



## MONTANA STATE PRISON OPERATIONAL PROCEDURE

Procedure:	<b>MSP 3.4.100 PRE-HEARING CONFINEMENT</b>
Effective Date:	09/25/1998 <span style="float: right;">Page 1 of 6 with attachment</span>
Revision Date(s):	07/15/1999; 09/27/2004; 07/15/2016; 01/01/2020; 01/10/2020; 05/20/2024
Signature/Title:	/s/ Jim Anderson, Public Safety Division Chief

### I. PURPOSE

An inmate may be temporarily confined for threatening and serious behaviors, safety, security, or other legitimate correctional interests.

### II. DEFINITIONS:

**Disability** – See *DOC 3.3.15 Americans with Disabilities Act (ADA) Offender Accommodations* for the definition and an explanation of disability.

**Offender Americans with Disabilities Act (ADA) Coordinator** – The individual assigned to facilitate ADA compliance with offenders.

**Pre-Hearing Confinement (PHC)** – A short-term, non-punitive housing status that is used to safely and securely control high-risk or at-risk inmates.

**Qualified Health Care Professional (QHCP)** – Physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals, and others who, by virtue of their education, credentials, training, and experience are permitted by law to evaluate and care for patients, including Department staff and contracted or fee-for-service professionals.

**Qualified Mental Health Professional (QMHP)** – Psychiatrists, psychologists, psychiatric social workers, psychiatric nurse practitioners, psychiatric nurses, licensed professional counselors, licensed clinical social workers, and others who, by virtue of their education, credentials, training, and experience are permitted by law to evaluate and care for the mental health needs of patients, including Department staff and contracted or fee-for-service professionals. This definition excludes Mental Health Technicians.

**Severe Mental Illness (SMI)** – A substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness. The individual must also have or have had within the past year exhibited signs and symptoms of a mental disorder. See *MCA 53-21-102*. Specific classifications of mental disorders are elaborated in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and are to be designated by a QMHP.

### III. PROCEDURES:

#### A. Criteria for Placement in PHC:

1. An inmate may be at risk of serious harm and should be confined until the threat can be evaluated and appropriate action taken.
2. An inmate may present an immediate risk of serious harm to others and should be removed from the general population until the risk can be evaluated and appropriate action taken.

3. An inmate presents an immediate risk of escape or other security threat and should be removed from the general population until the risk can be evaluated and appropriate action taken.
4. Placement in pre-hearing confinement is required to maintain or restore order, security, or safety following a disturbance, fight, assault, or other disorderly event, or to overcome inmate insubordination.
5. An inmate is facing an ongoing or pending disciplinary hearing, and PHC is required to:
  - a. Protect others (staff or inmate) prior to a disciplinary hearing.
  - b. Prevent an inmate from intimidating or coercing other inmates to give false testimony or to refuse to testify at a hearing.
  - c. Facilitate an investigation of allegations.
6. A criminal investigation is ongoing or pending, and continued removal from the general population is deemed reasonably necessary to facilitate the investigation.
7. Classification review / reassessment is ongoing or pending, and isolation is deemed reasonably necessary to facilitate the investigation.
8. A circumstance exists which appears to require immediate, temporary removal from the general population of one or more inmates to protect the legitimate correctional interest of the facility.

#### **B. Initiating PHC:**

1. PHC may be initiated by the following criteria:
  - a. A staff member's documented personal observations that can be supported by other evidence, e.g., eyewitness accounts, physical evidence, inmate's statement.
  - b. Evaluation of intelligence or reliable information.
  - c. An inmate who:
    - 1) Claims others have threatened the inmate with physical harm.
    - 2) Has disobeyed a Verbal Direct Order to return to the inmate's assigned cell.
  - d. A staff member's suspicion or perception of risk, based on experience or training.
  - e. Other information received, regardless of the source.
2. Under no circumstances will an inmate receive a disciplinary infraction or be placed in PHC for self-harm or conduct that is primarily associated with self-harm. Nothing in this provision prevents MSP staff from issuing a disciplinary write-up for infractions that are primarily associated with motives other than self-harm.
3. Staff who believe PHC is appropriate will provide all information relevant to that determination. The timeliness of the notification should be consistent with the urgency of the need for PHC.
  - a. The decision to impose PHC for classification review should be made by the Unit Manager/Lieutenant, or designee, who shall ensure an *Attachment A: Classification Review Notification* is completed and personally served to the inmate within 24 hours of the inmate's placement in PHC.
  - b. The decision to impose PHC for a disciplinary hearing should be made by the Shift Commander, who will ensure the Disciplinary Infraction Report(s) and all related incident reports are completed and that the Disciplinary Infraction Report is served to the inmate within 24 hours of the placement in PHC.
  - c. In all cases, the Unit Manager/Lieutenant, or designee, or Shift Commander will ensure:
    - 1) the receiving PHC unit and QMHP are notified in all cases before the inmate is placed in PHC.
    - 2) an Admission/Discharge Report (ADR) is sent electronically to the Classification Placement Office.

**C. Review and Referral by Qualified Health Care and Mental Health Professionals (QMHP)**

1. Upon notification that an inmate is being considered for placement in pre-hearing confinement, a QHCP will:
  - a. Review the inmate's health record to determine whether existing medical, dental, or mental health needs contraindicate the placement or require accommodations. Such review is documented in the inmate's health record, as well as in the offender management system; and
  - b. Immediately refer an inmate who is currently receiving mental health treatment to appropriate QMHP for further evaluation and document the referral in the inmate's health record and in the offender management system.
2. A QMHP must evaluate the inmate and review the inmate's mental health file and any other relevant documents within 24 hours of initial referral. The QMHP shall take appropriate measures to ensure confidentiality of all information communicated, including but not limited to out-of-cell interviews, and make appropriate housing recommendations.
3. The QMHP will notify and consult with the Warden or designee on housing alternatives if there are mental health contraindications to placement in pre-hearing confinement.
4. No inmate shall be placed in pre-hearing confinement based solely upon the inmate's disability or upon behavior that is a product of the inmate's disability unless, after a prompt and appropriate evaluation by a QMHP, such staff determines that the inmate presents such an immediate and serious danger that there is no reasonable alternative. In such a case, the inmate will be promptly and regularly re-evaluated with the goal of securing appropriate treatment and reintegrating into general population.
5. A QMHP will conduct a mental health evaluation or screening of an SMI inmate before placing the inmate in prehearing confinement or implementing disciplinary detention, to determine whether the SMI inmate's behavior is a manifestation of the SMI inmate's mental illness. If the behavior is a manifestation of the SMI inmate's mental illness, the SMI inmate should not be placed in prehearing confinement or disciplined. If the QMHP determines the infraction is not a manifestation of the SMI inmate's mental illness, the SMI inmate may be placed in prehearing confinement or disciplinary detention, provided that punishment may not include placement into conditions of confinement less than required.
6. A behavior is a manifestation of an inmate's disability if the behavior was caused by, or has a direct and substantial relationship, to the inmate's SMI. The results of this manifestation determination will be documented in writing and will include:
  - a. identification of the individual(s) who conducted the manifestation determination review;
  - b. identification of any documents reviewed in the determination; and
  - c. identification of any other sources of information utilized to make the determination.
7. No inmate designated SMI will be placed in pre-hearing confinement unless no other reasonable alternative placement is available to ensure the inmate's safety, and then for the least amount of time necessary. If an SMI inmate remains in PHC for longer than 24 hours, they must receive the same protections and requirements will be followed in accordance with *DOC 3.5.1 Restrictive Housing Unit Operations III E 1-9*.

**D. Coordination of Movement**

1. The staff member placing the inmate in PHC will contact the Classification Placement Office and/or PHC unit to verify the availability of a PHC cell.
2. If all PHC cells are occupied, the Unit Manager/Lieutenant, or designee, will coordinate with the Shift Commander to ensure appropriate placement of the inmate, which shall meet any accessibility requirements of any inmates with physical disabilities.

3. When an inmate is placed in PHC, the staff member who placed the inmate in PHC will complete an ADR and forward it to the Classification Placement Office.
4. A Movement Coordinator will generate a list of inmates in PHC and distribute it to the respective Unit Management Team, Command Post, Warden, Deputy Warden, Associate Wardens, Mental Health Department, Infirmary, and Classification Officer.

#### **E. 72-Hour Deadline**

1. As required in *MSP 3.4.1 Institutional Discipline*, the Disciplinary Hearings Officer (DHO) shall coordinate all hearings for disciplinary PHCs, completing an investigation and conducting a hearing, within 72 hours of the inmate's placement in PHC. The Warden, or designee, may extend the placement in PHC for another 72 hours if further investigation is needed to determine what action is appropriate.
2. The Unit Management Team of the sending unit shall conduct the classification review for an inmate placed in PHC, pending an investigation and classification decision. The review must be conducted within 72 hours of the inmate's placement in PHC. After 72 hours, if a decision cannot be reached, the inmate will be placed in the least restrictive environment that maintains the safety and security of the inmate, facility, and staff. The Warden, or designee, may extend the placement in PHC for another 72 hours if further investigation is needed to determine what action is appropriate.

#### **F. Conditions of PHC**

1. Conditions of PHC will be outlined in the PHC unit's policy, rules, and operational procedures.
2. Every inmate with a disability who is transferred to the PHC unit will receive reasonable accommodations, as necessary, while held in the unit, unless safety or security concerns render the accommodation unreasonable. Inmates who use wheelchairs who are not able to transfer into a shower stall will not be housed in pre-hearing confinement. Inmates who use wheelchairs (who cannot stand independently) will not be housed in isolation cells in the PHC unit.
3. An inmate placed in PHC will be allowed the personal property items as listed for PHC inmates on the current "*MSP Approved Inmate Personal Property List*" providing the privilege of having these items is not abused. Reasonable accommodation must be provided to inmates with disabilities. All SMI inmates shall have access to soap, deodorant, toothbrushes, and toothpaste for use in their cells, absent an immediate, documented danger that such items will be destroyed or used for self-harm. In such cases, reasonable efforts shall be made to use substitutes or facilitate supervised use of the items. See *DOC 3.3.15* for a further explanation of the reasonable accommodation process and staff obligations to assist with it.
4. An SMI inmate placed in PHC shall be given an opportunity to receive at least four hours per day of out-of-cell time, and shall not be confined to a cell for more than 20 hours per day, unless a QMHP makes a written determination that:
  - a. It is necessary to protect the inmate or other inmates from a dire and imminent risk of harm; and
  - b. Confining the inmate to a cell for more than 20 hours per day would not exacerbate or worsen the inmate's SMI.

#### **G. Terminating PHC**

1. The individual initiating PHC termination must fill out an ADR and document the reason(s) for the termination on the Notification Form or an Incident Report attached to the ADR.
2. Reasons for terminating PHC:

- a. The Shift Commander and / or Unit Manager/Lieutenant, or designee, determines PHC placement is no longer necessary.
- b. the disciplinary hearing or classification review has been completed and resolved.
- c. Results of the disciplinary or classification investigation are inconclusive and returning the inmate to the previous custody level is appropriate.
- d. Institutional need.
- e. A QMHP determines that PHC is not an appropriate housing designation for an inmate because of a disability.

**IV. CLOSING:**

Questions about this procedure should be directed to the Warden.

**V. AUTHORITY**

*MSP 3.4.1 Institutional Discipline*

*MSP 4.2.1 Inmate Classification*

**VI. ATTACHMENTS:**

*Attachment A: Classification Review Notification*



## ATTACHMENT A: CLASSIFICATION REVIEW NOTIFICATION

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
First Name

\_\_\_\_\_  
DOC#

Within a 72-hour period, an interview will be held addressing your present custody level and job assignment. You will be present at this review and have an opportunity to present evidence on your own behalf. If you have a disability, you can ask unit staff to offer you the option to have assistance in understanding this form and/or presenting your position.

Reason for notice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

time: \_\_\_\_ hrs.

Inmate signature: \_\_\_\_\_

Staff signature: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

time: \_\_\_\_ hrs.

Results: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Staff signature: \_\_\_\_\_