

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Policy: 410**

**Subject:** Due Process

**Effective Date:** 09/26/03                      **Review and Re-Issue Date:**

**Supersedes:** Policy 410                      **APA Rule Number:**  
Offender Discipline  
Dated 03/18/1996

<b>Recommended for approval by:</b> <b>Richard C. Turner, Director/Correctional Services</b>	<b>Authorized By:</b> <b>Steven M. Gold, Commissioner</b>
_____	Signed by S. Gold _____
<b>Signature</b> <b>Date</b>	<b>Signature</b> <b>Date</b>

**1. Authority:**

1.1. Title 28 V.S.A, 101 (1), 101 (5), 28 V.S.A. 102 (b) (2), 102 (c) (1), 102 (c) (5), 102 (c) (6), 28 V.S.A. 601 (2), 601 (3), 28 V.S.A. 812, 28 V.S.A. 851, 852, 853, 855, Title 28 V.S.A. 1301.

**2. Purpose:**

2.1 The purpose of this State of Vermont Policy is to outline the framework for the establishment of rules for Administrative Hearings.

**3. Applicability/Accessibility**

3.1 This policy applies to Department of Corrections staff and offenders. Anyone may have access to this policy.

**4. Policy**

4.1 Directives and Procedures regarding Administrative Hearings will cover:

- Offender Discipline.
- Violation Hearings (FR/CR/PAF)
- Administrative Segregation
- Preliminary Probable Cause (PPC) Hearings

## **Policy 410 Due Process**

### **5. Training Method**

5.1 The Department's Hearings Administrator, has the responsibility & authority to develop and deliver Administrative Due Process training for Hearing Officer candidates. Those candidates who successfully pass all training components will be recommended for certification by the Commissioner as a VT. DOC Hearing Officer. Local Superintendents and Work Site Managers will develop and deliver local training on the enforcement of rules and regulations.

### **6. Quality Assurance Processes**

6.1 Quality assurance processes are outline in procedures 410.01 through 410.04.

### **7. Financial Impact**

7.1 Due Process hearings associated with the administration of Offender Discipline (410.01), Violation of FR/CR/PAF Hearings (410.02) Administrative Segregation (410.03) and Preliminary Probable Cause Hearings (410.04) demand the exclusive attention of those involved. The majority of the workload falls upon uniformed personnel. Correctional Supervisors and correctional officers must concentrate their efforts at the task at hand when conducting investigations and participating in hearings. Uniformed staff must provide and retrieve paperwork to and from the offender throughout the entire process. From Notice of Hearing to potential Administrative Review there are several occasions where a signed receipt needs to be collected from the offender. All paperwork involved must be distributed to multiple entities requiring specialized forms. Filing this information in various, retrievable, electronic and paper formats demands dedicated administrative personnel time. The process requires various degrees of knowledge depending upon the role that is being fulfilled. The field of expertise is somewhat fluid and very detailed, requiring ongoing training and re-certification. Budgets are based upon a predicted workload. Any unanticipated increase in workload connected with the administration of offender Due Process hearings may translate into additional personnel and operating expense.

### **8. References:**

28 V.S.A. 101(1) (2) (5), 102 (B) (2), 102(C) (1) (5) (6), 601 (2) & (3), 812, 852, 853 Wolf v. McDonnell, 418 U.S. 539 (1974); Baxter v. Palmigiano, 96 S.Ct., 1551 (1976); Ponte v. Real, 105 S.Ct. 2192 (1985); Superintendent v. Hill, 472 U.S. 445 (1985).

### **9. Responsible Director and Draft Participants:**

This Policy was written by John B. Murphy, Hearings Administrator & Jay W. Simons, Assistant Superintendent

## Policy 410 Appendix I

**Confinement (Disciplinary/Administrative Segregation):** When an inmate's movement is restricted to a room or cell for 23 hours a day and privileges and property are severely limited. (410.01)

**Continuance:** The re-scheduling of a hearing date. (410.01)

**Disciplinary Committee:** A body of two or three qualified and trained staff persons appointed by the Superintendent by name. At least two members equal or constitutes a quorum for imposition of discipline. (370)& the Superintendent or Acting Superintendent may be chairperson. (410.01)

**Disciplinary Segregation:** When an inmate's movement is restricted to a single cell for 23 hours a day. Privileges and amenities are limited. (370, 410.01)

**Expunge:** To remove from the official inmate file. (410.01)

**Formal Process:** There are two types of formal process: the first is the use of the offender disciplinary system as defined by directive 410.01; the second is a furlough revocation that would require a case review and or a case staffing. (371.16)

**Hearing Assistant:** A person who assists the inmate in preparing and presenting his case. (410.01)

**Hearing Authority:** Each legal status has an authority that makes due process decisions concerning violations of conditions. Generally these due [process decisions are broken into two components; 1) the determination of guilt or innocence and 2) the disposition of the case. The hearing authority for probation is the District Court, for SCS and parole, it is the Parole Board and for furlough, it is the Department of Corrections. (413.06)

**Hearing Officer:** A person designated by the Commissioner of Corrections and assigned by the Superintendent/District Manager or designee to conduct hearings. (370)

**Investigating Officer:** A person selected by the Superintendent/District Manager or designee to investigate the charge and compile evidence for submission to the Superintendent/District Manager. (410.01)

**Major Disciplinary Report:** The report issued by a DOC employee when an inmate is charged with a major violation. (410.02)

**Presenting Officer:** A person assigned by the Hearing Officer to present facts relevant to the incident for disciplinary consideration. The presenting officer may also have been the investigating officer. (410.01)

**Reporting Officer:** The staff member who brings a charge against an inmate by preparing a disciplinary report. (410.01)

**Working Day:** Monday through Friday between the hours of 08:00 AM and 4:30 PM, excluding holidays, shall be defined as working days. (410.01)