

**New York City Department of Correction**



**RB: A**

**PERSON IN CUSTODY**

**RULE  
BOOK**

**-08/31/19-**

**CITY OF NEW YORK  
DEPARTMENT OF CORRECTION**

**CHAPTER I  
INMATE RULE BOOK**

**§ 1-01 Introduction**

This chapter sets forth the rules relating to inmates of New York City Department of Correction ("Department") facilities. All inmates will also be provided separately with detailed information relating to their incarceration, including the subjects covered in 39 RCNY § 1-02.

**§ 1-02 Rights and Privileges**

**a) Property**

When you first come to jail, any property that is taken from you that involves a criminal offense may be forwarded to the appropriate law enforcement agency for possible criminal prosecution and subject you to disciplinary action. Property taken from you that does not involve a criminal offense will be identified, inventoried, stored and returned to you after your discharge from Department custody. Upon incarceration you will be given more information about what property may be kept in jail and how to get other property back after discharge.

**b) Recreation**

The Department may limit your right to participate in recreation for a security related reason in accordance with State Commission of Correction standards. Upon incarceration, you will be given more information about how and when the Department can limit recreation.

**c) Religious rights**

You may attend religious services with general population inmates unless you are found to pose a threat to the safety and security of the institution, including if the Department finds it likely that you will disrupt the service. Upon incarceration, you will be given more information about your religious rights in jail.

**d) Telephone calls**

The Department may limit your telephone calls if they constitute a threat to institutional safety or security, if you abuse the telephone regulations or in accordance with a court order. Upon incarceration, you will be given more information about your rights to telephone calls.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction by providing written notice. Written notice must also be provided to the Department of Correction and the Facility.

You may also submit any additional relevant materials for the Board's consideration. The Board will issue a written response upon the appeal within five (5) business days after receiving the appeal.

**e) Visits**

The Department may revoke, deny or limit your contact visits if they constitute a serious threat to institutional safety or security. Upon incarceration, you will be given more information about your right to visits and the permitted schedules of those visits.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction and to the Commanding Officer by providing written notice. You may also submit any additional relevant materials for the Board's consideration. The Board, or its designee, will issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review.

**§ 1-03 Rules of Conduct**

**a) Introduction**

This section sets forth the behavior that is prohibited in Department of Correction ("Department") facilities. The grade of each offense is listed. The acts of conspiracy, attempt, and accessory will be punishable to the same degree as the actual offense involved.

**b) Definitions**

"Accessory" shall mean assisting in any way in the violation of a Department rule, before, during or after such violation.

"Any person" shall include, but not be limited to, uniformed and civilian Department staff, medical staff, contractors and their employees, volunteers, visitors and inmates.

"Attempt" shall mean any act that is intended to and tends to lead to a violation of a Department rule.

"Contraband" shall mean any item that is not sold in the commissary, that is not on the approved list of permissible items, that is possessed in more than the approved amount, or that the inmate does not have permission to possess. Contraband includes items that may disrupt the safety, security, good order and discipline of the facility. Any item that is illegal for an individual not on Department property to possess is also illegal to use or possess on Department property. Possession of contraband may subject an inmate to criminal prosecution as well as disciplinary action. Any person who tries to introduce contraband into a facility may also be subject to criminal prosecution.

"Conspiracy" shall mean an agreement between one or more persons to violate a Department rule.

“Department ID” shall mean any form of Department-issued tag, card, wristband, or other object that serves to identify an inmate.

“Good Time” shall mean a discretionary reduction of up to one third of the term of commitment for a definite sentence or certain civil commitments, as allowed by the New York State Correction Law.

“Security Risk Group” shall mean persons such as gang members, intended or actual contraband recipients, and weapons carriers or users, whose actions violate laws or established rules of conduct, or persons who belong to groups whose purpose is antithetical to established law enforcement authority.

“Sexual abuse” means sexual abuse as defined in the Prison Rape Elimination Act.

“Sexually explicit material” is any printed or displayed material that shows the frontal and/or rear nudity of any person, including but not limited to: the fully exposed female breast(s) and/or the genitalia of any gender; sexual excitement; sexual conduct, sexual intercourse; or sadomasochistic abuse.

“Staff” shall include, but not be limited to, uniformed and civilian Department staff, medical staff, contractors and their employees or volunteers.

“Unauthorized group” shall mean five or more inmates remaining in close physical proximity to each other when not authorized to do so by Department personnel.

**c) Prohibited Conduct**

An inmate who violates a rule listed in any subsection of Section 1-03(c) as a “Grade I” offense shall be guilty of the stated Grade I offense; an inmate who violates a rule listed in any subsection of Section 1-03(c) as a “Grade II” offense shall be guilty of the stated Grade II offense; and an inmate who violates a rule listed in any subsection of Section 1-03(c) as a “Grade III” offense shall be guilty of the stated Grade III offense

**1) ARSON (SETTING FIRES)**

**Grade I:**

100.10: An inmate is guilty of Arson when he or she intentionally starts or attempts to start any fire or causes or attempts to cause any explosion.

**2) ASSAULT AND FIGHTING**

**Grade I**

101.10: An inmate is guilty of Assault on Staff when he or she injures or attempts to injure any staff member, or when he or she spits on or throws any object or substance at any staff member. Assault or attempted assault on staff is always a Grade I offense.

101.11: An inmate is guilty of Grade I Assault when he or she injures any other person, or when he or she spits on or throws any object or substance at any other person.

101.12: An inmate is guilty of Grade I Assault on an Inmate when he or she injures any other inmate, or when he or she spits on or throws any object or substance at any other inmate.

101.13: An inmate is guilty of Assault with a Weapon when he or she uses any item to assault or attempt to assault any person.

101.14: An inmate is guilty of Grade I Fighting when he or she engages in a physical struggle with another inmate that results in injury to any person.

101.15: An inmate is guilty of the Grade I offense of Gang Assault on an inmate when the inmate, while acting in concert with two or more inmates, injures, spits on or throws any object or substance at any other inmate.

101.15.1: An inmate is guilty of the Grade 1 offense of Security Risk Group Assault when the inmate injures, spits on or throws any object or substance at any other inmate based on either inmate's Security Risk Group status or motivated by a Security Risk Group related purpose.

## **Grade II:**

101.16: An inmate is guilty of Grade II Assault when he or she attempts to injure any person other than a staff member, without using a weapon, but does not cause injury.

101.17: An inmate is guilty of Grade II Fighting when he or she engages in a physical struggle with another inmate that does not result in injury.

## **Grade III:**

101.18: An inmate is guilty of Grade III Fighting when he or she engages in a non-violent physical struggle with another person such as horseplay, boxing, wrestling or sparring.

## **3) BRIBERY**

### **Grade I:**

102.10: An inmate is guilty of Bribery when he or she gives or attempts to give any benefit, including but not limited to money or valuable items, to any person, with the intent of influencing that person's conduct or obtaining a benefit for himself or herself.

## **4) CONTRABAND**

### **Grade I:**

103.05: Inmates shall not possess any tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, rolling paper, matches and lighters.

103.07: Inmates shall not sell, exchange or distribute tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, matches and lighters.

103.08: Inmates shall not make, possess, sell or exchange any amount of alcoholic beverage.

103.10: Inmates shall not make, possess, sell or exchange any type of contraband weapon. Any object that could be used as a weapon may be classified as a weapon.

103.10.5: Inmates shall not possess or transport a Department-issued razor outside the housing area.

103.10.6: Inmates shall return all Department-issued razors after shaving is completed, in accordance with Department or facility procedures. Razors shall be returned in the same condition as received; for example, blade and handle shall be intact.

103.10.7: Inmates shall not possess more than one Department-issued razor.

103.11: Inmates shall not make, possess, sell, give or exchange any amount of narcotic, narcotic paraphernalia, or any other controlled substance, or a manufactured chemical compound that is not facility issued.

103.12: Inmates shall not make, possess, sell, give or exchange any type of escape paraphernalia. Where there is the likelihood that an item can be used to aid an escape, it may be classified as escape paraphernalia. Keys, possession of identification belonging to another person, or fictitious person, transferring an inmate's identification to another, possession of employee clothing, or any other articles which would aid in an escape, or which suggest that an escape is being planned, are contraband.

103.12.5: Inmates shall not possess any type of electronic telecommunications and/or recording device or instrument or any part of such device or instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communications; record or capture sound and/or images; or charge the power of any such device or instrument. Such devices shall include, but shall not be limited to, cameras (digital or film), video recorders, tape or digital recording devices, electronic storage devices, phone chargers, battery chargers, A/C adapters, A/C cables, cellular or digital phones, pagers, two-way radios, text messaging devices, or modem equipment or devices. (Radios sold in commissary are excluded from this prohibition.)

103.12.6: Inmates shall not possess any contraband with intent to sell or distribute such contraband.

103.12.7: Inmates shall not possess money whose value exceeds twenty (20) dollars in cash, checks, credit cards regardless of the credit available on the card, or debit or gift cards regardless of the value stored on the card. Money confiscated as contraband will be deposited in the City's treasury and will not be returned to the inmate.

## **Grade II:**

103.13: Inmates shall not sell or exchange prescription drugs or non-prescription drugs. Inmates shall not possess prescription drugs that they are not authorized by medical staff to possess.

103.13.5: Inmates shall not possess prescription or non-prescription drugs in quantities in excess of that authorized by medical staff. Inmates are not authorized to possess expired prescription medication or drugs.

103.13.6: Inmates are not authorized to possess any drug that by prescription, or by medical order, must be ingested in view of Department and/or medical staff.

103.14: Inmates shall not make, possess, sell, exchange, use or display any item that identifies the inmate as a member or associate of a Security Risk Group. Articles of religious significance that are Security Risk Group identifiers shall only be considered contraband if they are displayed. Incidental or inadvertent exposure of the item (for example, while showering, saying the rosary or other religious observance, dressing or undressing or sleeping) shall not be considered "display" under this rule.

103.15: An inmate is guilty of the offense of Possession of Contraband Grade II when such inmate possesses money having a value of up to and including twenty (20) dollars, in the form of cash or checks. Money confiscated as contraband will be deposited in the City's treasury and will not be returned to the inmate.

### **Grade III:**

103.16: Inmates shall not possess unauthorized hobby materials, art supplies or tattooing equipment, or writing implements.

103.17: Inmates shall not possess unauthorized amounts of jewelry, clothing, food, or personal property.

103.18: Inmates shall not possess unauthorized amounts of City-issued property.

103.19: Inmates shall not possess any other unauthorized items not specifically listed within this section.

## **5) COUNT PROCEDURES**

### **Grade II**

104.10: Inmates shall not intentionally cause a miscount.

104.11: Inmates shall not intentionally delay the count.

## **6) CREATING A FIRE, HEALTH OR SAFETY HAZARD**

### **Grade II:**

105.10: Inmates shall not create a fire hazard, health hazard, or other safety hazard.

105.11: Inmates shall not tamper with any fire safety equipment.

105.12: Inmates shall not cause any false alarms about a fire, claimed health emergency, or create any kind of disturbance or security problem.

105.13: Inmates shall not flood any living area or other area in the facility.

### **Grade III:**

105.14: Inmates shall not store food in their housing area or any work place, except food items bought in the commissary, which must be stored in the food containers provided.

105.15: Inmates shall not litter, spit, or throw garbage or any kind of waste or substance.

105.16: Inmates shall follow all local facility rules relating to fire, health or safety.

105.17: Inmates shall clean their cell or living area, toilet bowl, sink and all other furnishings every day. They must keep their cells and beds neatly arranged. Before leaving their cells or living areas for any purpose, they must clean their cells or areas and make their beds.

105.19: Inmates shall not obscure, block, obstruct, mark up, write on, or post any pictures or place any other articles on Department property, including any walls, windows, or lighting fixtures.

105.20: Inmates shall not cook in any living area, including any cell.

105.22: Inmates must keep themselves and their clothes clean.

105.24: Inmates shall not block the view into or out of any cell by putting anything on the bars of the cell or on any cell door, cell door window or cell window, in a manner that would obstruct the view into or out of the cell.

105.25: Inmates shall not use a food warmers as a personal cooking device.

## **7) DEMONSTRATIONS**

### **Grade I:**

106.10: Inmates shall not lead, attempt to lead or encourage others to participate in boycotts, work stoppages, or other demonstrations that interrupt the routine of the facility.

106.11: Inmates shall not participate in boycotts, work stoppages, or other demonstrations.

## **8) DESTRUCTION OF PROPERTY**

### **Grade I:**

107.10: An inmate is guilty of the offense Destruction of Property Grade I when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value greater than one hundred dollars (\$100.00).

### **Grade II:**

107.11: An inmate is guilty of the offense Destruction of Property Grade II when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value between ten dollars (\$10.00) and one hundred dollars (\$100.00).

### **Grade III:**



107.12: An inmate is guilty of the offense Destruction of Property Grade III when such inmate defaces or destroys City property, or private property belonging to another, with a value less than ten dollars (\$10.00).

## **9) DISORDERLY CONDUCT**

### **Grade III:**

108.10: Inmates shall not shout out to, curse, use abusive language, or make obscene gestures towards any person.

108.11: Inmates shall not behave in a loud and noisy manner.

## **10) DISRESPECT FOR STAFF; SEXUAL HARASSMENT TOWARDS STAFF**

### **Grade I:**

109.10: An inmate is guilty of the Grade I offense of Disrespect for Staff if the inmate physically resists a staff member, including by pulling or twisting away.

109.11: An inmate is guilty of the Grade I offense of Disrespect for Staff/Sexual Harassment towards Staff if the inmate harasses or annoys a staff member by touching the staff member.

109.11.5: An inmate is guilty of the Grade I offense of Sexual Harassment towards Staff if the inmate engages in unwelcome physical conduct of a sexual nature, including but not limited to: patting, rubbing, kissing, grabbing, pinching or touching of staff.

### **Grade II:**

109.12: An inmate is guilty of the Grade II offense of Disrespect for Staff/Sexual Harassment towards Staff if the inmate verbally abuses or harasses a staff member, or makes obscene gestures towards any staff member.

109.13: An inmate is guilty of the Grade II offense of Disrespect for Staff/Sexual Harassment Towards Staff when the inmate, in the plain view of staff, intentionally touches the inmate's own body with or without exposing the genitals, buttocks or breasts, in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive.

109.14: An inmate is guilty of the Grade II offense of Disrespect for Staff/Sexual Harassment Toward Staff when the inmate requests, solicits or otherwise encourages a staff member or any other to engage in sexual activity, or makes repeated and unwelcome sexual advances or verbal comments of a derogatory or offensive nature, including but not limited to: sexually suggestive remarks, jokes, innuendos, leering, comments, and gestures.

109.15: An inmate is guilty of the Grade II offense of sexual harassment towards staff when the inmate refuses to remove sexually explicit material the inmate has affixed, posted or displayed on Department property after being asked to do so by staff.

### **Grade III:**

109.16: An inmate is guilty of the Grade III offense of sexual harassment towards staff when the inmate affixes, posts or displays any sexually explicit material on Department property, including walls, windows, or lighting fixtures.

## **11) DISRUPTING INSTITUTIONAL PROGRAMS**

### **Grade II:**

110.10: Inmates shall not interfere with or disrupt institutional services, programs, or special activities.

## **12) ESCAPE**

### **Grade I:**

111.10: Inmates shall not escape or aid others to escape, or attempt to escape or aid others to escape. Exiting Department property, a Department facility, or vehicle without permission from Department staff is an escape.

## **13) EXTORTION**

### **Grade I:**

112.10: Inmates shall not make threats, spoken, in writing or by gesture, against a staff member for the purpose of obtaining any benefit.

### **Grade II:**

112.11: Inmates shall not make any threats, spoken, in writing or by any gesture, against any person other than a staff member for the purpose of obtaining any benefit.

## **14) FALSE STATEMENTS**

### **Grade II:**

112.50: Inmates shall not provide Department officials, or officials from other governmental entities, false oral or written statements for any purpose.

## **15) GAMBLING**

### **Grade III:**

113.10: Inmates shall not engage in any form of gambling.

## **16) HOSTAGE TAKING**

### **Grade I:**

114.10: Inmates shall not take or hold any person hostage.

## **17) IDENTIFICATION PROCEDURES**

### **Grade III:**

115.10: Inmates shall carry and display their Department ID at all times when outside their cell or sleeping quarters.

115.11: Inmates shall promptly produce their Department ID at the direction of any staff member.

115.12: Inmates shall report the loss of their Department ID promptly to appropriate staff members. Inmates shall be charged restitution for a new Department ID.

115.13: Inmates shall not intentionally tamper with or destroy their Department ID.

## **18) IMPERSONATION**

### **Grade I:**

116.10: Inmates shall not impersonate any staff member in any way.

### **Grade II:**

116.11: Inmates shall not impersonate another inmate or any other person in any way.

## **19) INMATE MOVEMENT**

### **Grade II:**

117.10: Inmates shall follow facility rules and staff orders relating to movement inside and outside the facility, including, but not limited to, rules and orders dealing with seating, lock-in and lock-out.

### **Grade III:**

117.11: Inmates shall not be out of their assigned area, including being in a cell to which they are not assigned, nor shall inmates leave an assigned area such as a work area or program area, without authorization.

## **20) PURCHASE, SALE OR EXCHANGE OF SERVICES OR PROPERTY**

### **Grade III**

119.10: Inmates shall not sell, buy or exchange services or personal property with any other inmate without permission.

## **21) REFUSAL TO OBEY A DIRECT ORDER**

## **Grade II**

120.10: Inmates shall obey all orders of Department staff promptly and completely. It shall be a Grade II offense to fail to obey the following orders: to stop fighting with or assaulting another person, to be frisked, to have a cell searched, to be locked-in and/or locked-out, to disperse an unauthorized assembly, to identify oneself, to go to court, and to cooperate in admission procedures. It shall be a Grade II offense to fail to obey any order given to an inmate when the inmate is outside the facility, and when any order is given in any emergency situation.

## **Grade III**

120.11: It shall be a Grade III offense of refuse to obey any other staff order promptly and completely.

## **22) RIOTING**

### **Grade I**

121.10: Inmates shall not take any action with the intention of taking control over any area of any facility. Inmates in groups must not use or threaten violence against any person or property.

121.12: Inmates shall not encourage or in any way persuade other inmates to take any action in order to take control over any area of the facility, or to use or threaten violence against any person or property.

## **23) SEX OFFENSES**

### **Grade I:**

122.10: An inmate is guilty of a Grade I Sex Offense when the inmate forces, coerces or attempts sexual abuse against another person, or engages in sexual abuse of a person who is unable to consent or refuse.

### **Grade II:**

122.11: An inmate is guilty of a Grade II Sex Offense when the inmate engages in sexual activity with another inmate. All contact between inmates is prohibited, including kissing, embracing, and hand-holding.

122.12: An inmate is guilty of a Grade II Sex Offense when the inmate exposes the private parts of the inmate's body in a lewd manner.

### **Grade II:**

122.13: An inmate is guilty of a Grade III Sex Offense when the inmate requests, solicits or otherwise encourages any other inmate to engage in sexual activity, or makes repeated and unwelcome sexual advances or verbal comments of a derogatory or offensive nature, including but not limited to, sexually suggestive remarks, jokes, innuendos, comments, and gestures.

122.14: An inmate is guilty of a Grade III Sex Offense when the inmate, in the plain view of any person other than staff, intentionally touches oneself with or without exposing their

genitals, buttocks or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance or offense, and that any reasonable person would consider this conduct offensive.

## **24) SMUGGLING**

### **Grade I:**

123.10: Inmates shall be guilty of Grade I smuggling if, by their own actions or acting in concert with others, they smuggle weapons, drugs or drug-related products, manufactured chemical compounds that are not facility issued, alcohol, tobacco or tobacco-related products, or escape paraphernalia into or out of the facility.

### **Grade III:**

123.11: Inmates shall be guilty of Grade III smuggling if, by their own actions or acting in concert with others, smuggle contraband other than those listed in section 123.10 of these rules.

## **25) STEALING, POSSESSION OF STOLEN PROPERTY**

### **Grade II:**

124.10: Inmates shall not steal property belonging to any other person or to the City whether that property is of any or no monetary value.

124.11: Inmates shall not possess property belonging to any other person or to the City whether that property has any or no monetary value.

## **26) TAMPERING WITH DOCUMENTS**

### **Grade II:**

125.10: Inmates shall not destroy, tamper with, change, counterfeit or give other inmates any institutional documents, passes or ID Cards.

125.11: Inmates shall not forge the signature of staff, an inmate, or any other person on any documents, institutional or otherwise.

## **27) TAMPERING WITH SECURITY DEVICES**

### **Grade I:**

126.10: Inmates shall not tamper with, destroy, or sabotage any security related device or equipment.

## **28) THREATS**

### **Grade I:**

127.10: Inmates shall not make any threat whether spoken, in writing, or by gesture, against any staff member.

**Grade II:**

127.11: Inmates shall not make any threat whether spoken, in writing, or by gesture, against any person other than a staff member.

**29) UNAUTHORIZED ASSEMBLY**

**Grade I:**

128.10: Inmates shall not gather in unauthorized groups anywhere.

**30) REFUSAL TO PROVIDE SAMPLE FOR DNA BANK**

**Grade I:**

129.10: Inmates shall not refuse to provide a DNA sample if they meet the criteria as set forth in Article 49-B of the New York State Executive Law qualifying a person as a designated offender. A designated offender is a person convicted and sentenced for charges specified in subdivision seven (7) of § 995 of Article 49-B of the New York State Executive Law, including, but not limited to Sex Offenses, Drug Offenses, and Dangerous Weapons Offenses.

**31) REFUSAL TO PROVIDE SAMPLE FOR RANDOM DRUG/ALCOHOL TESTING**

**Grade I:**

130.10: Inmates shall not refuse to provide a urine, hair, saliva, or other sample, according to the Department's policy and procedures, when they have been notified by the head of the facility or his/her designee that they have been selected for drug/alcohol testing, whether by random selection or based on reasonable suspicion.

**32) TESTING POSITIVE FOR ALCOHOL OR ILLEGAL DRUGS/SUBSTANCES**

**Grade I:**

130.11: Inmates shall not test positive for nor be found under the influence of alcohol or illegal drugs/substances.

130.12: Inmates shall not adulterate or tamper with, or attempt to adulterate or tamper with a urine sample or offer as their own a urine sample of another individual.

**33) ACTS OF HATE**

**Grade I:**

131.00: Inmates shall not engage in acts of hate against any person due to a belief or perception regarding such person's race, color, national origin, affiliation with any group, religion, religious practice, age, gender, disability, or sexual orientation.

131.10: Any action that targets a person or group in a negative and/or hostile manner is strictly prohibited. Inmates shall not intentionally commit any verbal and or physical offense against staff, inmates, or visitors, in whole or substantial part based on the other person's or persons' race, religion, color, national origin, group affiliation, age, gender or sexual orientation.

## **§ 1-04 Hearing Procedures**

### **(a) GENERAL PROCEDURES**

- (1) When you are placed in any of the most restrictive security categories, (other than Pre-Hearing Detention, which is addressed in subsection (b) below), you will be given written notice of:
  - i. The reasons for the designation.
  - ii. The evidence relied upon. The Department is not required to provide you with the source of confidential information.
  - iii. The right to a hearing before an impartial Adjudication Captain appointed from the Adjudication Unit.
  - iv. Your rights at the hearing.

### **(b) DISCIPLINARY HEARING PROCEDURES**

- (1) Pre-Hearing Detention (PHD). When you are placed in Pre-Hearing Detention (PHD) prior to your disciplinary hearing,
  - i. You will be issued a Notice of Pre-Hearing Detention within twenty-four (24) hours of the placement, which will state the reason for the placement in PHD.
  - ii. You will have the opportunity to respond to the Notice of Pre-Hearing Detention, verbally, or in writing in a designated space on the Notice form.
  - iii. The infraction hearing will be completed within three (3) business days of your transfer to PHD whenever possible, but you shall not be held in PD for more than seven (7) business days. If the hearing is not held in such time, you must be released from PHD.
- (2) Disciplinary Infraction Hearings. If you are not placed in PD, the infraction hearing will take place within three (3) business days after you receive written notice, unless further delay is justified in accordance with disciplinary due process. Your hearing may be held in absentia (that is, without you present) only if the following occurs: (i) you are notified of the hearing and refuse to appear; or (ii) you appear and are extremely disruptive, causing a situation that is unduly

hazardous to institutional safety that necessitates your removal from the hearing room. If your hearing is held in absentia, the justification for holding the hearing in absentia shall be clearly documented in the Adjudication Captain's decision.

(3) At your hearing, you have the following rights:

- i. To personally appear;
- ii. To make statements;
- iii. To present material, relevant, and non-duplicative evidence;
- iv. To have witnesses testify at the hearing, provided they are reasonably available and their attendance at the infraction hearing will not be unduly hazardous to the institutional safety of correctional goals.
- v. If you are non-English speaking, illiterate, blind, deaf, have poor vision, are hard of hearing, or if your case is very complicated, you have a right to be helped by a "hearing facilitator" (not a lawyer). The hearing facilitator shall be designated by the chief administrative officer, or the chief administrative officer's designee, at least twenty-four (24) hours prior to the hearing. The hearing facilitator may assist you with:
  - (aa) Interviewing witnesses;
  - (bb) Obtaining evidence and/or written statements;
  - (cc) Providing assistance at the disciplinary hearing;
  - (dd) Providing assistance understanding administrative segregation decisions;
  - (ee) Providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken;
  - (ff) Providing assistance understanding the waiver of any rights; and
  - (gg) Providing assistance in filing an appeal.
- vi. If you do not understand or are not able to communicate in English well enough to conduct the hearing in English, you have a right to an interpreter in addition to a hearing facilitator.
- vii. You have a right to appeal a decision against you.
- viii. You have a right to have the hearing recorded.



**(c) PROTECTIVE CUSTODY**

- (1) If you are transferred to protective custody (PC), the Department will determine within two (2) business days whether you should continue in such housing. If you do not consent to a decision to continue PC placement, you will be provided with written notice as set forth in 39 RCNY §1-04(a)(1).
- (2) The hearing will be held no sooner than 24 hours and no later than three (3) business days after you receive the written notice of your PC housing placement, unless an adjournment is required or for one of the reasons set forth in Directive 6007R-A.
- (3) The Adjudication Captain will recommend whether you should remain in PC to the Operations Security Intelligence Unit (OSIU) in writing within one (1) business day after the hearing. You will receive a copy of the decision from OSIU.
- (4) If you are placed in PC the Department will review your placement thirty (30) days after OSIU initially determined the assignment and then every sixty (60) days thereafter to see if you should remain in PC. You will be notified in writing of the results of that review.
- (5) If you request a hearing you will have the following rights:
  - i. To personally appear;
  - ii. To be informed of the evidence against you that resulted in the designation, subject to limitations regarding confidential information to protect another person's safety or facility security;
  - iii. The opportunity to make a statement;
  - iv. To call witnesses subject to the Adjudication Captain's discretion;
  - v. To present evidence;
  - vi. The right to a written determination with reasons.

**§ 1-05 Penalties**

**(a) INTRODUCTION**

If you are found guilty of violating a Department rule of conduct, your penalty will depend on the seriousness of your offense. Grade I offenses are the most serious and Grade III offenses are the least serious. The penalty will also depend on the facts and circumstances of your case. If you have a good explanation or justification for your actions - what is known as "mitigating circumstances" you may receive a less severe penalty.

Any of the penalties set forth below, or a combination of them, may be imposed on you for violating Department rules of conduct.

**(b) REPRIMAND**

You may lose one or more privileges, temporarily or permanently except that:

- i. You will not be deprived of the right to receive visitors, although contact visits may be replaced with non-contact visits.
- ii. You will not be deprived of the right to send or receive mail;
- iii. You will not be deprived of the right to contact legal counsel;
- iv. You will not be deprived of the right to have recreation as a sanction for an infraction.

**(c) LOSS OF GOOD TIME**

If you are sentenced and serving your time in a Department facility, you may lose good time.

- i. You may lose all your good time for a Grade I offense.
- ii. The maximum that you can lose for a Grade II offense is two-thirds of all of your good time.
- iii. The maximum that you can lose for a Grade III offense is one-third of all of your good time.

**(d) PUNITIVE SEGREGATION**

- i. The maximum period of punitive segregation for a Grade I offense is thirty (30) consecutive days for each disciplinary charge, unless the Grade I offense is for serious assault on staff that results in serious injury, which may result in a sentence of up to sixty (60) consecutive days.
- ii. The maximum period for a Grade II offense is ten (10) consecutive days for each disciplinary charge.
- iii. The following categories of inmate shall be excluded from punitive segregation:
  - a. Inmates under the age of 22;
  - b. Inmates with serious mental or serious physical disabilities or conditions.

**(e) RESTITUTION**

If you are found guilty of damaging or destroying City property, you may be ordered to pay restitution, which can be as much as the replacement cost of the item or property, plus the labor costs of fixing or replacing the item you damaged or destroyed. If you are found guilty of an assault that causes a need for medical services, you can be ordered to make a restitution payment towards the cost to the City for such medical services.

**(f) REPEATED OFFENSES**

The third time you are found guilty of a rule of conduct violation for the same offense during the same period of incarceration, you may be sentenced to a penalty that applies to the next higher grade of offenses. For example, the third time you are found guilty of violating a specific Grade III offense during the same period of incarceration, you may be given a Grade II penalty. Similarly, the third time you are found guilty of violating a specific Grade II offense during the same period of incarceration, you may be given a Grade I penalty.

**(g) SURCHARGE**

A disciplinary surcharge, in the maximum amount allowed by law, may be imposed on you for violating a rule of conduct.

**§ 1-06 Appeals**

You have the right to appeal an adverse decision rendered by the Adjudication Captain within two (2) business days of service of the decision. If you have been sentenced to a total of thirty (30) days or more of punitive segregation or loss of all your good time on any one (1) Notice of Disciplinary Disposition, your appeal shall be forwarded to the General Counsel in the Department's Legal Division. Within five (5) business days of the receipt of your appeal, you will receive a written decision from the General Counsel regarding such appeal, unless further documentation/information is required by the General Counsel to decide your appeal. In those cases, the five (5) business day limit shall be extended and the reasons for the extensions will be noted on the General Counsel's decision to you. If you receive an unfavorable decision from General Counsel within ten (10) business days of the receipt of your appeal, you may file a petition for a writ under Article 78 of the CPLR. If you are sentenced to less than thirty (30) days punitive segregation or loss of less than all of your good time, you may appeal that decision to the Warden of the facility where the infraction occurred.

