

Racial Disparity

Loss of Liberty

Planning and Research Unit

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This is an examination of the possibility of racial disparity associated with actions that may affect an offender's liberty in the Washington State Department of Corrections (DOC). Areas reviewed include: 1) the Prison Disciplinary process and sanctions of loss of Good Conduct Time; 2) the Community Corrections Violation Hearing process and confinement beyond credit for time served; and 3) offenders released from prison past their Earned Release Date.

Racial Disparity and Loss of Liberty

Overview

Introduction

In September 2008 the Planning and Research unit completed a review of DOC programs, services, and operations in Fiscal Year 2008 (Appendix A) with the intent of finding out if there was disproportional treatment based on race. The data revealed no conclusive evidence of disparity in the treatment of offenders by race in any of the areas examined.

Following that initial review, the Secretary requested a more in-depth analysis on areas that related to potential loss of liberty for the offender. This follow-up review examines the outcomes of the prison disciplinary system, community hearings process, and offenders held past their earned release date (ERD).

Summary of Findings

Areas where findings indicate some disparity in treatment include:

Loss of Good Conduct Time (GCT) - Prison Disciplinary Sanctions

- **Hispanic** offenders commit violent infractions at a rate twice their proportion of the prison population. (page 4)
- **Hispanic** offenders lose the most GCT for the first and second violent infractions within a twelve month period, and also lose the most GCT for Category A and B violent infractions. (page 5)

Community Violation Hearings

- **Black** offenders made up **16%** of the total FY08 community caseload but **25%** of the total violation hearings. However, on average, the number of days they were sanctioned did not exceed the average days for all offenders. (page 9)

Release Past Earned Release Date (ERD)

- **Black** offenders made up **18%** of the total FY08 releases but **25%** of the offenders released past their ERD. However, the average number of days held past ERD was not significantly higher than for Hispanic or White offenders. (page 10)
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Prison Disciplinary Process

Purpose Review the prison disciplinary process, specifically:

- Administrative processes to ensure equity
- Loss of Good Conduct Time (GCT) sanctions
- Litigation arising out of the prison disciplinary process

Policy This analysis refers to the following DOC policies:

- DOC 460.000 – Disciplinary Process for Prisons
- DOC 320.150 – Disciplinary Sanctions

Infractions Staff members do not have the discretion to withhold an infraction report for a serious violation. This provision ensures objectivity based on offender behavior.

Table 1: FY08 population compared to violent infractions w/ guilty findings.

	Black	Hispanic	Other	White	Total
Total Population	5,929 20%	3,037 10%	2,318 8%	18,562 62%	29,846 100%
Total Violent Infractions	496 22%	470 21%	154 7%	1,101 50%	2,221 100%

Infraction Review All Initial Serious Infraction Reports are reviewed by a designated Infraction Reviewer who is separate from the Disciplinary Hearings Officer to determine that a rule violation did occur.

Hearing Decisions The Hearing Officer’s decision is based solely on information obtained during the hearing. The hearing decision is documented.

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Prison Disciplinary Process, Continued

Sanctions The Disciplinary Table for Prison and Work Release and Prison Sanctioning Guidelines provides a sanction range based on the circumstances, seriousness of the offense, and the offender’s previous conduct record.

Appeals Offenders may appeal the Hearing Officer’s decision to the Superintendent.

Hearing Review The Superintendent/designee conducts and documents a review of all hearings and dispositions to ensure conformity with policy and WAC 137-28.

Loss of GCT Disciplinary Hearings Officers are encouraged to use sanctions that extend the offender’s minimum term only for the most serious violations.

Requests by the Disciplinary Hearings Officer for a sanction beyond the maximum range for loss of GCT must be made to the Superintendent with final approval by the Assistant Secretary for Prisons.

Loss of GCT for 1st and 2nd Violent Infraction *Table 2: FY08 average days loss GCT for first and second violent infractions.*

	Black	Hispanic	Other	White
1 st w/in 12 months	41	55	43	45
2 nd w/in 12 months	56	75	58	54

Loss of GCT by Infraction Category *Table 3: FY08 average days loss GCT by violent infraction category.*

	Black	Hispanic	Other	White
Category A	122	143	62	98
Category B	41	71	57	52

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Prison Disciplinary Process, Continued

Litigation **89** Personal Restraint Petitions (PRPs) related to prison disciplinary process were ruled on and closed in FY08 (PRPs closed in FY08 were not necessarily filed in FY08):

- **52** of those offenders are white – 59%
- **25** of those offenders are black – 28%
- **10** of those offenders are Hispanic – 11%
- **2** of those offenders are other – 2%

10 of those rulings were against the State:

- **7** of those offenders were white
 - **2** of those offenders were black
 - **1** of those offenders is Hispanic
-

Summary The prison disciplinary process includes several procedural layers to ensure equity.

Guilty findings for violent infractions are proportional to the total infractions generated.

Hispanic offenders lose the most GCT for the first and second violent infractions within a twelve month period:

- On average, 14 days more than black offenders and 10 days more than white offenders for the first violent infraction in 12 months.
- On average, 19 days more than black offenders and 22 days more than white offenders for the second violent infraction in 12 months.

Hispanic offenders lose the most GCT for Category A and B violent infraction:

- On average, 21 days more than black offenders and 45 days more than white offenders for Category A infractions.
- On average, 30 days more than black offenders and 19 days more than white offenders for Category B infractions.

There is no significant litigation related to prison disciplinary hearings and the number of rulings against the State has been minimal.

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Community Violation Hearings

Purpose Review the community corrections violation hearing process, specifically:

- Administrative processes to ensure equity
- Days in Pre-Hearing Confinement prior to hearing
- Days sanctioned beyond credit for time served
- Litigation arising out of the community corrections violation process

Policy This analysis refers to the following DOC policy:

- DOC 320.155 – Violation Process/Violations of Conditions

Hearing Officers Hearings Officers are a neutral party to the violation and report through a chain of command separate from field operations.

Per agency policy the Hearings Officer will:

- Excuse him/herself in instances where a conflict of interest exists and/or where impartiality cannot be maintained;
- Hearing Officers will receive basic and annual training in the hearing process;
- Treat all parties equally and with due respect.

Violation Hearings Compared to Caseload

Table 4: FY08 percent violation hearings compared to percent caseload.

	Black	Hispanic	Other	White	Total
Total Caseload	9,686 16%	6,795 11%	3,995 7%	40,122 66%	60,558 100%
Total Number of Hearings	6,518 25%	1,983 8%	2,229 9%	15,347 59%	26,077 100%

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Community Violation Hearings, Continued

Sanctions Although the supervising CCO can recommend a sanction, the sanction decision is made by the independent Hearings Officer.

The department's Sanction Guide is used as the tool for determining the appropriate sanction.

Appeals The offender will be reminded of the right to appeal and will be provided with DOC 09-225 Hearing and Decision Appeal to request an appeal.

The hearings appeal process will be implemented and administered regionally. Department and community Panel members will serve a one-year term.

Each Regional Appeals Panel will consist of:

- A Department employee appointed by the Regional Administrator;
 - A community member appointed by the Regional Administrator; and
 - The Hearings Program Administrator or designee.
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Hearing Review Two levels of Department review are conducted :

- Concerns about the hearing conduct, findings, or disposition can be directed to the Hearing Officer directly, or
- The Hearings Administrator/designee can investigate the matter and provide a written response to the FA.

The Hearings Administrator/designee provides a process of case analysis to review the performance and provide feedback

Days in PHC to Hearing Offenders wait in Pre-Hearing Confinement an average of 13 days for their violation hearing. This is consistent for offenders of all races.

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Community Violation Hearings, Continued

Confinement Days Sanctioned Beyond CFTS

Table 5: FY08 confinement days sanctioned beyond credit for time served.

	Black	Hispanic	Other	White	Total
Total Days Sanctioned	4,347	1,365	1,531	10,264	17,507
	25%	8%	9%	58%	100%
Average Days Sanctioned	60	58	55	63	61

Litigation

7 PRPs related to community violation hearings were ruled on and closed in FY08 (PRPs closed in FY08 were not necessarily filed in FY08):

- 5 of those offenders were white
- 2 of those offenders were Hispanic

None of those rulings were against the State.

Summary

The community corrections violation hearing process is independent of field operations and includes several procedural layers to ensure equity.

There is some disparity in the proportion of black offenders received violation hearings in FY08. While black offenders made up 16% of the total community caseload, they received 25% of the total violation hearings.

No disparity appears in these areas:

- Average days in pre-hearing confinement to hearing date.
- Average days sanctioned beyond credit for time served.

There is no significant litigation related to community violation hearings, and no rulings in FY08 against the State.

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Releases Past Earned Release Date (ERD)

Purpose This analysis reviews offenders released past their ERD and specifically:

- Releases past ERD by race
- Days released past ERD by race

Policy This analysis refers to the following DOC policies:

- DOC 350.100 – Earned Release Time
- DOC 350.200 – Risk Based Transition and Release

FY08 Releases Past ERD During FY08 1,258 offenders released past their ERD.

Table 6: FY08 releases past ERD by race.

	Black	Hispanic	Other	White	Total
Total Releases	1,428 18%	949 12%	588 7%	5,004 63%	7,969 100%
Total Releases Past Their ERD	309 25%	85 7%	92 7%	772 61%	1,258 100%

Days Released Past ERD **Table 7: FY08 days released past ERD.**

	Black	Hispanic	Other	White
Days Released Past ERD	33,862 25%	9,138 7%	8,830 7%	81,567 61%
Average Days Released Past ERD	110	109	95	106

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Releases Past Earned Release Date (ERD), Continued

Litigation

The Attorney General's Office tracks PRPs under the category "DOC Time Credits." This category includes all issues that would cause an offender to be held past their ERD to include: sentence structure errors, jail credit errors, 5990 and earned time credits. During Fiscal Year 2008:

50 PRPs related to release past ERD were ruled on and closed in FY08 (PRPs closed in FY08 were not necessarily filed in FY08):

- 23 of those offenders are white – 46%
- 18 of those offenders are black – 36%
- 7 of those offenders are Hispanic – 14%
- 2 of those offenders are other – 4%

1 of those rulings was against the State - the offender is black.

Summary

No racial disparity appears in the average days released past ERD.

Racial disparity may appear where black offenders made up 18% of the total FY08 releases but 25% of the total released past ERD.

There is no significant litigation related to releases past ERD, and one ruling in FY08 against the State.
