

Program Removal Hearings Procedures For Those Offenders Assigned To PPCS, SSP, EMP or GPS Programs

1. The "Offense Report" from disciplinary procedure, OP-060125, or a violation report may be used to document the alleged program rule and/or condition violation. An offender assigned to one of the programs may be disciplined for a violation of the "Acts Constituting Rule Violation" and may also be removed from the program for violating a rule and condition as found on the rule and condition sheet signed by the offender. The procedures found in this attachment will control in either event. If the offender is considered for discipline, he/she will receive a finding as to the disciplinary offense. If the offender is considered for program removal, he/she will receive a finding as to the rule and condition violation and a reason for program removal. If considered for both, the offender receives all three results.
2. When it is suspected that an offender on PPCS/EMP/SSP/GPS has committed a violation of the rules and conditions of the program, a staff member will prepare a report identifying the program rule and/or condition which it is believed that has been violated by the offender. If the offender is also suspected of violating an offender rule violation, that rule will also be clearly identified. If the situation dictates, offenders may be placed in segregated housing prior to the completion of the violation report. When this is appropriate, a segregated housing order will be prepared in accordance with OP-040204. The offender will be served notice of the program rule violation within three working days of being placed in segregated housing.
3. Procedures
 - a. The violation report will be prepared then reviewed and accepted by a supervisor before it is served to the offender.
 - b. After acceptance, the offender will be taken into custody and served with the notice of rule and condition violation and/or the offense report and given at least three working days to prepare for the hearing: program removal and/or disciplinary. The hearing will be conducted no later than ten working days after the offender has been served notice of the violation. The hearing may be rescheduled by staff if necessary and the reason for delay must be documented. The offender may ask for one continuance of three working days for good cause.
 - c. When notified of the violation and time of hearing the offender will be notified that if found guilty of the violation, a removal review will be held following the hearing at which the offender will be allowed to present evidence for mitigation (reasons for not being removed from the program and assigned to a facility).
 - d. If the offender waives the opportunity for a hearing and/or pleads guilty, staff will immediately impose discipline and conduct the removal review.

- e. For the program removal hearing the offender may call relevant witnesses and must inform the investigating officer of their identity and what the substance of their testimony will be at the hearing. The offender is also allowed to have relevant witnesses for mitigation. It is the offender's responsibility to notify his witnesses of the date and time of the hearing. The investigating officer may disallow any witness who does not have relevant testimony, such action will be documented. The staff member/s who witnessed the rule violation is/are to be present and available for questioning.
 - f. At the program removal hearing, the offender may pose relevant questions to the witnesses. The hearing officer may disallow non-relevant questions and will prevent any abuse of any witness by the offender. The offender may present relevant documentary evidence. If security reasons dictate, such as to protect the identity of an informant, the offender will not be permitted to confront or cross-examine a witness and the denial and reason will be documented by the investigating and hearing officer.
 - g. The staff member assigned to conduct the hearing will also conduct the program removal review and make a decision regarding removal or non-removal from the program reassignment to a facility. Only employees in job classification of team supervisor, unit manager, case manager IV or higher may be assigned as the program removal hearing officer.
 - h. The assigned hearing officer can not be a staff member who prepared the violation report, the offender's supervising officer or the supervisor who reviewed the report and authorized its issuance or authorized the placement of the offender in segregated housing.
 - i. If there is a finding of a rule and condition violation and the determination is to remove the offender from the program, the reason for removal will be documented referring to the evidence and anything relevant provided during the program removal review.
 - j. The program removal hearing is a non-adversarial administrative hearing and the offender is not permitted to be represented by an attorney, staff representative, or any other party unless the investigator determines the offender is incompetent to adequately understand the charge against him and to represent himself. In the case of an incompetent offender the investigator will assign a staff representative to assist the offender in the preparation of his defense or the offender may hire attorney at his own expense or apply to the local public defender for assistance.
4. Offenders found guilty of the rule and condition violation may appeal the findings of the hearing officer through the grievance procedures in OP-090124.
5. The hearing will be tape recorded, except for any period of deliberation by the hearing officer.

PROGRAM REMOVAL HEARING GUIDE

1. Test tape and recorder. The entire hearing must be recorded. Use a standard size cassette.
2. "I am _____, the program removal hearing officer, and this is a program removal hearing for offender _____, DOC # _____, who is charged with the rule violation of _____, which is alleged to have occurred on _____. This is the second phase of the process for offenders assigned to a specialized program who have committed rule violations. This hearing is being recorded on tape number _____. All present will speak clearly and distinctly. The hearing is being held on _____ (date/time) at _____(location). Each person present will state your name and title/status for the audio record please". Pause to let each speak.
3. If the offender has been previously sworn in for the disciplinary hearing, you may skip this section, but note into the tape that the offender was previously sworn in for the disciplinary hearing. "Offender _____, you have the right to remain silent. However, adverse inferences may be drawn from your silence. Anything you say can, and will, be used against you in this proceeding and in a court of law. You may stop talking anytime you wish. Do you understand each of these rights I have explained to you?" Allow offender to answer.

Swear in the offender. "Do you solemnly swear or affirm that the testimony that you are about to give in this hearing is the truth, the whole truth, and nothing but the truth?" Allow offender to answer. "Be advised, offender _____, that any disruptive behavior on your part may result in your removal, and the hearing will proceed without you. Do you understand?" Allow offender to answer.

4. "Offender _____, did you receive notice of the charge against you by use of the Notice of Rule and Condition Violation form?" Allow offender to answer.
5. Read the rule violation into the record. Indicate to the offender that you have reviewed the evidence, and allow the offender to present his evidence regarding the rule violation. At this time, the offender may cross examine his accuser, but must direct his questions through the hearing officer. The offender may present live witnesses, witness statements, or other documentary evidence relevant to whether or not the rule was violated.
6. The offender and all witnesses will be asked to step out of the hearing, or the hearing officer may leave the hearing. The hearing officer will deliberate and make a determination of whether or not there is some/any evidence that the offender violated the rule of the program. The finding will be documented in section I of the Program Rule and Condition Violation Hearing Action form.
7. The offender and all witnesses will be brought back into the hearing and advised of the finding. If the offender is found to have violated the rule, the offender will then be

allowed to present his defense, witnesses, witness statements, and/or documentary evidence relevant to why he should not be removed from the program. The officer may give his recommendation and reason also.

8. The offender and all witnesses will be asked to step out of the hearing or the hearing officer may leave the hearing. The hearing officer will then deliberate and make a determination of whether or not the offender will be removed from the program and reassigned to a correctional facility. The decision will be documented in section 2 of the Program Rule and Condition Violation Hearing Action form.
9. If witnesses were disallowed during the hearing, this information and the reason will be documented in section 3 of the Program Rule and Condition Violation Hearing Action form.
10. The offender will be brought back into the hearing and the offender will be advised of the finding and reason. The offender will be given a copy of the completed Program Rule and Condition Violation Hearing Action form.
11. The offender will be advised of the appeal process. "You may appeal the finding that you did commit the rule violation through the department offender disciplinary process found in OP-060125. You have fifteen calendar days from today to begin the appeal by submitting the Offender's Rule and Violation Appeal form to the district supervisor. You may appeal the removal from the program by utilizing the inmate/offender grievance process found in OP-090124. You have seven calendar days to begin the grievance process by submitting a Request to Staff form to your supervising officer."
12. Turn off the tape.