

Title 68 – DEPARTMENT OF CORRECTIONAL SERVICES

Chapter 6 – INMATE DISCIPLINARY PROCEDURES

001- Applicability. This rule applies to all facilities operated by the Department of Correctional Services.

002- Departmental Policy. The Warden of each facility shall maintain a clearly defined disciplinary procedure that complies with the provisions of this Rule and is consistent with guidelines issued by the Director. The disciplinary procedure shall be designed to contribute to the efficient operation of the facility and to be conducive to the successful re-socialization of the inmates confined therein.

003- Pre-hearing Detention. Inmates charged with a rule violation may be held on immediate segregation status. The inmate's status shall be reviewed within seventy-two hours by the Warden or designee.

004- Disciplinary Principles. In every disciplinary action the following principles apply.

004.01 Disciplinary action is used to regulate an inmate's behavior within acceptable limits. Disciplinary sanctions are imposed to punish the inmate for his/her misconduct and to deter that inmate and other inmates from engaging in similar misconduct in the future. Each disciplinary sanction imposed must be proportionate to the seriousness of the inmate's misconduct, giving consideration to all aggravating and mitigating circumstances and prior offenses for the same or similar behavior.

004.02 The behavior of inmates committed to the custody of the Department shall be controlled in an impartial and consistent manner.

004.03 Disciplinary action shall not be capricious, retaliatory or revengeful.

004.04 Corporal punishment of any kind is prohibited.

004.05 Disciplinary committees may request investigations, but cannot conduct investigations themselves.

004.06 A finding that a person has committed an act prohibited by the Code of Offenses must be based upon information obtained in the hearing process.

004.07 Records of all disciplinary actions shall be kept.

005- Notice of Disciplinary Procedures. The Warden or designee shall give inmates notice of the Department's disciplinary procedures. The rulebook containing all

chargeable offenses, penalties and disciplinary procedures shall be given to each inmate and staff member. The rulebook is translated into those languages spoken by significant numbers of inmates. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator shall assist the inmate in understanding the rules. This information may be given either at the time of admission to the facility or during reception and orientation.

006- Filing and Logging of Misconduct Reports. If an employee witnesses or has a reasonable belief that an infraction of the Code of Offenses has been committed by an inmate, the employee shall prepare a written report. The report shall be filed with Warden or designee, within seventy-two hours of the occurrence of the infraction or the discovery of it. The point of discovery of a drug violation based on a laboratory drug test is when the result of the laboratory test is received by the facility's designated staff member. The report shall be placed in the files of the facility, and logged in facility records. The report shall be logged within 24 hours after the report is filed, which commences the investigation.

007- Disciplinary Committees. Each facility shall have institutional and unit disciplinary committees. After a misconduct report is filed and logged pursuant to *Chapter 6, section 006* of these rules, the Warden or designee shall review the report, and determine the offenses allegedly committed and determine whether the hearing on the report shall be conducted by an institutional disciplinary committee or a unit disciplinary committee. The factors to be considered include but are not limited to the inmate's disciplinary history, the nature of the alleged offense(s), and the likelihood of disciplinary segregation and/or loss of good time being imposed.

007.01 Unit disciplinary committees shall follow the rules and use the Code of Offenses established by *Chapter 5* of these rules.

007.02 Unit disciplinary committees may not order the loss of good time or impose disciplinary segregation.

007.03 The procedures for unit disciplinary committee hearings and the sanctions that may be imposed by a unit disciplinary committee shall be established by Administrative Regulations and Operational Memorandum.

007.04 The institutional disciplinary committee may transfer cases to a unit disciplinary committee and a unit disciplinary committee may transfer cases to the institutional disciplinary committee.

007.05 None of the rules or procedures set forth below in this chapter apply to unit disciplinary committees.

008- Institutional Disciplinary Committee or Hearing Officer. The Warden shall establish one or more disciplinary committees. The Warden may appoint a single hearing officer in lieu of a "committee" and where the term "committee" is used herein it refers to

individual hearing officers as well as committees composed of two or more members. To the extent possible, a person representing the treatment or counseling staff of the facility shall participate as a member of the facility disciplinary committees. No person shall maintain a position on a disciplinary committee during a hearing if that person has first-hand knowledge of the charges brought against the accused inmate, either as an eyewitness or as the reporting officer or investigating officer. However, an employee may be a member of a disciplinary committee when the incident is so widely witnessed that virtually every employee has witnessed it in whole or in part. Records of disciplinary proceedings shall be maintained in the inmate's file jacket unless dismissed on appeal.

009- Institutional Disciplinary Committee Procedures. Institutional Disciplinary committees shall hold hearings that comply with these rules and regulations and Nebraska statutes.

009.01 Before an inmate can be disciplined for a drug or alcohol violation, the inmate may request and the Department shall provide independent confirmation testing of positive results of urinalysis testing. If the confirmation test is positive, the inmate may be required to pay the cost of the confirmation test.

009.02 Investigatory Hearing. Upon receipt of a Misconduct Report, the Warden or designee shall designate an investigating officer(s). The investigating officer shall not be the employee reporting and shall not have been involved in the particular incident in question. After an alleged rule violation is logged, an investigating officer will meet with the accused inmate, give the inmate written notice of the allegations, an opportunity to make a statement about the allegations, and an opportunity to request representation and/or witnesses at the disciplinary hearing. The investigating officer shall interview the inmate and may interview other persons with relevant knowledge to determine whether there is some evidence that an offense was committed. The investigation should be completed promptly unless exceptional circumstances necessitate a delay. The investigating officer shall forward the misconduct report to the disciplinary committee with a recommendation on whether or not the report should be dismissed.

009.03 Notice of Hearing. No less than twenty-four hours before the hearing is scheduled to be held, each inmate charged with an offense shall be given written notice of the date of the hearing. The inmate may waive this twenty-four hour requirement in writing.

009.04 Notice of Charges. No less than twenty-four hours before the hearing is scheduled to be held, each inmate charged with an offense shall be given written notice of the alleged misconduct and the rules such conduct is alleged to violate. The inmate may waive this twenty-four hour requirement in writing.

009.05 Hearings. An institutional disciplinary hearing shall be held within seven days, excluding weekends and holidays, after the occurrence or discovery of an infraction.

009.06 Opportunity to Appear. An inmate charged with an offense shall have an opportunity to appear before and address the institutional disciplinary committee unless the inmate waives this right in writing or is excluded because of his or her behavior. An inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. Reasons for the inmate's absence or exclusion must be documented.

009.07 Reporting Employee. The Reporting Employee shall appear at the disciplinary hearing unless the inmate waives his/her presence in writing.

009.08 Presentation of Witnesses and Documentary Evidence. An institutional disciplinary committee may compel an employee with relevant information to appear as a witness. An institutional disciplinary committee shall also allow the inmate charged to call witnesses with relevant knowledge and present relevant documentary evidence in the inmate's defense when permitting the inmate to do so will not be unduly hazardous to institutional safety or correctional goals. Requests for witnesses or documentary evidence must be made at the time of the investigatory hearing, or must be in writing and received by designated staff at least 24 hours in advance of the hearing. An institutional disciplinary committee shall state its reasons in writing for refusing to allow a witness to testify or to have requested documentary evidence at the hearing. When it would compromise safety or security to allow a person to appear as a witness, the person may submit a written statement to the committee. The refusal of an inmate to make a written statement or to testify shall be documented.

009.09 Written Statement of Decision. The institutional disciplinary committee shall give the inmate a written statement of the decision. This statement shall include the basis for the decision and any disciplinary action imposed.

009.10 Change of Work, Education or Program Assignment. A change in work, education or other program assignment shall not be used for disciplinary purposes.

009.11 Preparation of Inmate's Defense. The inmate charged shall have an adequate opportunity to prepare a defense. Such opportunity shall include the right to assistance and advice in preparing and presenting a defense from any inmate in general population or staff member at the facility where the hearing is held. The inmate or staff member may serve only in an advisory capacity for the inmate so charged. A representative will be appointed when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf. No inmate or staff member shall be recruited to serve in such an advisory capacity involuntarily. A request for a representative must be made at

the time of the investigatory hearing, or must be in writing and received by designated staff at least 24 hours in advance of the hearing.

009.12 Waiver. The inmate may waive the right to have the reporting employee at the hearing, the right to twenty-four hours notice of the hearing, the right to twenty-four hours notice of the charges, the right to a representative, the right to request witness and the right to be present at the hearing. Waivers and consents shall be in writing, signed by the inmate and reviewed by the Warden or designee. A signed waiver may be rescinded only for good cause as determined by the institutional disciplinary committee.

009.13 Continuances. The institutional disciplinary committee may grant a continuance or postponement of the disciplinary hearing. A request for a continuance may be made by either institutional staff involved in the discipline process or the inmate. A continuance may be granted only for good cause shown for a reasonable period of time, and shall be made in writing and made part of the disciplinary record.

0010-Review by Warden. An inmate may not be disciplined without the approval of the Warden or designee. The Warden may modify or decrease the sanctions imposed by the disciplinary committee, but may not increase the severity of those sanctions. The Warden's responsibilities under this paragraph may not be delegated to anyone who served as a member of the disciplinary committee hearing the case to be reviewed.

0011- Loss of Good Time and Disciplinary Segregation. Institutional disciplinary committees may impose the following penalties for violations of the Code of Offenses if the committee finds the violations to be serious or flagrant. Flagrant or serious misconduct shall include: causes major disruption to the operation of the institution; creates danger for the public, staff and/or inmates; violence; substantial destruction of property; risk of escape or repeated violations of the same offense in the past 12 months.

0011.01 Class I offenses (those preceded by a Roman Numeral I in the Code of Offenses).

0011.01A Confinement in disciplinary segregation for a definite period of time not exceeding sixty days, and/or

0011.01B Loss of good time not exceeding six months for violations not involving assault or injury to a person. Loss of good time not exceeding two years for violations involving assault or injury to a person. The Disciplinary Committee may designate loss of good time involving assault or injury to a person as non-restorable.

0011.02 Class II offenses (those preceded by a Roman Numeral II in the Code of Offenses).

0011.02A Confinement in disciplinary segregation for a definite period of time not exceeding forty-five days, and/or

0011.02B Loss of good time not exceeding three months.

0011.03 Class III offenses (those preceded by a Roman Numeral III in the Code of Offenses).

0011.03A Confinement in disciplinary segregation for a definite period of time not exceeding thirty days, and/or

0011.03B Loss of good time not exceeding two months.

The maximum sanction involving disciplinary segregation shall not exceed sixty days for all violations arising out of one incident. The maximum sanction involving loss of good time shall not exceed six months for all charges arising out of one incident except for violations involving assault or injury to a person.

012- Other Penalties. In addition to the penalties set out above, a disciplinary committee may impose the following penalties. A combination of penalties may be imposed for each offense contained in the Code of Offenses.

012.01 Extra Duty. An inmate may be assigned additional work duties without pay during a period of time not to exceed thirty days. Work assignments need not be in the area of the inmate's present work assignment. Extra duty shall not exceed 120 hours for all violations arising out of one incident.

012.02 Restriction. An inmate may be restricted from any correctional facility activities for disciplinary reasons except the recognized worship activity for his/her religious faith group, dining hall, designated group or individual therapy, and school, for a period of time not to exceed ninety days for all violations arising out of one incident. Restrictions on clothing, bedding, mail, visitations, use of toilets, wash bowls, scheduled showers or facilities and materials needed for access to the courts shall be imposed only for abuse of such privileges or facilities.

012.03 Reprimand. An inmate may be reprimanded verbally or in writing for violating the Code of Offenses.

012.04 Restitution. An inmate may be required to make restitution for: the actual value of property intentionally or recklessly destroyed belonging to the state or any other person; the actual cost to the state for injuries, repairs or other damages caused by intentional acts of the inmate; and for the reasonable costs incurred by the state when returning the inmate to the correctional facility after an escape. Before restitution can be ordered for disciplinary reasons, the inmate must be found to have violated a pertinent rule, and a disciplinary committee must determine the amount of restitution based on substantial evidence introduced at a disciplinary committee hearing. Restitution monies may be taken only from the inmate's institutional account.

013- Criminal Offenses. Criminal prosecution does not stay disciplinary actions.

014- Records. If an Institutional Disciplinary Committee dismisses or an appellate body reverses all charges on a misconduct report, all records of the disciplinary action shall be

removed from the inmate's file. When an inmate is found guilty of only some of the rule violations he or she was originally charged with in a misconduct report, the disciplinary record must show which charges were dismissed.

015- Appeals Process. The inmate shall be advised of the right of appeal at the time he or she is notified of a disciplinary committee's decision. Appeals must be in writing and must state the charge(s) to be reviewed and the reason(s) why the charge(s) should be reversed. The inmate shall submit the appeal to designated staff within fifteen days after receiving notice of a disciplinary committee's decision.

Within ten days after receiving the inmate's appeal, designated staff will send a complete copy of the disciplinary committee record, and the inmate's appeal to the Appeals Board. The complete disciplinary committee record includes the misconduct report, disciplinary action sheet, and other relevant documents. The Appeals Board will render a decision based on this evidence. The Appeals Board will review and analyze due process, findings of fact, evidence relied upon, and the impartiality of the decision-making process. Appeals Board staff will send the inmate a copy of the Appeals Board decision within thirty days after receipt of the appeal.

016- Disciplinary Segregation. Disciplinary segregation is the status of confinement in a cell or other control unit facility separated from general population members insofar as practicable, as a result of a hearing on charges of misconduct pursuant to this Rule. Inmates housed in disciplinary segregation will have significantly fewer privileges than those housed in administrative detention.

017- Solitary Confinement. Solitary confinement is the status of confinement in an individual cell having solid, soundproof doors, and depriving the inmate of all visual and auditory contact with other persons. No inmate shall be placed in solitary confinement for disciplinary reasons.

018- Room Restriction. Room restriction is the status of being restricted from certain privileges normally afforded members of the general inmate population. It does not consist of total separation from the general population and does not constitute disciplinary segregation.