

MAINE DEPARTMENT OF CORRECTIONS
SUMMARY OF AND RESPONSES TO PUBLIC COMMENTS

Chapter Number and Title of Rule: Chapter 10, Section 20.1, Adult Resident Discipline

The Maine Department of Corrections proposes to amend Rule Chapter 10, Section 20.1 Adult Resident Discipline.

The Secretary of State's rulemaking ad was published on July 22, 2026. The Department of Corrections provided notice of rulemaking to interested persons on July 16, 2026, and posted it on the Department's website that same day.

A public hearing was held on August 11, 2026.

This document summarizes all oral and written comments received during the public comment period ending August 21, 2026, and the responses thereto.

The Department thanks all commenters for providing oral and/or written comments.

Summary of Public Comments and Responses

The following persons attended the public hearing
1. Mae Boyle – read the written comments of residents Santiago and Burnell
2. Luca Mellon - oral comments

The following persons or organizations submitted written comments:
1. Andrew Freeman (MDOC # 98269) – submitted 2 emails with the same comments
2. Deborah Hylton Marianna Freeman – submitted 2 emails with the same comments
3. MSP Residents affected and concerned – these comments were anonymous
4. Luca Mellon
5. MSP NAACP Branch – submitted by Foster Bates (MDOC # 52366)
6. Pedro E. Santiago (MDOC # 26561)
7. Robert Burnell (MDOC # 175628)
8. Roscoe Sargent (MDOC # 83226)
9. Sarah Johnson
10. Thazra-Rosie Hylton
11. Deborah Hylton
12. Gordon Perry
13. MDOC Residents Affected and Concerned – these comments were anonymous

Comments and Responses

1. Written comments of Maine State Prison resident Andrew Freeman (MDOC # 98269)

COMMENT: The commenter states that Procedure O.21 undermines the basic promise of fairness and contradicts other parts of the policy, which provide that constitutional and statutory rights are to be followed in matters of discipline, disciplinary action is not to be arbitrary or retaliatory, and sanctions must be fair, impartial, and proportionate. To make sure things are fair, the disciplinary policy sets up a whole system of rules: a written notice of charges at least 24 hours before a hearing, an investigator to look into what happened, an impartial hearing officer, a counsel substitute, the right to call witnesses and present exhibits, and a finding of guilt requiring proof that is "more probable than not."

According to the commenter, Procedure O.21 destroys all of these protections because it states that if facility staff think a resident did something wrong, the staff can "punish" them by changing their custody level, transferring them to a different housing status, dropping their privilege levels, and completely restricting, suspending, or terminating mail, phone, in-person and video visits, text messaging, tablets, and computer or internet access. The commenter finds it objectionable that the procedure says this can be done "regardless of whether the disciplinary process is initiated" and "regardless of whether the conduct leads to an informal resolution or formal resolution of the violation" and that it says that "a dismissal or a finding of not guilty does not preclude taking any such action." According to the commenter, this is unfair even if the procedure declares that "such action is not in the nature of a disciplinary sanction."

The commenter believes that this is a deprivation of liberty and property without due process and means that innocence offers no protection. The resident asks that this procedure be removed in its entirety and that only those found guilty of a disciplinary violation be subject to these actions, which the commenter believes should only be imposed through the disciplinary process.

RESPONSE: The commenter is mischaracterizing this procedure (which is proposed to be only slightly amended from its previous version). The purpose of this procedure is to provide notice to residents that the disciplinary process is separate from other processes that may result in an action being taken because it is in the interest of the resident, in the interest of the resident population, or in the interest of safety, security, or orderly management. Removal of this procedure would not change the applicability of those processes; it would just mean there would be less transparency.

None of those other processes allows actions to be taken based on the whims of facility staff, as the commenter implies. Instead, decisions are made only after careful consideration by a resident's Unit Team, the facility Warden, or Deputy Warden, and/or relevant Central Office administrators. For some of these decisions (e.g., change in custody level), residents have the opportunity to be heard at a review before the decision is finalized. All decisions made are subject to either a specific appeal process (just like the disciplinary process is) or the grievance process. A resident who does not succeed on an appeal or a grievance, as applicable, is then able to dispute the action in court. Even if due process were implicated by an action taken outside of the disciplinary process, these safeguards are more than sufficient.

It would be unreasonable to provide that these actions only be taken if imposed through the disciplinary process. Many of the actions referred to in Procedure O.21 need to be taken proactively and cannot wait the up to 30 or so days that completion of the disciplinary process can take. For example, if it is discovered that a resident is threatening someone in the community by phone, the Warden needs to be able to restrict that resident's phone privileges right away. If one resident assaults another, the resident, if still posing a threat to others, would

need to be immediately moved to a different housing area, where the Unit Team (and Warden) would determine whether they stay there or are safe to return to their original housing area. Waiting for a disciplinary finding of guilt in either of these situations would be dangerous. It would be like suggesting that the police not be allowed to take the car keys of a drunk driver or the Secretary of State's Office not be allowed to suspend the driver's license of a drunk driver unless and until a court finds them guilty of a crime.

Procedure O.21 will not be removed.

2. Written comments of Marianna Freeman

COMMENT: The commenter opposes Procedure O.21 by largely echoing the comments of Andrew Freeman regarding due process. The commenter believes that due process requires that actions taken by the Department in the interest of safety need to have an administrative process with the same procedural safeguards as the disciplinary process. The commenter adds that the statement in the procedure that "such action is not in the nature of a disciplinary sanction" is an unconstitutional "substance over form" evasion as the possible outcomes of this procedure are identical to the disciplinary sanctions laid out in Procedure M of the policy.

RESPONSE: To the extent these comments echo prior comments, see the responses to the latter. In addition, the Department points out that the commenter is incorrect in asserting that the possible outcomes of the actions referred to in this procedure are identical to those described as disciplinary sanctions in Procedure M. For example, none of the actions referred to in Procedure O.21 can result in the loss of previously earned good time or in the imposition of disciplinary restriction, both of which are possible disciplinary sanctions.

While it is possible for privileges to be lost through both the disciplinary process and in other ways, that does not mean that the loss of privileges is always a punishment. It might be a preventative measure taken because it would be unwise to trust the resident with the privilege. For example, if a dog in the care of a resident is found to have been mistreated, and it is possible that the dog is still at risk from the resident, then the resident will lose the privilege of participating in the dog training program immediately and regardless of the outcome of any later disciplinary hearing. Even if the resident is not found guilty of the mistreatment because of a lack of sufficient proof to reach the disciplinary policy's requirement of "more probable than not" or due to a technicality like failure of staff to meet some time deadline set out in the disciplinary policy, that is not a reason to put the dog in danger of further mistreatment. This is no different than an employer firing their accountant because the money they handle has gone missing – the employer does not have to bring a criminal complaint at all, let alone wait until there has been a conviction for embezzlement before they ensure their money is protected from future loss.

3. Written comments of "MSP Residents affected and concerned"

COMMENT: The commenters oppose Procedure O.21 because they say it exceeds statutory authority, subverts established agency rulemaking doctrines, and creates an arbitrary mechanism that violates basic principles of Maine administrative law, including the Accardi doctrine, which requires agencies to follow their own procedural rules. Furthermore, they claim it renders the formal disciplinary hearing framework completely illusory as it strips "essential" privileges, alters housing status, or lowers security classification for alleged conduct "regardless of whether the disciplinary process is initiated" or following an explicit "not guilty" finding or dismissal. They claim it creates a parallel and unreviewable avenue to impose a "penalty" on residents.

The commenters add that Procedure O.21 risks running afoul of judicial review standards under the Maine Administrative Procedure Act (5 M.R.S §11001 et seq.) and Maine Rules of Civil Procedure 80C. They say that this procedure touches upon a slippery slope of arbitrary and capricious actions, as well as abuse of discretion.

They ask that this procedure be deleted or that it be amended to explicitly state that administrative housing or privilege changes *shall not* be based upon alleged conduct for which a resident has received a formal dismissal or a finding of not guilty, nor used as a substitute for formal disciplinary proceedings.

RESPONSE: To the extent these comments overlap with prior comments, see the responses to the latter. As for the Accardi case, it was not about a Maine agency or Maine law. It concerned a federal agency and federal law. In addition, the Department notes that the commenters point to no statutory authority that is exceeded by this procedure. The Department points to 34-A M.R.S. §§ 1201, 1202, 1402(1) and 1403(1), which have been interpreted by the Maine Law Court to give broad authority to the Department, and which would be rendered meaningless if the position of the commenters were to be adopted. It would be impossible for the Department's facilities to be managed in way that promotes safety, security, and order if any action that is considered to be adverse to a resident could only be the result of a formal disciplinary hearing process. There are numerous federal and Maine court decisions upholding as necessary the broad discretion given to correctional agencies to manage correctional facilities and their residents.

There is also no administrative law, rulemaking doctrine, or judicial review standard that this procedure runs afoul of.

Procedure O.21 will not be deleted or amended.

4. Oral and written comments of Luca Mellon

The commenter expressed various concerns, either orally or in writing or both.

COMMENT: Stated only orally was the commenter's objection that comments could only be made related to the proposed amendments rather than on the entire rule. The commenter stated that they spoke with a staff person at the Secretary of State's Office who said otherwise. The commenter was asked to identify that staff person but declined.

RESPONSE: It is impossible to check on what the commenter might have been told by an unidentified person. It is the Department's position that if a rule is proposed to be repealed and replaced, then the entire rule, including provisions that are not different from the then current rule, is subject to comments. However, in the case of a rule proposed only to be amended, if a comment is unrelated to proposed changes, it can be rejected on the basis that it is unrelated to the rulemaking.

COMMENT: Stated only in the written comments was a concern that facility residents would not be able to understand a rule written in what they call "inaccessible legalese jargon." The commenter does not believe that case managers can provide enough help with this due to having large caseloads.

RESPONSE: This commenter notes that they made a similar comment last year. At that time, they were invited to submit written comments with suggested simplified wording. They did not do so either then or now. Similar to last year, the Department believes that the proposed amendments are written as simply as they can be, considering the complexity of the subject matter and the need for precision in a rule that is required to comply with due process notice requirements. As pointed out last year, not only does every adult facility resident have a case

manager, but there are other staff who they can ask questions of if they do not understand the amended rule. Again, as stated last year, any resident who needs or requests assistance in defending themselves against a disciplinary charge has the opportunity to have a trained counsel substitute assist them.

Stated in oral comments and then elaborated on in written comments were the following:

COMMENT: The commenter expressed concern that residents are not adequately notified of rulemaking, focusing on what the commenter characterizes as unreliable tablet access and the lack of a physical library at the Maine State Prison.

RESPONSE: Every resident who requests notification of rulemaking receives it as required by statute. Putting rulemaking notifications on the tablets issued to most residents by the DOC is not required but is done as a courtesy. Any resident without tablet access has the option of requesting rulemaking notification from the facility librarian, including at Maine State Prison.

COMMENT: The commenter was dissatisfied with the arrangements for accessing the hearing in person, the time of the hearing being in the middle of a workday, and that a request for a Zoom link to the hearing was denied. The commenter also wondered why hearings could not be held in the correctional facilities, which they said residents reported had happened with respect to another rule.

RESPONSE: The Department concedes that the arrangements for in-person access could have been less cumbersome. However, both this commenter and another person were able to attend, and there have been no reports that anyone who wished to attend in-person was prevented from doing so. The hearing's timing factored in the possibility of attendees needing to travel long distances. There is no requirement for a rulemaking hearing to include remote access, something which has proven difficult in the past. It is also not true that rulemaking hearings were ever held in the facilities, something which logistics would preclude.

COMMENT: The commenter requested that future proposed rules be formatted using "underlining, boldface, strikethrough, italics, and/or color" for easier identification of the proposed changes. When it was pointed out at the hearing that the legislative format with underlining and strikethroughs had been used, the commenter claimed that was not true for the copy on the DOC's website and also said that proposed rules should be in "red track changes" format.

RESPONSE: It is sufficient to use underlining and strikethroughs for a proposed amended rule. This is standard practice and is also used for proposed legislation. Checks of the website both before and after the hearing show that the copy of the proposed amended rule there does have this formatting.

COMMENT: The commenter objects to Procedure N, the "Business or Commerce" disciplinary violation, because, the commenter says, it includes a new prohibition on residents leasing or renting property, which will detrimentally affect residents and their loved ones.

RESPONSE: The commenter misunderstands the purpose of this change. It is to allow the renting or leasing of property, provided the resident receives written authorization from the Chief Administrative Officer. Under the current rule, this is not allowed at all because it would involve a resident incurring a debt, which is prohibited as the disciplinary violation of "Debt." However, because this is not as clear as it could be, the definition of "Debt" will be amended to add the appropriate cross-reference to "Business or Commerce."

COMMENT: The commenter opposes Procedure O.21, though this commenter defers to other commenters for their reasons why, other than noting that they consider it an unfair loophole that denies due process and providing an example of what the commenter considers unfair, which the commenter says the resident in question gave their consent to share.

RESPONSE: To the extent these comments echo prior comments, see the responses to the latter. Because the Department has not seen any resident's consent, it will not respond to the specific example, other than to say that the observations made and conclusions drawn by the commenter are misleading.

COMMENT: The commenter is concerned that this rule includes violations built upon a different policy that is not subject to rulemaking, specifically Policy 24.10 (Adult Resident Use of Computers and/or Access to the Internet).

RESPONSE: Because this comment is unrelated to the proposed amendments to the rule, it is rejected.

5. Written comments of the MSP NAACP Branch – submitted by Foster Bates, Maine State Prison resident (MDOC # 52366) – contained in two largely overlapping documents

COMMENT: The commenter states that the rule's incorporation of Policy 24.10, Adult Resident Use of Computer and/or Access to the Internet, together with the Adult Resident Computer Use and/or Internet Access Agreement, into the disciplinary framework suppresses democratic participation, obstructs civic advocacy, penalizes constitutionally protected speech, and is in conflict with the values of the Maine Model of Corrections (normalization, humanization, dignity, respect, integrity, and empowerment). In particular, the commenter opposes the existence of the following disciplinary violations in Procedure N: Computer and Internet Violations, Termination Violations, Class A; Computer and Internet Violations, Tier I Violations, Class B; and Computer and Internet Violations, Tier II Violations, Class C.

RESPONSE: Because this comment is unrelated to the proposed amendments to the rule, it is rejected.

COMMENT: The commenter believes that Policy 24.10 is itself flawed and points to various of its provisions in support of this comment.

RESPONSE: Policy 24.10 is not a rule and, therefore, is not subject to rulemaking comment.

COMMENT: The commenter believes that the agreement attached to Policy 24.10 is also flawed and points to various supposed omissions in this agreement in support of this comment.

RESPONSE: The agreement attached to Policy 24.10 is not a rule and, therefore, is not subject to rulemaking comment.

COMMENT: The commenter opposes Procedure O.21. The commenter states that every deprivation of a privilege described in this procedure is a disciplinary sanction, despite the Department's saying otherwise, because it is imposed based on alleged conduct and its purpose and effect is to deter, correct, or respond to the conduct, which makes it punitive in nature, and any attempt to put such an action into the category of "administrative management" is a pretext designed to evade constitutional due process requirements, burden expression protected by the First Amendment (in a way that also violates equal protection), and violate the Fourteenth Amendment's guarantee of non-arbitrary state action, which the

commenter describes as action that is not rational, proportionate, or reviewable. According to the commenter, there are court cases supporting these assertions. The commenter also believes that this procedure undermines the rest of the rule. The commenter's final claim is that the "any other action" language allows for unlimited, unreviewable discretion. The commenter concludes that the policy must be revised so that every deprivation triggered by alleged conduct is treated as a disciplinary sanction with full constitutional protections.

RESPONSE: To the extent this comment echoes the comments of other commenters, it has already been responded to. To sum up, not every response to conduct is a punitive one implicating due process protections. In addition, to the extent that the commenter is claiming that this procedure places an unconstitutional burden on expression based on its content or violates equal protection, that is completely false. Further, contrary to what the commenter claims, there is nothing arbitrary about this procedure. Moreover, the Department knows of no court cases that support the commenter's assertions but knows of many that contradict them. Finally, this procedure does not undermine the rest of the rule, as it does nothing more than provide notice of the existence of processes separate from the disciplinary process that might result in certain actions being taken in the interest of the resident, in the interest of the resident population, or in the interest of safety, security, or orderly management. The "any other action" language does nothing more than provide notice that the list is not all-inclusive. As noted in response to another comment, every action taken is either appealable or grievable. Therefore, the policy will not be revised as requested.

COMMENT: The commenter suggests changes to Procedures B.4.a, C.7.d, and C.7.4 (apparently a reference to C.7.d.4).

RESPONSE: Because these suggestions are unrelated to the proposed amendments to the rule, they are rejected.

6. Written comments of Pedro E. Santiago, Maine State Prison resident (MDOC # 26561)

COMMENT: The commenter requests that Procedure O.21 be removed from the final document because, the commenter says, it permits administrative sanctions that bypass fundamental due process protections. By allowing staff to restrict privileges or change housing status without the procedural safeguards of written notice, a fair hearing, and an impartial decision-maker, the rule undermines the integrity of the disciplinary process and diminishes the constitutional guarantee of due process.

The commenter further states that the proposal conflicts with established principles of Maine administrative law, including the principle set out in Sylvia v. Maine Department of Corrections that state agencies are expected to follow their own duly adopted rules. Allowing administrative action to circumvent or disregard the outcome of the formal disciplinary process is inconsistent with those principles and statutory obligations imposed under 34-A M.R.S. § 3032.

RESPONSE: To the extent this comment echoes the comments of other commenters, it has already been responded to. As for the Sylvia case, it concerned a disciplinary hearing and the failure of the disciplinary hearing officer to follow the disciplinary hearing process set out in this rule. Similarly, 34-A M.R.S. § 3032 is the statute that requires certain procedural safeguards related to the disciplinary process to be set out in this rule. Neither is relevant to a procedure that does not govern the disciplinary process but just provides notice about other, separate processes.

7. Written comments of Robert Burnell, Maine State Prison resident (MDOC # 175628)

COMMENT: The commenter requests that Procedure O.21 be removed because, he says, if he is found not guilty of an infraction, he should not be punished. He says that would be like being found not guilty of a crime and still being sent to prison. He claims that is what an RPR does as he would have to do three more days in prison even if found not guilty. He states that it is a pretty obvious way for staff to abuse their authority by retaliating against residents after they are found not guilty or win on a technicality.

RESPONSE: To the extent this comment echoes the comments of other commenters, it has already been responded to. Regarding the RPR example, this is apparently a reference to a resident performance report, which is issued when a resident's conduct during a particular month does not warrant the resident being awarded good time for that month. Whether or not to award good time in the first place is, by law, completely discretionary and has no due process requirements attached to it. The disciplinary process, which may result in the loss of good time that was awarded previously, does require due process. There is no requirement that the outcome of the latter, which has to do with whether a resident should be punished for bad behavior, have any effect on the former, which has to do with whether a resident should be rewarded for good behavior. It is not like being found not guilty of a crime and being sent to prison anyway. It is like being found not guilty of the theft of a car and not being allowed to keep the car when someone else produces the ownership papers.

8. Written comments of Roscoe Sargent, Maine State Prison resident (MDOC # 83226)

COMMENT: The commenter opposes Procedure O.21, stating that it could derail all the progress he has made. He states that he has been punished after being found guilty through the disciplinary process many times but has worked hard on rehabilitating himself and has had "clear conduct" for over two years now. He is concerned that even if he is found not guilty of a disciplinary violation, he would lose privileges and housing status that he has worked so hard for.

RESPONSE: Again, the commenter mischaracterizes this procedure. It merely provides notice of already existing other processes; it does not create them or require that they be used in any particular situation. It is just being slightly revised to provide even more notice.

9. Written comments of Sarah Johnson

COMMENT: The commenter opposes Procedure O.21, repeating the same arguments that other commenters have made relating to its purported violation of due process. The commenter is also concerned that this procedure "will" cause anxiety and distrust, resulting in an undermining of facility safety and rehabilitative progress.

RESPONSE: To the extent these comments repeat prior comments, see the responses to the latter. As for the commenter's prediction of future ill effects should this rule amendment be adopted, it should be pointed out that, in its basic form, this procedure has been in this rule since 1991.

10. Written comments of Thazra-Rosie Hylton

COMMENT: In opposition to Procedure O.21, the commenter equates it with the ability to punish someone without proof and to keep that punishment in place even after they have been proven innocent, which the commenter says is immoral and should be illegal. The commenter gives the example of an incarcerated person who loses the ability to use phone "privileges" to call their aging mother, and then the person is found to be not guilty of the accused infraction.

The commenter says that there is no guarantee they will ever be able to call their mother again due to "termination of privileges."

RESPONSE: To the extent these comments echo prior comments, see the responses to the latter. As for the commenter's example, any loss of phone privileges may be grieved through the resident grievance process, and that might result in a reinstatement of phone privileges. A resident who does not succeed on a grievance is able to dispute the loss of privileges in court. One way or the other, if the resident should have their privileges reinstated, there is no reason to believe it won't happen.

11. Written comments of Deborah Hylton

COMMENT: The commenter is requesting that Procedure O.21 be stricken because, in addition to echoing the comments of others about fairness and due process, the commenter believes it is based on an assumption that the rights of incarcerated individuals somehow matter less.

RESPONSE: To the extent these comments echo prior comments, see the responses to the latter. In addition, there is no assumption underlying this procedure that the rights of incarcerated individuals matter less than the rights of others. The reasons for this procedure have been explained in responses to prior comments.

12. Written comments of Gordon Perry

COMMENT: The commenter opposes the adoption of the proposed amended rule claiming that it is not in line with the MMOC (Maine Model of Corrections).

RESPONSE: The comments are too vague to respond to in any detail. The Department believes that the proposed amended rule is consistent with the Maine Model of Corrections.

13. Written comments of "MDOC Residents affected and concerned"

These "commenters" do not actually comment on the proposed amendments to the rule, but instead they set out a series of proposed amendments of their own, none of which has anything to do with this rulemaking, and, therefore, they are rejected.