

82128-3

NO. 35652-0-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

ALLAN PARMELEE,

Appellant,

v.

ROBERT O'NEEL, et al.,

Respondents.

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DIVISION II  
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STATE OF WASHINGTON  
BY DEPT

ANSWER TO AMICUS BY RESPONDENTS

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## I. INTRODUCTION

The American Civil Liberties Union (“amicus”) argues that Mr. Parmelee should not have been infracted for his letter regarding Superintendent Sandra Carter, arguing the statute referenced in the infraction through the prison disciplinary code is unconstitutional. However, the arguments of amicus are not applicable to this case because Mr. Parmelee was infracted in a prison disciplinary proceeding; he was not criminally prosecuted. This Court has already held that inmates do not have a First Amendment protection to engage in libelous or scurrilous language while in prison and they may be infracted if they do. *See Personal Restraint of Parmelee*, 115 Wash. App. 273, 63 P.3d 800 (2003). In addition, prison disciplinary proceedings are not criminal prosecutions and therefore do not include the same procedures.

Here, Mr. Parmelee was infracted for calling Ms. Carter a man-hating Lesbian. He did not have the constitutional right to engage in that conduct and he was properly infracted for doing so. By referencing misconduct captured in a criminal statute as part of its prison disciplinary code, the Department did not forego the deference given it by the courts in maintaining a prison environment, as recognized by this Court in *Parmelee*. By referencing misconduct captured in a criminal statute as

part of its prison disciplinary code, the Department did not transform prison disciplinary proceedings into criminal proceedings.

## **II. ARGUMENT IN RESPONSE TO AMICUS**

### **A. INMATES DO NOT HAVE A RIGHT TO ENGAGE IN LIBELOUS AND SCURRILOUS LANGUAGE.**

The United States Supreme Court pronounced the general standard of review for prison regulations affecting a prison inmate's constitutional rights in *Turner v. Safely*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64 (1987). The four-part *Turner* test is "a unitary, deferential standard for reviewing prisoners' constitutional claims". *Shaw v. Murphy*, 532 U.S. 223, 229, 121 S. Ct. 1475, 149 L. Ed. 2d 420 (2001). The test evaluates the interference with a constitutional right in the context of prison life as an unusual case wherein the prison officials' need to control the prison environment is paramount over an inmate's right. If a prison has a legitimate penological interest for limiting an inmate's constitutional right, the evaluation of the constitutionality of that limitation turns on factors including: 1) the rational relationship between the right and the limitation, 2) the reasonableness of the limitation, 3) the impact accommodation would have on the prison environment, and 4) the absence of readily available alternatives. *Shaw*, 532 U.S. at 229.

This test was designed by the Court to prevent the courts from becoming “the primary arbiters of what constitutes the best solution to every administrative problem, thereby ‘unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration’”. *Turner*, 482 U.S. at 89 (citing *Procunier v. Martinez*, 416 U.S. 396, 407, 94 S. Ct. 1800, 1808, 40 L.Ed.2d 224 (1974)).<sup>1</sup> The Court also recognized, based on separation of powers concerns that “such a standard is necessary if ‘prison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations’”. *Turner*, 482 U.S. at 89 (citing *Jones v. North Carolina Prisoners’ Union*, 433 U.S. 119, 128, 97 S. Ct. 2532, 2539 (1977)).

The Court of Appeals has already applied *Turner* in a similar matter brought by Mr. Parmelee where he was penalized by the King County Jail for his use of profanity in grievances or comments directed towards officers, despite a contrary ruling by the Ninth Circuit. *Personal Restraint of Parmelee*, 115 Wash. App. 273, 284, 63 P.3d 800 (2003). There, Mr. Parmelee argued that the Ninth Circuit’s ruling in *Bradley v. Hall*, 64 F.3d 1276, 1280 (9th Cir. 1995), allowed him to write anything in a grievance “no matter how profane and disrespectful”. *Parmelee*, 115

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<sup>1</sup> “The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree.” *Procunier*, 416 U.S. at 404-05.

Wn. App. at 282. This Court in *Parmelee* rejected the holding of the Ninth Circuit in *Bradley* and found that there was a legitimate reason for requiring all inmates to behave respectfully towards prison staff and limiting tension between guards and residents. *Id.* at 284-287. This Court also found that there were other avenues available; specifically that other words could have been used to properly address the problems that the Petitioner was attempting to address. *Id.* Finally, this Court stated that there were other available options; as those statements would not be allowed in a court petition or other legal process. *Id.*

Despite this Court's holding in *Parmelee*, amicus argues that Mr. Parmelee should not have been infracted when the Department relied on its own rules referencing a Washington statute when it infracted him for sending a libelous letter to the Secretary because the referenced statute was unconstitutionally overbroad. However, Mr. Parmelee was not criminally charged for libel while in the community. Instead, Mr. Parmelee committed an act that was subject to the Department's prison disciplinary process. Prison inmates retain their First Amendment rights, subject to limitations justified by reasonable penological interests identified in *Turner*. Under the *Turner* standard, as this Court recognized in *Parmelee*, Mr. Parmelee did not retain the right to openly refer to Superintendent Carter

as a “man-hating lesbian.” Therefore, the arguments presented by amicus fail.

Amicus suggests that an inmate cannot seek a redress of a grievance without using insolent, abusive, or scurrilous language. Amicus suggests that prison inmates may be chilled in their attempts to file grievances if they cannot freely use such language. This argument overlooks that no one has unfettered First Amendment rights. An individual does not have a right to falsely yell “Fire!” in a crowded theater. *Schenck v. United States*, 249 U.S. 47, 52, 39 S. Ct. 247, 259 (1919). Neither child pornography nor obscenity is protected by the First Amendment. *New York v. Ferber*, 458 U.S. 747, 764, 102 S. Ct. 3348, 3358 (1982). There is similarly no protected right to speak “fighting words”. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 62 S. Ct. 766, 769 (1942). The Court has allowed the limiting of these types of speech as their “expressive content is worthless or of *de minimis* value to society”. *Chaplinsky*, 315 U.S. at 571-72. In most, if not all, states, prison inmates are expected to refrain from using insolent, abusive, or scurrilous language when speaking to staff, visitors, and other inmates.<sup>2</sup> The Ninth Circuit’s assumption that prison inmates cannot freely air their grievances in writing without using insolent, abusive, or scurrilous language directly

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<sup>2</sup>See Appendix 1 for a listing of state statutes, rules, and policies prohibiting inmates from using insolent, abusive, or scurrilous language directed to prison staff.

contradicts the expectations held for inmate behavior. This Court specifically held in *Parmelee* that an inmate could grieve without resorting to such language:

Parmelee did not need to refer to Officer Bonilla as a “pissant officer” and an “asshole” in order to explain the basis of his grievance. Neither did he need to demand that the prison authorities “fire this asshole before someone reacts to his attempt to provoke violently,” in order to request that the door problem be corrected.

*Parmelee*, 115 at 285.

The assumption that an inmate will not be able to file grievances without using insolent, abusive, or scurrilous language also assumes that an inmate is incapable of functioning as a rational, average citizen. Citizens filing lawsuits are not permitted to use offensive, scandalous language in their pleadings before the court. In fact, in most courts, including the United States Supreme Court, the use of such language carries severe consequences for both the action itself and the individuals involved. See Sup. Ct. R. 24.6; *In the Matter of Teddy I. Moore*, 529 U.S. 1063, 120 S. Ct. 1715 (2000); *Knight v. Bar Association*, 321 U.S. 803, 64 S. Ct. 634 (1944); *Missouri, K. T. R. R. Co. v. Texas*, 275 U.S. 543, 48 S. Ct. 82, 72 L.Ed. 391 (1927); *Royal Arcanum v. Green*, 237 U.S. 531, 546-47, 35 S. Ct. 724, 59 L.Ed. 1089 (1915); *Green v. Elbert*, 137 U.S. 615, 624, 11 S. Ct. 188, 191, 34 L.Ed. 792 (1891).

In *Shaw*, the United States Supreme Court harmonized two concepts. The Court analyzed the importance of the constitutional interest based on the language used to assess the value of the content of the language. *Shaw*, 532 U.S. at 230. “[T]he *Turner* test, by its terms, simply does not accommodate valuations of content. On the contrary, the *Turner* factors concern only the relationship between the asserted penological interests and the prison regulation.” *Id.* To assert that inmates filing grievances should be accorded a higher standard of protection because of the content of their grievances is an absurd interpretation of the law.

The decisions of the federal circuit courts are in accord with this Court’s decision in *Parmelee*. For example, the Seventh Circuit held that libelous language in a grievance is grounds for discipline. *Hale v. Scott*, 371 F.3d 917 (7th Cir. 2004). In *Hale*, the inmate argued that because he had labeled the libelous language he used in reference to a staff member as a “rumor” in his grievance, that he should not be punished. *Id.* at 919. In upholding the regulation, the court stated, “groundless allegations in a legal pleading can be sanctioned without anyone supposing that First Amendment issues are raised; it would be beyond paradoxical to suggest that if the allegations happened to be not only baseless but also libelous they would be entitled to greater legal protection”. *Id.* at 919 (citations omitted).

The Third Circuit upheld a disciplinary sanction for a prison inmate who wrote “unfounded, slanderous and derogatory statements” about prison staff in a grievance. *Hadden v. Howard*, 713 F.2d 1003, 1005 (3rd Cir. 1983). At his disciplinary hearing, the inmate argued that he had the right to make any statement in a grievance, even if of a “maliciously defamatory nature”. *Id.* at 1005. The *Hadden* Court disagreed, finding, “If it is possible for inmates maliciously to lie and maliciously to show disrespect toward prison staff members, merely by doing so within the context of filing an inmate complaint, then serious problems of staff morale and prison discipline may reasonably be expected to arise.” *Id.* at 1006-07.

The Fifth Circuit similarly upheld a disciplinary regulation prohibiting prisoners from making or writing derogatory or degrading remarks about prison employees. *Gibbs v. King*, 779 F.2d 1040, 1045 (5th Cir. 1986). The *Gibbs* Court found that the regulation furthered legitimate interests, as the clear purpose of the rule was “to prevent escalation of tension that can arise from gratuitous exchanges between inmates and guards and to enable employees to maintain order without suffering verbal challenges to their authority”. *Id.* at 1045.

The Sixth Circuit reached a similar conclusion in *Smith v. Campbell*, 250 F.3d 1032 (6th Cir. 2001). *Smith* held that a prisoner has

no right to file grievances “in a manner that violates legitimate prison regulations or penological objectives”. *Id.* at 1037.

The Eighth Circuit also upheld a disciplinary sanction for a prison inmate who wrote vulgar, obscene, and racist comments against prison staff in letters he was sending to a former inmate. *Leonard v. Nix*, 55 F.3d 370, 374-76 (8th Cir. 1995). The *Leonard* Court found that the fact that the diatribe was in writing did not insulate the plaintiff from discipline, as “[t]here is little doubt that the same language, if spoken by [the plaintiff] directly to the warden, would result in justifiable disciplinary action to preserve discipline and order”. *Id.* at 375 (finding that a prison inmate who wrote verbal abuse in an outgoing letter was “flouting the system and exploiting the First Amendment” by putting his abuse in writing “and then claiming First Amendment protection for his misconduct”).

**B. THE DEPARTMENT PROPERLY RELIED ON ITS PRISON DISCIPLINARY RULES, REFERENCING LANGUAGE FROM THE STATUTE AS PART OF ITS DISCIPLINARY CODE.**

By referencing misconduct captured in a criminal statute as part of its prison disciplinary code, the Department did not transform prison disciplinary proceedings into criminal proceedings. In a prison disciplinary hearing, an inmate is entitled only to minimal due process protections. *In re Plunkett*, 57 Wn. App. 230, 235, 788 P.2d 1090 (1990).

In *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963 (1974), the Supreme Court set forth the due process rights of a prison inmate at a disciplinary proceeding where a state created liberty is at issue. The Court noted that, “prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply”. *Wolff*, 418 U.S. at 556.<sup>3</sup> “Prison disciplinary proceedings, on the other hand, take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so.” *Id.* at 561. In light of this conclusion, the Court held that a prisoner is entitled only to: (1) written notice of the charges against him at least 24 hours in advance of the hearing; (2) an opportunity to call witnesses and present documentary evidence in his defense, provided that doing so will not be unduly harmful to institutional safety or correctional goals; and (3) a written statement setting forth the disciplinary board’s findings of fact. *Id.* at 563-66. Also, in reaching the decision as to what due process rights are constitutionally required in the prison disciplinary setting, the *Wolff* Court expressly rejected other due process rights, including the right to confront and cross-

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<sup>3</sup> *Id.* at 560 (“Viewed in this light it is immediately apparent that one cannot automatically apply procedural rules designed for free citizens in an open society, or for parolees or probationers under only limited restraints, to the very different situation presented by a disciplinary proceeding in a state prison.”)

examine witnesses and the right to retained or appointed counsel. *Id.* at 567-572.

Implicit in the due process requirement that an inmate receive a written decision is the requirement the disciplinary finding be supported by “some evidence in the record.” *Superintendent v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). “Ascertaining whether the ‘some evidence’ standard is satisfied does not require examination of the entire record, independent assessment of witnesses, or weighing of the evidence.” *Id.* “Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.* (emphasis added). When a prison disciplinary committee finds an inmate guilty of an infraction, that finding must be based on some evidence which links the inmate to the infraction. *In re PRP of Reismiller*, 101 Wn.2d 291, 297, 678 P.2d 323 (1984).

Here, Mr. Parmelee was infractioned for “[c]ommitting any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.” WAC 137-28-260 (1)(517).<sup>4</sup>

Here, Mr. Parmelee received only ten days segregation for his placement in segregation. Because of the punishment received, Mr.

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<sup>4</sup> The Department has since modified its prison disciplinary rules. Sexual harassment is a serious infraction. WAC 137-25-030(659); see also WAC 137-28-160 (defining sexual harassment as “any word, action, gesture, or other behavior that is sexual in nature and offensive to the reasonable person.”).

Parmelee did not even receive a sanction triggering due process considerations under *Sandin v. Connor*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), much less a result that violated the holdings in *Wolff* or in *Hill*. Consequently, Mr. Parmelee did not incur an atypical and significant hardship under *Sandin* implicating due process. Therefore, his claim under due process fails. See Respondent's Brief at 11-13.

**C. THE RULE PROPOSED BY AMICUS IS UNWORKABLE IN A PRISON SETTING.**

By referencing misconduct captured in a criminal statute as part of its prison disciplinary code, the Department did not forego the deference given it by the courts in maintaining a prison environment, as recognized by this Court in *Parmelee*. In addition to the interests discussed above, another important goal of state prison systems is to rehabilitate prison inmates. See *McKune v. Lile*, 536 U.S. 24, 37, 122 S. Ct. 2017, 2027 (2002). Recidivism can be reduced through social education of inmates in order to assist them in developing self control. "Behavior Management is a philosophy as well as an action. It is built on the belief that recidivism can be reduced and the offender returned to the community better prepared to live a pro-social life through: Social education for the development of self control . . . [and] . . . Rules for personal development and accountability." Appendix 2, Washington State Department of Corrections

Behavior Management Guide, p. 1. Self control is developed through holding prison inmates accountable for their actions. "Acceptance of responsibility is the beginning of rehabilitation." *McKune*, 536 U.S. at 47.

If prison inmates are allowed to write insolent, abusive, or scurrilous language to and about staff in prison grievances, the goal of teaching inmates to develop self control and be accountable for their actions will be undermined. In fact, prison inmates could deliberately use the grievance system to circumvent prison discipline policies regarding respect.

If the Ninth Circuit's ruling is allowed to stand, prisons can expect many more inmates to follow the lead of *Parmelee* and *Leonard* by writing profane, obscene, and disrespectful grievances directed toward staff. Not only will prisoners flout the system and exploit the First Amendment, but any attempt to instill self control and accountability will be seriously hampered. This Court recognized this issue in *Parmelee*, concluding:

Given the ugly realities of prison life, we have no doubt that the impact would be a veritable barrage of similar written "grievances," filed not for the purpose of addressing prisoner concerns but for the purpose of venting frustration, resentment, and despair.

*Parmelee*, 115 Wn. App. at 286 (citing *Dawson v. Hearing Committee*, 92 Wn.2d 391, 396, 597 P.2d 1353 (1979)).

The fourth and final *Turner* factor to be evaluated by the Court is whether alternatives to the regulation are readily available. The Court specifically noted, “[t]his is not a ‘least restrictive alternative’ test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant’s constitutional complaint.” *Turner*, 482 U.S. at 90-91. In analyzing potential alternatives, the court must also consider the cost to the prison. More than a *de minimis* cost establishes that an alternative is not readily available. *Id.*

The alternative to forbidding insolent, abusive, or scurrilous language in grievances is to allow it. This Court has already rejected that suggestion, as made by Mr. Parmelee. *Parmelee*, 115 Wn. App. at 286-87 (“[S]uch an outright exemption would raise the First Amendment rights of prisoners above those enjoyed by litigants outside the prison population.”). The Ninth Circuit’s suggestion that prison officials in direct contact with prison inmates be shielded from the content of the grievances does not resolve the problems created by the use of the language. Such a suggestion is in direct conflict with the prison goal of rehabilitation and the development of self control. If prisoners are allowed to circumvent prison rules by writing insolent, abusive, or scurrilous language in

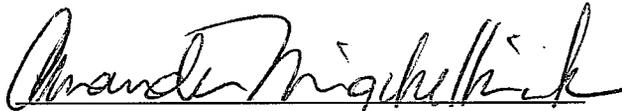
grievances, the prison goals of rehabilitation and development of self control will not be met.

**III. CONCLUSION**

The Respondents request the Superior Court's decision be affirmed.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of March, 2008.

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**CERTIFICATE OF SERVICE**

I certify that I served a copy of the RESPONSE TO AMICUS BY  
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Karen Thompson  
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## **APPENDIX 1**

State	Citation to policy, code, or statute	Rule
Alaska*	Alaska Admin. Code tit. 22 § 05.400, Prohibited Conduct for Prisoners, (d)(13)	Using abusive or obscene language or gesture that is likely to provoke a fight or that clearly disrupts or interferes with the security or orderly administration of the facility.
Arizona*	Department Order 803, Attachment C (B)(16)	Disrespect in the form of profanity, obscene or abusive language or gestures.
Arkansas*	Inmate Grievance Procedure, AD 04-01	Inmates who use the Grievance procedure to direct threats or indecent or vulgar language at another person shall be referred to the appropriate disciplinary authorities in accordance with the disciplinary rules and procedure.
California*	Cal. Code Regs. tit. 15, § 3004 (2006) Rights and Respect of Others (b); § 3005(c); §3084.4(b); § 3314(a)(3)(I)	<p>Inmates will not openly display disrespect or contempt for others. Inmates shall not willfully attempt to incite others, either verbally or in writing.</p> <p>An inmate appeal containing profanity, or obscene language shall be rejected.</p> <p>Administrative rule violations include the use of vulgar or obscene language.</p>
Colorado	CDOC, AR 150-01-IV-D-II-(27), Verbal Abuse	An offender commits this offense when he subjects another person to abusive, offensive, or defamatory language or gestures.
Connecticut	Administrative Directive 9.5 Code of Penal Discipline, Section 9.5.13.H	Insulting language or behavior, including using abusive or obscene language or making an obscene gesture.
Florida*	<p>Fla. Admis. Code Ann. r. 33 (2006), 33-601.314 (1-4)</p> <p>(9-1)</p> <p>33-103.017(2)</p>	<p>Disrespect to officials, employees, or other persons of constituted authority expressed by means of words, gestures, and the like.</p> <p>Obscene or profane act, gesture, or statement – oral, written, or signified.</p> <p>An inmate shall be subject to disciplinary action if the inmate knowingly includes false, threatening, obscene, or profane statements in the grievance or any of its attachments.</p>

Georgia*	SOP IIB02-0001 Attachment 4, Prohibited Acts, Inmate Disciplinary Codes B-12  B-13	Use of written or verbal profane, obscene (as prescribed by applicable constitutional standards) or abusive words, language, gestures, or pictures to other persons. Insubordination to a staff member; defined by cursing or showing disrespect toward an employee.
Hawaii*	COR.13.03 Adjustment Programs Governing Serious Misconduct Violations and Adjustment of Minor Misconduct Violations	Low-Moderate Misconduct: Using abusive or obscene language to a staff member.
Idaho*	IDOC Division of Operations Directive 318.02.01.001, Attachment F, Disciplinary Code No. 607  No. 620	Words actions or gestures designed or intended to harass and intimidate staff, visitors, offenders or the public. Using abusive/obscene language.
Illinois*	Illinois Administrative Code Section 504, Appendix A, Offense Numbers and Definitions - Number 304, Insolence	Talking, touching, gesturing, or other behavior that harasses, annoys, or shows disrespect.
Indiana*	IDOC Administrative Procedure 02-04- 101, Appendix 1, Offense 348  IDOC Administrative Procedure 00-02- 301(VIII)	Insolence, vulgarity or profanity toward staff or visitors. A disciplinary action filed against an offender for threatening staff, other offenders, visitors or volunteers, or using insolent or vulgar language, other than to explain a statement by staff shall not be considered reprisal for using the Offender Grievance Process.
Kansas	Kan. Admin. Regs. 44-12-305, Insubordination or disrespect to officers or other employees	Each inmate shall be attentive and respectful towards employees, visitors, and officials. The showing of disrespect, directly or indirectly, or being argumentative in any manner shall be considered insubordination.
Kentucky*	Kentucky Corrections Policy Number 15.2(II)(C) Category I Violations (12)	Abusive, vulgar, obscene or threatening language, gestures or actions.

Louisiana*	La. Admin. Code tit. 22, § 365 (2005). Disciplinary Rules Y.11.  Rule 3. Defiance	The communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest, or inmate. No inmate shall curse or insult an employee, visitor guest or their families.
Maine	Code Me. R. § 03-201 (2006) Prisoner Discipline, Procedure D : Acts Prohibited (Violations)(18) Disorderly Behavior	Failure of the prisoner to conduct himself/herself in an orderly and courteous manner at all times.
Massachusetts	Mass. Regs. Code tit. 103, § 430.24(3-26)	Use of obscene, abusive or insolent language or gesture.
Michigan*	PD 03.03.105, Prisoner Discipline	Words, actions, or other behavior which is intended to harass, degrade or cause alarm in an employee.
Minnesota	Minnesota DOC Offender Discipline Regulations (2005), Rule 300, Abuse/Harassment	No offender shall show overt disrespect for another person. This includes abuse/harassment shown whether or not the subject is present. Abuse/harassment includes, but is not limited to, derogatory or profane writing, remarks or gestures, name calling, yelling, and other acts intended as public expressions of disrespect for authority and made to others.
Mississippi	MDOC Disciplinary Procedures (SOP #18-01-01) Rule #31  Rule #32	Using abusive or obscene language.  Being loud, boisterous or disorderly to the extent that the noise disturbs the tranquility of the institution.
Missouri	IS19-1.1(21) Insulting Behavior	Using abusive or obscene language; or making an obscene gesture; or making a written statement, any of which annoys, offends or intimidates.

Montana*	MSP 3.4.1, Attachment A, Infraction 4208  MSP 3.3.3, V, N	Insolence : Words, actions, or other behaviors that harass or cause alarm in an employee, including but not limited to direct disrespect in the form of profane, obscene or abusive language or gestures. Abuse of the grievance procedure may include use of profanity, threats, abusive or demeaning language. A pattern of abuse may result in the return of future grievances.
Nebraska*	Rule 5 – III – D  Grievance Rules 5 and 6 (Disciplinary Rules)	Swearing, cursing, or using abusive gestures or language directed at another person; words, actions, or other behavior intended to harass, demean, or cause alarm in an employee. Language used in grievances is subject to DCS Rules 5 & 6.
Nevada*	AR 707.05, G9;  AR 707.05, G2  AR 740.01, 1.5.1        AR 740.01, 1.5.2	Abusive language or actions toward another person. Abuse of the inmate grievance process. Inmates are prohibited from knowingly, willfully or maliciously filing frivolous or vexatious grievances, which are considered to be an abuse of the Inmate Grievance Procedure. Inmates abuse the Inmate Grievance Procedure when they file a grievance that contains: Any language, writing or illustration deemed to be obscene, profane, or derogatory . . . .
New Hampshire	N.H. Rev. Stat. Ann. § 622:14, Discipline  12.C  13.B/C    14.B/C	The commissioner of corrections may punish any convict guilty of insolence or ill language to any officer of the prisons . . . . Use of abusive, profane, or obscene language or gestures. Use of provoking words or gestures which might result in violence. Insubordination or disrespect toward a staff member.

New Jersey	N.J. Admin. Code tit. 10A, § 4-4.1, Prohibited Acts, .304.	Using abusive or obscene language to a staff member.
New Mexico	CD 090100, Inmate Discipline, Attachment CD-090101.B(B)(14), Verbal Abuse or Gesture	Subjecting another person to abusive, offensive or defamatory language or gestures.
New York*	N.Y. Comp. Codes R. & Regs. Tit. 7 § 270.2(B)(8)(ii), Rule 107.11	Inmates shall not harass employees or any other persons verbally or in writing. This includes, but is not limited to, using insolent, abusive and/or obscene language and gestures, or writing or otherwise communicating messages of a personal nature to employees or volunteers.
North Carolina	Rules for Inmates Handbook – Inmate Discipline, <a href="http://www.doc.state.nc.us/dop/index.htm">http://www.doc.state.nc.us/dop/index.htm</a> , Class C Disciplinary Offenses, C2	Directed toward or use in the presence of any State official, any member of the prison staff, any inmate, or any member of the general public, oral or written language or specific gestures or acts that are generally considered disrespectful, profane, lewd, or defamatory.
North Dakota	Department of Corrections and Rehabilitation Offenses, Violation A-32 Violation B-26	Offense of insolence to staff members.  Use of obscene or profane language.
Ohio*	Ohio Admin. Code § 5120-9-06, Inmates rules of conduct (C)(26). Ohio Admin. Code § 5120-9-31, Inmate grievance procedure (F)	Disrespect to an officer, staff member, visitor, or other inmate. An inmate may be subject to disciplinary action for disrespectful, threatening or otherwise inappropriate comments made in an informal complaint, grievance, or grievance appeal.
Oklahoma*	OP 060125, Attachment A, Acts Constituting Rule Violation, 11-1 11-2  OP 090124, Inmate Grievances, IX, Abuse of the Process	Insolence to staff member or citizens. Using abusive/obscene language, or making profane/obscene/sexual gestures to a staff member or citizens. The appropriate reviewing authority may determine there is abuse or misuse of the grievance process, and may restrict the inmate's/offender's capacity to submit a grievance. The abuse may be, but is not limited to grievances intended to harass another.

Pennsylvania*	DC-ADM 801, Attachment A, A.33  DC-804, Part 3	Using abusive, obscene, or inappropriate language to an employee. Grievances must be legible, understandable, and presented in a courteous manner.
Rhode Island*	11.01-4 DOC Attachment 1, 337  Inmate Grievance Procedure 13.10 DOC, III.D.5.d.(5)	Swearing, cursing, using any vulgar, abusive, insolent, or any other improper language toward staff or visitors. It [the grievance] should not contain remarks which are abusive, insulting, or unrelated to the problem.
South Carolina	SCDC Policy OP-22.14, Inmate Disciplinary System, 836 Disrespect (3.17)	The failure of any inmate to observe proper decorum or who willfully engages in action or makes statements to a person who is discourteous in nature, which may or may not include the use of profanity.
Tennessee*	TDOC Policy 502.05 13, Disrespect  TDOC Policy 501.01, H, 3	Any act, whether spoken, visual or written, which would tend to degrade a particular person or position. Profanity, insults, and racial slurs, unless an alleged direct quote of another party, shall not be permitted in grievances.
Texas	TDJC Rule 42	Use of indecent or vulgar language or indecent or vulgar gestures in the presence of or directed at an employee or any person who is not an offender.
Utah*	Utah DOC Policy and Procedures, FDr01/06.05(B01) Frivolous, Malicious or Vexatious Misuse of Administrative Review	An offender may be charged with this offense if the offender frivolously, maliciously or vexatiously used or misused any administrative review process.
Vermont	Directive 410.01, Offender Discipline, Appendix I, Minor Violation 19	Using abusive or obscene language or making obscene gestures in the presence of staff, volunteers or others.

Virginia*	Virginia DOC Division Operating Procedure No. 861.4(B)(222); 866	<p>Vulgar or insolent language or gestures directed toward an employee, or directed toward, or in the presence of, persons who are not inmates or employed by DOC (general public, volunteers, and visitors).</p> <p>An inmate may be charged with an infraction for using the following language in a grievance: . . .</p> <p>Unfounded - when a determination is made of compliance with properly established procedures.</p> <p>Vulgar, Insolent Language - the use of language that is offensive to a reasonable person.</p>
Washington*	Wash. Admin. Code § 137-28-220, General Infractions (1)(202)	Abusive language, harassment or other offensive behavior directed to or in the presence of staff, visitors, inmates or other persons or groups.
Wisconsin	Wis. Admin. Code § DOC 303.25, Disrespect	Any inmate who shows disrespect to any person is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, yelling, and other acts made outside the formal complaint process which are expressions of disrespect for authority.
District of Columbia	D.C. Mun. Regs. tit. 28, § 504 (2005), Class III Offense 504.9	<p>(a) Making any profane, obscene, or abusive remark to any employee of the Department of Corrections, or other custodial official; or</p> <p>(b) Making a profane, obscene, or abusive remark about an employee or official of the Department of Corrections in the presence of that employee.</p>
Federal Bureau of Prisons	PS 5270.07, CN 12 10/11/2000, Prohibited Acts 312 Prohibited Acts 404	Insolence towards a staff member. Abusive or obscene language.

**\* In these states, prohibitions against hostile, sexual, abusive or threatening language may be applied to written grievances.**



**Washington State**  
**DEPARTMENT OF CORRECTIONS**  
**BEHAVIOR MANAGEMENT GUIDE**

**The Correctional Context**

Behavior management in the correctional context involves monitoring, directing and controlling offender movements and actions through the consistent enforcement of rules, appropriate verbal and physical interventions and the active encouragement of productive attitudes and actions.

Behavior Management is a philosophy as well as an action. It is built on the belief that recidivism can be reduced and the offender returned to the community better prepared to live a pro-social life through:

- √ Social education for the development of self-control
- √ Vocational education and work opportunities to prepare for productive jobs in society
- √ Rules for personal development and accountability
- √ Controlling the levels of freedom and responsibility based on the offender's behavior

Behavior management is also a process that encompasses every aspect of the correctional facility. Each department and activity supports and enforces:

- √ Compliance with facility and department rules
- √ Development of self control through accountability
- √ Establishment of an environment safe for staff and offenders
- √ Opportunity for self improvement

Behavior Management has five primary components that are present in every facility and custody level:

- 1. The offender disciplinary process** - defined by the Washington Administrative Code (WAC) accomplished through a system of due process.
- 2. The classification process** - a system to determine custody level and privileges based on the subject's behavior, offense, treatment needs and risk to facility and or public.
- 3. Programming** - opportunities in the facility for work, school, and self-improvement. Offenders must participate in approved activities or stay on a lock-down status during normal programming (work) hours.
- 4. Interaction and confrontation management**-the structure of the non-verbal, verbal and physical control techniques that a correctional worker uses to maintain security within the facility, encourage compliance and instruct self-control through example.

**5. Security systems**-the establishment and enforcement of psychological, social, and physical boundaries in order to protect the public, facilitate socialization and develop respect for authority.

Each of these components work hand in hand to structure and define an environment that:

- √ protects the public
- √ is safe for staff and offenders
- √ facilitates change through accountability and example

### **Your Part as a Correctional Professional**

You as a correctional worker have a key role. Institutions don't confront, instruct, demonstrate and encourage. People do.

In facilities across the state the availability of psychologists and therapists to work with the general population is virtually non-existent. It is usual for an 850-bed facility to have two part time psychologists and two full time chaplains. For psychologists, the large caseload of release and transfer evaluations leaves little time for serious counseling.

Chaplains do counseling but they seldom have the time for the consistent interaction required to make a difference in the thought processes and behavior of offenders. This result is a tremendous gap in our system.

In most cases it would not be appropriate for correctional officers and other staff to enter into a counseling relationship with an offender.

However, we shouldn't discount the value of a consistent demonstration of life skills in our day-to-day interaction with offenders. As correctional workers we enter our facilities and work with the same offenders day after day, sometimes for years. You actually have the opportunity and the ability to impact offenders beyond the scope of traditional counseling.

Interactions with the offenders do have an effect. That effect can be very constructive or it could be destructive. Constructive interaction is the result of our ability to maintain a balance that reflects a professional who will not be manipulated, intimidated or defeated by the scope of the task.

Our job as correctional professionals goes beyond keeping the offenders from hurting themselves or just leaving the perimeter. Our job is to create a safe community in the prison and impact offenders through our daily interactions. If we adopt the goal of sending offenders back to the community better prepared than when they came in, we can have an impact on the safety of communities through the reduction of recidivism.

It is also the case that our interactions with offenders can be counterproductive, even destructive. If we feel it is our calling to punish offenders or retaliate for the sake of the victims, we will not

be able to maintain the balance that could result in some level of constructive change. Some of the harmful attitudes that you may find in an institution may include:

- √ It's me against you.
- √ I'll get you no matter what you do (infractions).
- √ Do what you want, just don't make work for me.
- √ I'll be your friend when you behave.
- √ Stay away from me, you contaminated piece of \_\_\_\_!

You may feel all of these attitudes at some point in your career. When that happens, these feelings should serve as an alarm that something is not working right and it is time to get refocused. Why? The Washington Department of Corrections has a 30% recidivism rate. That means approximately 1/3 of the offenders who are released re-offend within five years. When an ex-offender re-offends, there is another victim. The cost in resources and human suffering is incalculable. As correctional professionals, we have an opportunity to intervene in that process.

The bottom line is, if you are not contributing positively to the development of offenders, you are not contributing to the goals of the department.

Over the next few weeks you will learn the use of some powerful tools that will help you be effective in that intervention and to maintain a personal balance that will result in a productive career in corrections.

### **Who are these people?**

The individual circumstances that result in long term state incarceration are as varied as the people themselves. While we classify them by crime type, there are individual motives that we never explore. There are some general statements that we can make that reflect typical motivations or mindset of offenders.

Most individuals are under state supervision because:

- √ They feel exempt, that no one can catch or hold them accountable for their offenses; that it is about not getting caught.
- √ They are often controlled by emotions with little consideration of the long-term results of their actions.
- √ They do not accept responsibility for their actions-it is someone else's fault; they are victims.
- √ They often feel that they cannot change how or who they are.

Listed below are the general offenses and the percentage of offenders incarcerated for those offenses in Washington State:

Offense	Percentage
Murder 1 and 2	12.0%
Manslaughter	1.7%
Sex Crimes	18.8%
Robbery	9.6%
Assault	17.4%
Property Crimes	15.1%
Drug Crimes	20.9%
Other unknown	4.5%

*Source: DOC Offender Statistics as of March 2003*

The average age is 34. The race is 71% white, 22% black and 7% other. 92.8% are male. Over 35% have done prison time in Washington before. Only 2.8% are doing life without release. That means 97.3% will be on our streets again.

This can be a difficult group to manage if you do not understand who you are and your relationship to offenders. As a correctional worker you are the line between the offender and public, and the best chance we have to reduce recidivism.

### **Discussion**

√ *What implications does the statistical profile suggest for managing offenders? What types of problems can we anticipate?*

√ *What personal issues might we encounter when dealing with offenders?*

√ *What are your observations or feelings about the impact of staff quality interactions with offenders?*