



**SAN MATEO COUNTY  
PROBATION DEPARTMENT  
INSTITUTIONS SERVICES MANUAL**

**ARTICLE 7**

**Discipline**

**§1390**

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**Topic                      Youth Discipline**

**Policy**                      This policy addresses the application of youth rules and disciplinary sanctions for youth who fail to comply with facility rules. It is the goal of this facility to promote acceptable behavior through the use of positive interventions and supports.

Youth discipline shall be imposed at the least restrictive level required to achieve the desired behavior. Discipline shall not include corporal punishment, group punishment, physical or psychological degradation.

**1390. DISCIPLINE**

The Superintendent or authorized designee shall develop and implement written policies and procedures for the discipline of youth that shall promote acceptable behavior; including the use of positive behavior interventions and supports. Deprivation of the following is not permitted as a form of discipline:

- a. bed and bedding.
- b. daily shower, access to drinking fountain, toilet and personal hygiene items, and clean clothing.
- c. full nutrition.
- d. contact with parent or attorney.
- e. exercise.
- f. medical services and counseling.
- g. religious services.
- h. clean and sanitary living conditions.
- i. the right to send and receive mail.
- j. education.; and,
- k. rehabilitative programming.

The Superintendent or authorized designee shall establish rules of conduct and disciplinary penalties to guide the conduct of youth. Such rules and penalties shall include both major violations and minor violations, be stated simply and affirmatively, and be made available to all youth.

Provision shall be made available to provide accessible information to youth with disabilities, limited English proficiency, or limited literacy.

### **1390.1 DUE PROCESS**

Youth who are subject to discipline as a result of rule violations shall be afforded the procedural due process required by federal and state law. All youth will be made aware of the rules of conduct for which they will be held accountable, as well as any defined penalties for rule violations. Staff will not engage in arbitrary actions against youth. All disciplinary actions will follow clearly established procedures. All disciplinary sanctions will be fairly and consistently applied.

Institution staff shall issue a Disciplinary Due Process Ticket for all minor rule violations, documenting the violation and consequences. All Due Process Tickets shall be issued in a timely manner and reviewed by the lead Institution staff.

Institution staff shall issue an Incident Report for all major rule violations documenting the violation and consequences. Incidents Reports shall be issued in a timely manner and approved by the Institutions Services Manager or Office of the Day (ISM/OD)

A youth may choose to appeal a disciplinary action through the grievance process by submitting a signed and dated Grievance Form to any person or placing it in the grievance box on the youth's unit.

To ensure due process, Institution staff shall make reasonable accommodations for youth with disabilities, limited English proficiency or literacy, consistent with the Youth Grievances Policy.

The process for a youth accused of a major rule violation includes (15 CCR 1391):

- a. A fair hearing in which the discovering Institution staff member or investigating ISM/OD presents factual evidence supporting the rule violation and the disciplinary action.
- b. Advance written notice to the youth of the disciplinary hearing, to allow the youth time to prepare a defense.
- c. Assignment of a neutral hearing officer.
- d. The limited right to call witnesses and/or present evidence on the youth's behalf.
- e. The assistance of a staff member upon request of the youth.
- f. The appointment of a staff member to serve as an assistant or representative in cases where the youth may be incapable of self-representation.
- g. A formal written decision that shows the evidence considered by the hearing officer, the reasons for any sanctions, and an explanation of the appeal process in a Disciplinary Due Process Hearing Report.
- h. Reasonable sanctions for violating rules that relate to the severity of the violation.
- i. The opportunity to appeal the finding.
- j. All major disciplinary actions shall be reviewed at the Superintendent level to ensure proper rules and procedures were followed. This review shall occur once discipline or alternative programming is carried out.

### **1390.2 YOUTH RULES AND SANCTIONS**

The Superintendent or the authorized designee is responsible for ensuring that youth rules and disciplinary sanctions are developed, distributed, reviewed annually, and revised as needed. Administration of discipline shall use trauma-informed approaches and positive behavior interventions (15 CCR 1391).

Youth cannot be held accountable for rules of which they are unaware. However, it is impossible to define every possible prohibited act or rule violation that might be encountered in a detention facility. Therefore, a current list of recognized infractions that are generally prohibited should be accessible to all youth. Youth rules shall be translated into the languages that are understood by the youth (see the Youth Orientation Policy).

Disciplinary procedures governing youth rule violations should address rules, minor and major violations, criminal offenses, disciplinary reports, prehearing and post-hearing disciplinary actions, prehearing and post-hearing removal from general population, and prehearing and post-hearing separation from other youth.

### **1390.3 MINOR RULE VIOLATIONS**

Institution staff are authorized to recommend informal discipline for minor violations.

Minor rule violations generally include those that do not have an impact on the safety, security, or efficiency or operation of the facility and its personnel, staff, and/or youth. Minor rule violations may result in informal counseling, advising the youth of expected behavior, and/or a “cooling off” time away from other youth for a maximum of 30 minutes, all of which are not considered discipline. Minor rule violations also may result in disciplinary actions such as loss of privileges, loss of behavior points, and/or alternative programming such as completing a book report, essay, art project or other constructive activity separate from the group.

Any staff member imposing informal discipline should issue a Disciplinary Due Process Ticket and document the information in the Youth Log.

A youth may request that an Institution staff review the imposed sanction. The Institution staff should respond to the request within a reasonable time (generally within two hours) and shall have final authority as to the imposition of informal discipline.

See Procedures Manual on Alternative Program for further information.

### **1390.4 MULTIPLE MINOR RULE VIOLATIONS**

Institution staff may initiate an incident report listing the major rule violations if a youth is charged with three or more minor rule violations within a 30-day period. Copies of all minor rule violations will be attached to the major rule violation report. The Superintendent or the authorized designee shall assign the staff responsible to conduct the hearing according to the applicable procedures.

### **1390.5 MAJOR RULE VIOLATIONS**

Major rule violations are considered a threat to the safety, security, operation or efficiency of the juvenile facilities, its staff members, youth, or visitors. Staff members witnessing or becoming aware of a major rule violation shall take immediate steps to stabilize and manage the situation, including notification of an ISM or authorized designee as soon as practicable. The institution staff shall assess the situation and initiate any emergency action, if necessary, and notify the ISM or the authorized designee.

Major rule violations may result in loss of privileges, loss of behavior points, alternative programming or room confinement if other less restrictive options have been attempted and exhausted or attempting those options poses a threat to the safety and security of the youth, ward, or staff.

The staff member who learned of the rule violation shall write and submit a disciplinary report, along with all relevant evidence, to the appropriate ISM or authorized designee prior to the end of the shift.

### **1390.6 PREHEARING SEPARATION**

Youth who are accused of a major rule violation may be removed from the general population of youth with the ISM or authorized designee approval, if there is a threat to safety or security of other youth, staff members, or visitors.

The Chief Probation Officer or the authorized designee shall, within four hours including weekends and holidays, review the status of any youth in prehearing separation to determine whether continued separation from the general population is appropriate (Welfare and Institutions Code § 208.3).

### **1390.7 INVESTIGATIONS**

Investigations involving major rule violations should be initiated within 24 hours of the initial report and completed in sufficient time for the youth to have a disciplinary hearing and as soon as practicable when the youth has been removed from the general population. If additional time is needed, the investigating Institution staff will request more time in writing from the ISM or authorized designee. The youth will be notified in writing of the delay.

If, upon completion of the investigation, the investigating lead staff finds insufficient evidence to support a major rule violation, the investigating lead staff may discuss alternative sanctions with the On-Duty Officer of the Day, including handling the incident as a minor violation or recommending that charges be removed. Such alternatives shall be documented in the youth's file.

If the investigating lead staff determines that sufficient evidence exists to support a major rule violation, the investigating lead staff will act as the hearing coordinator and will be responsible for:

- a. Reviewing all reports for accuracy and completeness.
- b. Overseeing or conducting any required additional investigation.
- c. Determining the final charges.

- d. Making preliminary decisions about the appointment of a staff member to act as an assistant to the youth.
- e. Identifying any witnesses who may be called to the hearing.

### **1390.8 NOTIFICATIONS**

A youth charged with a major rule violation shall be given a written description of the incident and the rules violated before a disciplinary hearing (15 CCR 1391).

Unless waived in writing by the youth, hearings may not be held in less than 24 hours from the time of notification.

If the youth has been removed from the general population, written notice shall be given no later than two hours after the removal from the general population of youth.

### **1390.9 HEARINGS**

The Superintendent shall appoint at least one hearing officer to preside and conduct disciplinary hearings of major rule violations. The hearing officer should be a qualified ISM or authorized designee who will have the responsibility and authority to rule on charges of youth rule violations. The hearing officer shall also have the power to impose sanctions. The hearing officer shall not investigate nor preside over any youth disciplinary hearing on cases where the hearing officer was a witness or was directly involved in the incident that generated the complaint.

Youth charged with major rule violations are entitled to be present at a hearing unless waived in writing or excluded because their behavior poses a threat to facility safety, security, and order. Institution Staff shall inform the hearing officer when any youth is excluded or removed from a scheduled hearing and shall document the reasons for the exclusion or removal. A copy of the report shall be forwarded to the Superintendent.

Hearings may be postponed or continued for a reasonable period for good cause. Reasons for postponement or continuance shall be documented and forwarded to the Superintendent.

The hearing officer shall disclose to the accused youth all witnesses who will be participating in the hearing. Youth have no right to cross-examine witnesses. However, the accused youth may be permitted to suggest questions that the hearing officer, in the hearing officer's discretion, may ask.

### **1390.10 EVIDENCE**

Accused youth have the right to make a statement, present evidence, and call witnesses at the hearing. Requests for witnesses shall be submitted in writing by the youth no later than 12 hours before the scheduled start of the hearing. The written request must include a brief summary of what the witness is expected to say.

The hearing officer may deny the request when it is determined that allowing the witness to testify would be unduly hazardous to institutional safety or correctional goals, or when the

witness's information is not relevant or would be unnecessarily duplicative or is otherwise unnecessary. The reason for denying a youth's request for witness testimony shall be documented in the hearing report. The reason for denial of any documents requested by the youth shall also be documented in the hearing record.

A witness's signed written statement may be submitted by the youth as an alternative to a live appearance. The hearing officer shall review and determine whether the statement is relevant to the charges and shall document the reason for exclusion when any written statement is not considered.

Absent a safety or security concern, all staff reports and evidence, including exculpatory evidence, obtained during the disciplinary investigation shall be made available to the accused youth prior to the hearing.

#### **1390.11 CONFIDENTIAL INFORMANTS**

If information from any confidential informant is to be presented at the hearing, information establishing the reliability and credibility of the informant shall be provided to the hearing officer prior to the hearing. The hearing officer shall review such information to determine whether the informant is reliable and credible.

#### **1390.12 STAFF ASSISTANCE**

Upon the request of the youth, a staff member shall assist the youth at a disciplinary hearing. A staff member shall be assigned to assist a youth who is incapable of self-representation at a disciplinary hearing due to literacy, developmental disabilities, language barriers, or mental status (15 CCR 1391). The scope of the duties of the assistant shall be commensurate with the reasons for the appointment. The assistant should be allowed sufficient time to confer with the youth to fulfill the assistant's obligations. In these cases, the youth does not have a right to select a person to assist in the youth's disciplinary hearing. The final decision regarding the appointment rests with the hearing officer.

Youth discipline is an administrative and not a judicial process. Youth do not have a right to an attorney in any disciplinary hearing. Additionally, disciplinary matters may be referred for criminal prosecution as there is no double jeopardy defense for an administrative process.

#### **1390.13 DISCIPLINARY DECISIONS**

Disciplinary decisions shall be based on the preponderance of evidence presented during the disciplinary hearing.

The disciplinary process shall consider whether a youth's mental disabilities or mental illness contributed to the youth's behavior when determining what type of discipline, if any, should be imposed (28 CFR 115.378(c)).

#### **1390.14 REPORT OF FINDINGS**

The hearing officer shall write a report regarding the decision and detailing the evidence and the reasons for the disciplinary action. A copy of the report shall be provided to the youth. All

documentation related to the disciplinary process shall be retained and a copy should be placed in the youth's file.

If it is determined that the youth's charge is not sustained at the end of the disciplinary hearing, the documentation shall be removed from the youth's file but otherwise maintained in accordance with records retention requirements.

All disciplinary hearing reports and dispositions shall be reviewed by the Superintendent or the authorized designee as soon as practicable after the final disposition.

### **1390.15 DISCIPLINARY APPEALS**

Youth wishing to appeal the decision of the hearing officer must do so in writing within five (5) days of the decision. All appeals will be forwarded to the Superintendent or the authorized designee for review.

Only appeals based on the following will be considered:

- a. The disciplinary process or procedures were not followed.
- b. There was insufficient evidence to support the hearing officer's decision.
- c. The discipline imposed was not proportionate to the violation committed.

A final disposition shall be rendered as soon as practicable if the youth's appeal is granted, or discipline is reduced but no later than 10 days after the appeal. The decision of the review authority shall be final, and the result of the appeal shall be provided to the youth in writing.

Superintendent

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### **1390.16 LIMITATIONS ON DISCIPLINARY ACTIONS**

The U.S. and California constitutions expressly prohibit all cruel or unusual punishment. Additionally, the following limitations exist (15 CCR 1390; 15 CCR 1391; 15 CCR 1371):

1. In no case shall any youth or group of youth be delegated the authority to punish any other youth or group of youth.
2. In no case shall a safety room be used for disciplinary purposes.
3. In no case shall any restraint device be used for disciplinary purposes.
4. Food or access to drinking fountain shall not be withheld as a disciplinary measure.
5. Correspondence privileges shall not be withheld as a disciplinary measure.
6. In no case shall access to the courts and/or legal counsel be suspended as a disciplinary

measure.

7. No youth may be deprived of the implements necessary to maintain an acceptable level of personal hygiene, including but not limited to a daily shower, access to a drinking fountain, a toilet, personal hygiene items, and clean clothing.
8. Discipline may be imposed for sexual activity between youth. However, such activity shall not be considered sexual abuse for purposes of discipline unless the activity was coerced (28 CFR 115.378(g)).
9. No discipline may be imposed for sexual contact with staff unless there is a finding that the staff member did not consent to such contact (28 CFR 115.378(e)).
10. No youth may be disciplined for falsely reporting sexual abuse or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation, if the report was made in good faith based upon a reasonable belief that the alleged conduct occurred (28 CFR 115.378(f)).
11. No confinement in excess of four (4) hours inside their room and without an opportunity for at least one (1) hour of exercise daily outside of the immediate living quarters may be imposed unless the Superintendent or the authorized designee determines and documents that this opportunity will jeopardize the physical safety of the youth or others or the security of the facility.
12. No youth may be subject to a substantial change in heating, lighting, or ventilation or dirty and unsanitary living conditions.
13. No youth may be subject to restrictions on clean clothing, bed and bedding, the use of hygienic facilities, or reading or writing materials as a disciplinary measure.
14. Restrictions shall not be placed a youth's living conditions.
15. Restrictions shall not be placed on medical and dental care as a disciplinary measure.
16. Restrictions shall not be placed on a youth's access to government officials as a disciplinary measure.
17. Restrictions shall not be placed on a youth's access to grievance proceedings as a disciplinary measure.
18. No youth may be prohibited from contact with the youth's parents or guardian as a disciplinary measure.
19. No youth may be deprived of education, rehabilitative programming, mental health counseling, or religious services as a disciplinary measure.

20. In no case shall any youth be subjected to corporal punishment or physical or psychological degradation.

Discipline shall not include group punishment, where a group of uninvolved youth are denied programming or treatment due to the actions of one or more youth except when the safety and security of the unit and/or facility may be in jeopardy. Necessary measures to maintain the safety and security of the facility and youth shall not be considered group punishment. Denial of special privileges that are not programming or treatment is not considered group punishment.

Exceptions must be justified in writing and approved by the Superintendent and must be consistent with the applicable disciplinary disposition.

The discipline of youth should promote acceptable behavior. Generally, discipline should be imposed at the least restrictive level which promotes desired behavior (15 CCR 1390).

### **1390.17 GUIDELINES FOR DISCIPLINARY SANCTIONS**

Any Institution Staff, teacher, Institution Services Manager, or Superintendent may impose discipline using trauma-informed approaches and positive behavior interventions. Special consideration should be given to youth with disabilities, limited literacy and English language learners.

Institution Staff are prohibited from delegating the responsibility for discipline to any youth, volunteer, or support staff person.

The sanctions imposed for rule violations can include counseling, loss of certain privileges or "points" associated with a rewards-based behavior management system and restitution for damaging property. To the extent that therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for sexual abuse are available, the facility shall consider whether to require a youth being disciplined for sexual abuse to participate in such interventions as a condition of access to programming or other benefits (28 CFR 115.378(d)).

Discipline shall be commensurate with the nature and circumstances of the offense committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories (28 CFR 115.378(b)).

Youth shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the youth engaged in youth-on-youth sexual abuse or following a criminal finding of guilt for youth-on-youth sexual abuse (28 CFR 115.378(a)).

The Chief Probation Officer or the authorized designee shall be responsible for developing and implementing a range of disciplinary sanctions for violations.

Violations that result in a removal from a camp or commitment program, but not a return to court, shall follow the due process provisions in this policy (15 CCR 1391).

### **1390.18 RECORDS**

A record of all rule violations and sanctions will be made and maintained in accordance with the juvenile facilities' records retention schedule.

At a minimum, Disciplinary Due Process Tickets or incident reports are required for rule violations. The Institution Staff member who observed or detected the rule violation or who was charged with investigating a rule violation is responsible for completing the Disciplinary Due Process Ticket or incident report. The Disciplinary Due Process Ticket or incident report shall include, at a minimum:

- a. The date, time, and location of the incident.
- b. The specific rules violated.
- c. A written description of the incident.
- d. The identity of known participants in the incident.
- e. Identity of any witnesses to the incident.
- f. Description and disposition of any physical evidence.
- g. Action taken by staff, including any use of force.
- h. Name and signature of the reporting group supervisor.
- i. Date and time of the report.

The Institution Staff investigating the violation and preparing the prehearing details for major rule violations shall ensure that documentation in the rule violation report includes:

- a. Date and time that the explanation and the written copy of the complaint and appeal process were provided to the youth.
- b. The youth's response to the charges.
- c. The reasons for any sanctions.
- d. The identity of any staff or witnesses involved or requested by the youth.
- e. The findings of the hearing officer.
- f. The youth's appeal, if any.
- g. The appeal findings, if applicable.

### **1390.19 TRAINING**

The Superintendent or the authorized designee is responsible for ensuring that a wide range of training and disciplinary tools are available to aid staff and that preprinted forms are available for documenting rule violations in a consistent and thorough manner (15 CCR 1322).

The Superintendent or the authorized designee is responsible for developing and delivering, or procuring, training for staff members who participate in the disciplinary hearing process. Training topics should include the legal significance of due process protections and the hearing officer's role in ensuring that those protections are provided (15 CCR 1322).