violence on the compound as a whole. This works in several ways.

Most inmates dislike segregation and appear willing to modify their behavior to avoid segregation, and especially to avoid lengthier periods of segregation and conviction of the 'most serious offenses.' I have a number of formerly very violent inmates walking around SSCF who self-report that they are controlling or modifying their behavior because they don't want to go back to segregation. I have had

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inmates renounce gang affiliation and sever gang ties because ‘it’s not worth it’, I have watched inmates with extensive assault histories walk away from fights or from situations where they previously would have fought because they didn’t want to go back to segregation. So for a number of inmates, it appears that proper use of segregation appropriately modifies behavior.

For a small number of inmates, nothing appears to modify their behavior (except maybe time and maturity.) For this number, segregation and disciplinary segregation serve to separate them from the population and to protect staff and inmates from their violent influence. The committee report makes clear that identifying and separating violent predators is critical, I would fully agree. The vast majority of inmates choose not to engage in violent behavior while incarcerated or choose to do so only rarely. Those small number that choose to repeatedly engage in serious violent behavior should be properly separated from others. Disciplinary segregation is one of several tools management has to enforce this.

I certainly have not seen any evidence here at SSCF for a 30 day segregation sanction increases an individual inmate’s likelihood of violence. It is true that many of these inmates are more violent than other inmates, however, it seems that this is a characteristic that they bring with them into segregation, the very trait that generally got them into a lengthier period of segregation in the first place, as opposed to a result of said segregation.

We do have a very small number of inmates who spend lengthier periods of time in segregation. These cases are generally limited to our most serious risks – inmates who have escaped (or made a good faith effort to do so), inmates who have brutally assaulted staff, and those who have created gangs within the institutions. Although the limited number of these cases makes it hard to draw any concrete conclusions on the effect of their long-term segregation, even in these extreme cases, it has not been my observation that long term segregation ‘makes them worse’ or causes them to suffer mental illness.

In proposing these sorts of changes, it may be beneficial to consider two significant changes in our demographics.

There has been a large political push to identify non-violent offenders and to move these inmates out of prisons. We have been told that incarceration should be reserved for the most serious, most egregious cases. What does this mean for Correctional facilities? It means a higher ratio of violent anti-social individuals in prison. Last I recall, something like 75% of our inmates are violent felons, a percentage that appears only likely to increase. As we increasingly move the lower risk individuals into the community or to minimum custody work camps, those left behind will increasingly be (obviously) the more dangerous more violent inmates.

Secondly, in the past 10 years, particularly the past 5, we have seen an explosion of gang related activities both in Vermont communities and in our facilities. As of April 24<sup>th</sup>, SSCF’s intelligence team has identified over 100 inmates who are believed to be STG affiliated. These include homegrown threats like ‘Hitler’s Henchmen’, ‘ACG’ and New Hampshire’s Brotherhood of the White Warrior, as well as nationally known gangs such as the Bloods, Crips, Vice Lords, Aryan Brotherhood, Latin Kings, Outlaws MC, and Devils Disciples MC. There are active Blood sets in Rutland and in Springfield, Hells Angels operates in numerous parts of New Hampshire and on the borders of Vermont, the Latin Kings appears to be trying to move their drug trade up from Springfield, MA into southern Vermont, and various New York gangs are moving in a similar fashion from the Albany area into the Western side of the state. Many of these inmates have lengthy incarcerative histories in other states and a life-long pattern of criminal behavior and thinking. They have little in common with our traditional population and enter our facilities with a decidedly more

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antagonistic attitude towards correctional staff then we are used to. The recent serious assault in Newport may be only a foreshadowing of the increased violence that gangs will bring into our system – a violence that Vermont has largely been spared in the past, but which has been experienced by larger systems for many years. Toning down our response to serious offenses is the wrong move at the wrong time.

One of my staff found for me the federal guidelines surrounding use of disciplinary segregation. Interestingly, the federal system uses many of the same safeguards we employ to ensure inmates are afforded due process rights and that segregation is used appropriately. They also provide for conditions of confinement that are very similar to that which we employ, conditions that ensure that the basic needs of inmates are met and that segregation is not abusive. Their timelines around the imposition of segregation are quite telling though

### Time Constraints of Disciplinary Segregations (**section 541.13**)

#### Low

1st offense - Up to 7 days

2nd offense - Up to 7 days

3rd offense or more within 6 Months- Up to 15 Days

#### Moderate

1st offense - Up to 15 days

2nd offense within 12 months -Up to 21 days

3rd offense within 12 months – Up to 30 days

#### High

1st offense - Up to 30 days

2nd offense within 18 months - Up to 45 days

3rd offense within 18 months – Up to 60 Days

Greatest 1st offense - Up to 60 days

Interestingly, the federal bureau of prison lists as ‘greatest’ offenses much of what was classified as Major A offenses in our currently operating 410 directive, and as ‘high’ offenses much of what was classified as Major Bs in our currently operating directive.(although some current Major Bs are classified as ‘moderate’.) In other words, the federal system issues up to twice as much segregation time for the most serious as our current system allows and as much as 4 times as much for most serious offenses as the new proposed system allows.

I could go on some more, but to summarize, I am strongly opposed to the proposed changes, especially as these relate to our most serious offenses and it is my firm opinion, based on my experience in the past 10 years – including 6+ years as a hearing officer, time spent working as a segregation officer, as a supervisor dealing extensively with some of Vermont’s most challenging inmates, and as an administrator overseeing the largest segregation unit in the state, that these changes would not be beneficial to our system and would have a negative impact on the safety of our facilities.

Specific comments on some other minor pieces below:

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Line 598 - Can language be added allowing for the removal of good time for offenses that occurred at a work camp, but are adjudicated at a facility – for instance an inmate who commits a serious offense, such as an assault, is often moved from Windsor to Springfield pending resolution of the DR. Given that the offense occurred while he was earning good time, it would seem appropriate to penalize that good time in relevant cases at the hearing, and this has been the practice, however the current language doesn't clearly permit or prohibit that.<sup>2</sup>

Line 696<sup>3</sup> – add sanction M – replacing and repairing fire equipment (notably sprinkler heads) is a significant expense generated completely by inmate misbehavior and it would be appropriate to pass this expense back to the responsible inmates.

Line 773<sup>4</sup> – Is the intent that segregation time cannot be used for inmates who cheek and snort their own medication, or who cheek this and hold it for future resale?

Line 1221<sup>5</sup> – Replace ‘use back if needed’ with attach additional sheets if need, or something similar. The forms are carbon copy and when inmates write on the back, it renders these carbon copies virtually unreadable.

Line 1350<sup>6</sup> – Add a place to write in the sanction.

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DOC's Response

<sup>2</sup> We changed the language. Thanks.

<sup>3</sup> We agree. We added ‘M: to A.15.

<sup>4</sup> We clarified l. 773.

<sup>5</sup> Att. 7 – We changed.

<sup>6</sup> We added Recommended Sanction.

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The current 410.01 has this infraction listed as a Major A.<sup>1</sup>

11. The introduction, or attempt at introducing, tobacco of any amount into or onto the grounds of a correctional facility, to include being found to be in possession of any amount of tobacco in excess of one cigarette. A18 ( A, 0-30 days)

This has been removed from the rewrite and changed to a B category:

19. The introduction, or attempt at introducing, tobacco of any amount into or onto the grounds of a correctional facility. B33 (A, 0-14 days)

This should return to the current language. Much of the strong-arming, inmate-on-inmate assaults and bartering centers on tobacco. We are terminating staff members that we catch bringing in tobacco.

Lines 365-366- I agree

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DOC's Response

<sup>1</sup> [See our attached response.](#)

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Lines 456-457- Most segregation sanctions reduced to less than ½ of the current maximum segregation time, this line further eviscerates the ability of all Hearing officers. This creates very little room for professional judgment and progressive discipline.<sup>2</sup>

Line 773<sup>3</sup> - change to: transfer, sell or stockpile as this creates a potentially serious situation (intentional/accidental overdose).

Return sanctions to those currently allowed.

Director Murphy states:

“Based on the premise that lengthy periods of segregation often cause levels of violence to escalate within a correctional facility possible time in Disciplinary Segregation has been reduced for most Major “A” convictions and some Major “B”s. If a Superintendent feels that an inmate needs to be removed from general population for safety and/or security reasons for a lengthy or indeterminate period of time they can do so by utilizing the administrative segregation process. Thirty Days for a single DR conviction is now reserved for the most egregious of offenses, assault on staff and the killing of an individual.” “A non SMI/SFI inmate may serve up to 30 days for multiple DR offenses.” Thank you for this part.

It has been my experience that we routinely separate the most violent inmates, first through a process of progressive discipline, then, only when repeated attempts at behavior modifications have failed, we utilize Administrative Segregation. (Ad-Seg has also been successfully utilized with individuals who have legitimate escapes or attempted escapes and on a couple of occasions when the individuals’ crime is extraordinarily sensational.

There appears to be a plethora of information about segregation time available, both pro and con.

Two reports of note that support the use of segregation are:

“One Year Longitudinal Study of the Psychological Effects of Administrative Segregation” by Maureen L. O’Keefe, M.A. Colorado DOC and from Colorado University at Colorado Springs Psychology Department, Kelli J. Klebe Ph.D.; Alysha Stucke, B.A.; Kristin Sturm, B.A. and William Leggett, B.A. (<http://www.crimeandconsequences.com/crimblog/adseg-report-final1.pdf>)

The Psychological Effects of 60 days in Administrative Segregation by Ivan Zinger and Cherami Wichmann of the Research Branch, Correctional Service of Canada. ([http://dsp-psd.pwgsc.gc.ca/collections/collection\\_2010/scc-csc/PS83-3-85-eng.pdf](http://dsp-psd.pwgsc.gc.ca/collections/collection_2010/scc-csc/PS83-3-85-eng.pdf))

In Zinger’s study he stated: So, it is likely that

“For example, the findings of this study are somewhat irrelevant to current segregation practices in the United States where offenders can be segregated for years for disciplinary infractions with virtually no distractions, human contacts, services or programs.

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DOC’s Response

<sup>2</sup> We disagree.

<sup>3</sup> We clarified based on suggested feedback language. Did not use your language.

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The difference between the personality of segregated and non-segregated offenders is an important finding. Although many have suggested that segregated offenders' psychological weaknesses and idiosyncratic behaviors were not well tolerated by the general inmate population (Carriere, 1989; Gendreau, Tellier, & Wormith, 1985; Rold, 1992; Wormith, Tellier, & Gendreau, 1988); the personality of segregated offenders had seldom been assessed. Whether a distinct personality profile may increase an offender's risk of being placed in administrative segregation should be further examined using more comprehensive measures of personality."

"Although this research revealed no evidence that administrative segregation for periods of up to 60 days was damaging, the findings of this study should not be used to legitimize the practice of administrative segregation."

"Although it will always remain a legitimate management tool to effectively deal with problematic situations and individuals; its current use is perhaps symptomatic of the Correctional Service Canada's inability to reduce tensions and resolve conflicts in the prison context."

Based on the first quote, it is clear that Zinger was unfamiliar with Vermont's current system which is extremely similar to Canada's. Zinger clearly does not support extended segregation but has no issue up to sixty days.

In the O'Keefe study, 247 inmates were studied over a one-year period. (302 inmates were selected but 55 were not active participants.) The researchers expected to find significant deterioration but instead wrote: "The results of this study were largely inconsistent with our hypotheses and the bulk of literature that indicates AS (Administrative Segregation) is extremely detrimental to inmates with and without mental illness."

The studies that complain about the use of segregation site the most egregious conditions, most notably the lack of medical care and mental health services. This is not reflective of VT-DOC's segregation units and practices. Our Directives clearly address Conditions of Confinement and we have strict rules in the handling of SFI inmates.

370 [Classification, Treatment and the Use of Administrative and Disciplinary Segregation for Inmates with a Serious Mental Illness - APA Rule # 05-049](#)

#410.06 [Restrictive Housing Status, Conditions of Confinement](#)

Director Murphy stated at the May 16 Superintendent meeting that there was no indication that facilities were abusing segregation. Superintendents should be allowed to manage their staff in the issuance of segregation time, and I believe do a very good job of it. Our hearing officers are well aware of what we consider acceptable. From examples I have sent you, you can see the infractions where 30 days segregation was requested were assaults and one improper use of mail (to contact his victim after being warned) in conjunction with two other DRs.

I would state that the hearing officers are not over-reaching and we are not being abusive.

An additional significant reason for not reducing allowable segregation sanctions is the less tangible effect on staff morale. Line officers have a vested interest in the disciplinary system. Reducing allowable seg time for infractions would have a long-lasting negative impact on staff morale. Many staff feel completely unappreciated, especially since the 3% pay cuts of last year.

In the comparison table below I selected the Federal Bureau of prisons because of the sheer magnitude of their system, 3 states that are considered "progressive", Washington, Oregon and

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Connecticut, and Colorado as it's system has been studied in regards to segregation as referenced above and it is a moderate state. I only listed the charges that we classify in the rewrite as "A" offenses. It is clear that none of the other systems would consider 30 days harsh or excessive. Additionally, each of the systems has many more infractions that can earn segregation time than our current list of Major DRs.

*(Many of these departments allow more segregation time for repeated violations.)*

	VIOLATION	VT-DOC PROPOSED	FEDERAL BOP	State of WA DOC	OREGON DOC	Colorado DOC	CT. DOC
A#1	Killing any Person. A02	(A, 30 days)	up to 60	1st offense 60-120	1st offense 0-30	0-60	0-30
A#2	Assault, physically attacking another person with or without the use of an object or substance.	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-30
A#3	Assault on a Department of Corrections' employee, contractor or volunteer. Intentionally striking or attacking a Department of Corrections employee, contractor or volunteer with or without the use of an object or substance, or behaving in such a reckless manner that one's actions cause a strike of a Department employee, contractor or volunteer.	(A, 0-30 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-30
A#4	Sexual Assault (Sexual Abuse).	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-30
A#5	Fighting where bodily injury is attempted or carried out.	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-20
A#6	Escape from an institution A03A, armed escort A03B, Correctional Officer custody, to include intentional absence from a furlough or facility work crew from a correctional institution. A03C	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-15

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A#7	Creating disturbances that threaten the order and safety of the facility including, but not limited to, riots, work strikes and hunger strikes.	(A, 0-14 days)	up to 60 (greatest severity) up to 45 (high severity)	1st offense 60-120	1st offense 0-30	0-30	0-30
A#8	Possession, manufacture or introduction of any item that constitutes a danger to the order of the facility including, but not limited to, weapons, dangerous instruments, escape tools, or communication devices (e.g., cell phones). This also includes possession of any unauthorized weapon while in the custody of the Commissioner of Corrections outside a correctional facility (e.g., at Court, a hospital, etc.).	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-30
A#9	Possession, introduction or use of any alcohol, narcotics, depressants, stimulants, hallucinogenic substances or marijuana (any plant material, extract or resin of the genus cannabis) or related paraphernalia not prescribed for the individual by the medical providers.	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-30
A#10	Refusing to submit to a breathalyzer, alco-sensor or any method of testing for drugs, alcohol or intoxicants.	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-15
A#11	Giving false information/making a false allegation – Inmates are prohibited from intentionally and/or knowingly making a false allegation against any staff person or any person under contract to the Department of Corrections, and/or intentionally misleading staff in the course of their official duty.	(A, 0-14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	No comparable DR

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A#1 2	Arson – Inmates are prohibited from setting a fire or causing an explosion.	(A, 14 days)	up to 60	1st offense 60-120	1st offense 0-30	0-30	0-15
A#1 3	Security Threat Group Affiliation – Inmates are prohibited from possessing or displaying any materials, symbols, colors or pictures of any identified security threat group or engaging in membership in or in behaviors uniquely or clearly associated with a security threat group.	(A, 14 days)	No comparable DR	1st offense 60-120	1st offense 0-30	0-20	0-20
A#1 4	Unauthorized use of the mail or telephone; to include, but not be limited to, making a call to a person on your authorized phone list and having them forward the call to someone not on your authorized list.	(A, 0-14 days)	up to 60 (greatest severity) up to 45 (high severity)	1st offense 60-120	1st offense 0-30	No comparable DR	0-15
A#1 5	Tampering with fire alarms, fire safety apparatus (such as extinguishers, air pacs, sprinkler heads, hoses, fire blankets, etc.) or any other safety equipment.	(A, 0-14 days)	up to 45	1st offense 60-120	1st offense 0-30	0-20	0-15
A#1 6	Unauthorized Use of a Computer – using, accessing or viewing a computer or computer terminal in any manner that is not authorized by departmental personnel;	(A, 0-14 days)	up to 15	1st offense 0-14	1st offense 0-30	No comparable DR	No comparable DR

strongly disagree with the reduced segregation time. 30 days is not a substantial amount of time. 14 days for these infractions is absurd and very disrespectful to all Officers who work the line everyday

I strongly disagree with making Tobacco infractions Major B violations. Specifically Major B18, 19. I would recommend making these major A.

All Major A violations should have a sanction of 30 days. All Major B 0-30 days.

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Line 852 - "APCT"<sup>1</sup> We have not used this standard for several years. We currently train with the Monadnock Defensive Tactics System. (MDTS.)

Line 853 - Define "another person's space." This is not defensible. The department trains all Officers that the "reactionary gap" is 4-6 feet. Nothing is trained or taught about "personal space."<sup>2</sup>

Line 860 - what is "offensive contact"<sup>3</sup>.

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DOC's Response

<sup>1</sup> We changed.

<sup>2</sup> We clarified this.

<sup>3</sup> Offensive contact is evaluated on a case-by-case basis. What one person may find offensive, another may not.

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To reduce the maximum segregation sanctions would be counter productive. The inmate population in Vermont is changing to a significant degree. We are starting to get a much more violent population with a much lower regard for human rights and life. We are getting a larger number of inmates with gang affiliations, and the attending attitudes. Not all of our bad characters have gang affiliations, however a larger percentage have little or no empathy for others. We need the tougher sanctions to help keep these people in check. The way this will be accomplished is to be able to directly impact what privileges they have in the corrections environment. If anything the sanctions should be increased, not decreased.<sup>1</sup>

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DOC's Response

<sup>1</sup> [See our attached response.](#)

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The current 410 allows for progressive discipline with the each consecutive DR be more severe than the last. By reducing the maximum penalty of the DRs it doesn't allow for progressive discipline unless it becomes an Ad-Seg issue which creates more work and paper work for management. This takes away from the whole DR process and allows the inmates more freedom and less respect for the rules. There are inmates that have DR time running concurrent with other DRs because they can only stay in Seg. for 30 days. If this is reduced they can get in to more trouble with less discipline with effects staff safety and anybody else that works inside a secure perimeter in this state.

I do understand rewriting the DR process to get the terminology more common and to avoid confusion but watering down a system that works isn't the best answer, this would tie the hands of the people that already have a tough job and make tougher and less safe.

I work mainly Seg units at this facility and see the same inmates come thru on a regular basis. They know they have a time limit for being on DR Status and know that there is only so much the department of correction can do to them<sup>1</sup>.

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DOC's Response

<sup>1</sup> [See our attached response.](#)

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My colleague's response deserves significant thought at the Department's Executive level. The differences set forth appear to challenge an ideology. My feedback is to insure the current executive

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structure fully understands and pushes the ideology down the lane they choose and not react to other pressures that may cause unnecessary future adjustments.

His thoughts likely are in the lane with the majority of seasoned institutional staff (and mine).<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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I agree, you can't say it much clearer than what my colleague did.<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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It is my belief as a COI who regularly works the units at this facility, that this possible change to Directive 410.01 sends a dangerous message to inmates. The reduced segregation time proposed will in my opinion tell inmates that misbehavior in the correctional setting is becoming more tolerable. I believe the less time given for offenses will actively encourage these behaviors to take place. I also believe that the inmate population will regard this as the DOC not backing its line staff, and it is highly likely to encourage them to engage in unacceptable and potentially dangerous behavior. I also feel lightening sanctions and segregation time does very little to correct behavior, which is something that society expects from our department. Thank you for your consideration.<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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Reducing the amount of segregation time able to be given, diminishes a tool in our tool box. You will in essence tie our hands by doing this. Understand it from our perspective by standing in my shoes that may be soaked in feces, urine and food that was thrown at them.<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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I believe that to reduce the allowable time on Major DR.'s is unacceptable the allowed time frames on some D.R.'s should be higher for the infractions. If the time were to be lowered, the inmates would win because they would feel as though they are only getting a slap on the wrist for any sanction.

I think that hole time is hole time and if you present yourself to be a hazard to the facility, staff, and other inmates you should be able to be held accountable for your actions and a more lengthy sanction should be allowed as it is in other states.<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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I disagree with the new directive in relation to the disciplinary sanction times. To literally cut the segregation times in half for every offense with the exception of the major A-02, A-01E, and A-01F is egregious. By lowering the amount of days of segregation time to me is telling the offenders that we do not take this behavior as serious as we once did. Maybe an offender would be more likely to

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commit the offense knowing the reduced amount of segregation time that that particular offense now carries. Being a RHU officer, I deal with these offenders directly. I would say about 98% of sanctions given out rarely carry the maximum amount of segregation time, whether being a 0-30 or a 0-15 day DR. Most inmates take a waiver for less time or have their offense amended to a lesser DR as part of the bargaining process. I strongly feel that if an offender knows there is a possibility of getting 30 days of segregation time for an offense they might not be more apt to commit the offense. What if the State and Federal courts were to cut all sentencing guidelines in half for offenses in the public? The crime rate would increase astronomically. It's the adage risk vs. reward.<sup>1</sup>

“Based on the premise that lengthy periods of segregation often cause levels of violence to escalate within a correctional facility” Is there any statistical evidence to back up this claim? We learn in the suicide prevention that past = future, therefore if an offender gets a DR for a violence related offense the chances of them getting into another fight I feel is unrelated to the amount of segregation time they serve...just a thought.

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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I am concerned with the reduction of segregation time in this proposed update to directive 410.01. While we must always consider the negative impact segregation can have on an inmate, these changes appear to almost negate the deterrent and punitive effect that segregation has with most inmates.

It has been my experience that most inmates know where the line is between an infraction that will earn the imposition of segregation and one that will not. By and large, most inmates keep their behavior in check enough that they will not have to worry about doing a stretch of segregation. These changes, I believe, will have a negative impact on behavior. Meaning simply that when they make that instant evaluation of whether or not the consequence of their action is worth what they get out of it - the fact that we've lessened the consequence will only encourage an increase in anti-social behavior.

Additionally, this proposed update to directive 410.01 reduces the segregation time of some very serious violations. The fact that an assault with weapon on another inmate or the introduction of a controlled substance to a facility only carry a sanction of up to 14 days makes little sense to me.

While it may be important to assess the negative impact of segregation on an inmate's mental health, I would argue that lessening that impact should not come at the cost of safety in our facilities. I believe that the reduction of segregation time, for the reasons I've outlined, will make our facilities a more dangerous place to work and live.<sup>1</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

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Some of the inmate's do not care if they get minor Dr after Minor Dr. Some have got 4, 5, even 6 minor's in 30 to 45 days. Can this be changed to issuing a major after 3 Dr's of the same just like for

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the minor smoking Dr's.( I have been doing progressive discipline with the minor's also). This needs to be looked at.<sup>1</sup>

I am going to attach a fail sheet that I think would work well and would cut down on how many Dr's are written.(Attached)<sup>2</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> [See our attached response.](#)

<sup>2</sup> Thanks for the suggestion. It appears to be an incentive program that is unofficial. Incentive programs such as this have been eliminated in DOC.

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Page 4 of the proposed Policy 410.01 defines self defense.

Self defense is not discussed or addressed anywhere in the 34 page Policy.<sup>1</sup>

Why is self defense defined, if it is not addressed or discussed anywhere in the Policy? A reasonable inmate who reads the policy will not know if he has the right to self defense, or not. By defining self defense on page 4, the Policy may lead an inmate to assume that he has a right to self defense. He does not.

In McGarry v. Pallito, Docket # 408-6-09 Wncv, Assistant Attorney General David McLean argued that Vermont DOC inmates have no right to self defense.

Given the position that Mr. McLean took in court regarding the lack of a right to self defense, I think it is unwise to define self defense, without discussing it or addressing it. I strongly suggest that you speak with Mr. McLean about his position on the issue.

\_\_\_\_\_ DOC's Response

<sup>1</sup> Thanks. We'll remove it.

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Request that the Department adds the definition of SFI in the directive so that it complies with the statute 28 VSA 906(1) (B).

Suggested additions to the INMATE DISCIPLINARY REPORT FORM:

### 1. Disciplinary Report (DR)

1.d of the Directive requires that the supervisor refer prisoners who are SFI/SMI to a QMHP for assessment prior to holding a hearing and that the QMHP assessment will include:

- an opinion as to whether the behavior results from the serious mental illness/functional impairment and if so, if the DR should be dismissed.
- a determination if contraindications exist to using any specific sanction and specifically segregation;
- a recommendation to the hearing officer for disposition or sanction options or alternative actions.

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Recommend that a section be added to the form to indicate that this referral to a QHMP took place, and that the QMHP documents the outcome.<sup>1</sup>

### 2. Major Violations:

2. c.iii of the Directive requires that if the prisoner has a known SMI/SFI, they cannot be placed on Administrative Segregation unless a physician ensures that no contraindications exist and approves the placement.

Recommend that a section be added to the form so that physician approval, or not, can be documented.<sup>2</sup>

Also add language that in cases where the SFI prisoner charged with a major DR is found to be inappropriate for pre-hearing segregation by a physician, alternatives such as transfer to psychiatric facilities or the infirmary for closer observation will be considered and documented.

### 3. Minor Violations

3.b of the Directive states that if a prisoner has a SFI/SMI, staff will discuss options for informal resolution with a QMHP within 24 hours of the written report, for minor violations.

Recommend that a section be added to the form so that this documentation can occur.<sup>3</sup>

Recommend that language be added to this section of the Directive requiring any SFI prisoner being charged with a minor DR be informed, with appropriate accommodations if needed, of this part of the directive and that he understands his options to either negotiate an alternative dispute resolution or request a formal hearing. Document that the prisoner understood this and if the prisoner has a disability that makes it hard for him to understand this information when it is presented, that the DOC respond to this need.<sup>4</sup>

### 4. Investigation of Alleged Major Violations

Recommend that if the hearing officer identifies that the prisoner charged with the DR or the witnesses are SFI, the hearing officer must document appropriate consultation and consideration of reasonable accommodations to assure accurate and effective interviewing occurs.<sup>5</sup>

### 5. Hearing Process

5.d. Recommend that if the prisoner is identified as SFI that the DOC must document that they conveyed his rights on a hearing assistant to him appropriately.<sup>6</sup>

\_\_\_\_\_ DOC's Response

<sup>1</sup> We added instructions to the form.

<sup>2</sup> We added recommended language re: physician approval. We don't feel your other suggestion re: transfer is appropriate for the DR form.

<sup>3</sup> We feel this is a training issue, not a form issue.

<sup>4</sup> The ADA directive and its inmate orientation form should cover this.

<sup>5</sup> We added language to Section 4. b.

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Also recommend adding to the definition section that all the relevant roles (hearing officer, investigating officer, etc.) have received specific training annually on their role and responsibility. For hearing assistant, add examples of who that person can be.<sup>7</sup>

### 7. Sanctions

7.d.viii of the Directive requires that a physician must approve the use of Disciplinary Segregation before placing an inmate with a SMI/SFI on this status.

Recommend that a section be added to the form so that physician approval, or not, can be documented.<sup>8</sup>

This should include that the physician is aware of how long the segregation time will be, i.e., 2 days or 14 days.<sup>9</sup>

Also any SFI prisoner that is approved or ordered to serve time in disciplinary segregation for more than three (3) days have a follow up medical evaluation within four (4) days of being placed in disciplinary segregation specifically to evaluate the SFI prisoner's appropriateness for transfer to an inpatient psychiatric unit or other medical unit or treatment environment as needed.<sup>10</sup>

### 9. Appeal Process

9. a of the Directive discusses the appeal process available for the prisoner.

Recommend that language be added to this appeal process on how a prisoner can request assistance, and from whom, in completing this appeal, which needs to occur within 7 business days of the hearing decision.<sup>11</sup>

Also recommend that language be added to the directive that the prisoner receives in the written notice of the DR decision notice they can contact the Prisoners' Rights Office for assistance and if the prisoner is identified as SFI that they receive notice of the Prisoners' Rights Office availability in an accommodated format that is itself documented.<sup>12</sup>

### 12. Segregation Report

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<sup>6</sup> The audio record should provide sufficient documentation.

<sup>7</sup> Training requirements don't belong in the Definitions section. We did give an example of who the hearing assistant could be.

<sup>8</sup> We added.

<sup>9</sup> The physician isn't going to know how long. It's an ongoing evaluation.

<sup>10</sup> We feel the current Segregation Confinement Log Sheet takes care of this.

<sup>11</sup> We added language.

<sup>12</sup> We think the ADA Directive takes care of this.

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Recommend that the DOC include in their reports numbers on all SFI prisoners held in segregated circumstances as defined by 28 VSA 701(b). For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, “segregation” means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons<sup>13</sup>.

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DOC’s Response

<sup>13</sup> We have taken your comments under advisement.

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1. The inmates thought it made sense that the Major A for Introduction of Tobacco would be a Major B.<sup>1</sup>
  2. On page #5 the law librarian suggested insuring DR's are given a docket # (he says without it it's a due process violation).<sup>2</sup>
  3. On page #7 the suggestion was made to specify that in order to grant a continuance, the notification of the continuance must be made prior to the time of the scheduled hearing.<sup>3</sup>

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DOC’s Response

<sup>1</sup> Fine

<sup>2</sup> All disciplinary hearings have docket #s. We disagree that the DR needs a docket # for due process.

<sup>3</sup> We disagree. Not all reasons to continue a hearing are known before the hearing. An inmate gets 24 hours notice before a hearing