NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
707

INMATE DISCIPLINARY PROCESS

Supersedes: (Temporary, 11/23/09); 02/12/10; (Temporary, 02/13/17); (Temporary, 4/25/17)
Effective Date: 05/16/17

AUTHORITY: NRS 209.131; NRS 209.356; NRS 209.361; NRS 209.246

PURPOSE:

To ensure Nevada Department of Corrections has established rules of conduct as well as sanctions and procedures for addressing violations defined in writing and communicated to all inmates and staff.

RESPONSIBILITY:

1. The Director of Corrections is responsible, through the respective Deputy Directors, for the implementation of the inmate disciplinary process.

2. The Warden is responsible for ensuring compliance with the inmate disciplinary process and the overall management of the inmate disciplinary process, at their respective institution or facility, through the institution's or facility's Operational Procedures.

3. An Associate Warden, under the direction of the Warden, is responsible for the compliance of the inmate disciplinary process by their subordinate staff.

4. All staff and inmates are responsible to have knowledge of and comply with the inmate disciplinary regulations and procedures.

707.01 DEPARTMENT POLICY

1. All inmates committed (including safe keepers) to the Department shall be subject to disciplinary action for violations of the Department's rules and regulations.

2. Disciplinary action should be taken as soon after the misconduct as is practical.

3. Discipline shall be applied in an impartial and consistent manner.

4. Corporal punishment or inhumane treatment is prohibited.

5. Disciplinary proceedings are an administrative process, unrelated to and not bound by the rules for criminal procedure, civil trials, administrative codes or procedures.

6. Inmate(s) shall be informed that they can appeal through the grievance procedure any portion of their discipline as it relates to due-process or sanctions imposed as a result of the hearing, unless they agree to bargained plea.

7. Inmate(s) sanctioned to disciplinary segregation shall be advised that they can petition the warden for a release from segregation by utilization of the *Inmate Request Form* (DOC 301), also referred to as a kite, prior to the completion of imposed sanction as a result of demonstrated good conduct after serving one-half of their imposed sanction. Bargained pleas are exempt from early release.

8. Upon commitment to the Department, all inmates shall be issued, and required to sign for a copy of the Inmate Disciplinary Manual and AR 707 Inmate Disciplinary Process.

A. Signed acknowledgment will be maintained in the inmate's I-file.

B. When a literacy or language problem prevents an inmate from understanding the manual, a staff member or translator will assist the inmate in understanding the rules.

9. The manual will be available to all inmates. Availability is satisfied if a copy is kept in the institutional law library or in the living units for those facilities without a law library.

10. All inmates are assumed to have notice of this manual.

11. The inmate disciplinary process includes the following procedures:

A. Only one charge per incident will be assigned to the inmate on the Notice of Charges form NDOC 3017.

B. Only the most serious Code violation that shall be supported by "some evidence" will be charged on the NDOC 3017. The finding of the hearing shall not be arbitrary or capricious and the finding can be supported by the hearing officer's review of the evidence.

C. No additional charges will be added. *Charges will not be stacked – defined as more than one charge per incident.*

D. If at any stage during the hearing process, whether at the Preliminary Hearing, at the Hearing Officer stage, or at a Full Disciplinary Committee, it is known or suspected that the inmate's mental health or medical condition was a substantial cause of the misconduct and/or that the inmate is assigned to the Mental Health program or has been already diagnosed as Seriously Mentally Ill (SMI), the inmate shall be referred for a psychological evaluation prior to the disciplinary hearing.

E. The psychological evaluation shall state whether the misconduct was a result of the inmate's mental health or whether the mental illness contributed to the misconduct, and it shall be included in the written documentation that shall be considered by the Hearing Officer or

Committee, when considering the sanctions to be imposed pursuant to Inmate Disciplinary Sanctions in 707.2.

F. If during the psychological evaluation, the staff conducting the evaluation suspects that the misconduct may have been as a result of a medical condition, such as, but not limited to; Dementia, Alzheimer's, Post-Traumatic Stress Disorder (PTSD), or other condition such as a traumatic brain injury (TBI), the staff person shall refer the inmate to Medical for their review and recommendation.

G. If it is determined that the inmate's misconduct was a result of his/her mental health status or that the inmate is assigned to the Mental Health program, the inmate shall be given reasonable and appropriate accommodations in preparation for the hearing and the inmate may be provided with assistance during the hearing.

H. If an inmate is diagnosed as Seriously Mental Ill (SMI), or has a medical condition, as determined by a mental health or medical professional, that may have affected the inmate's behavior which resulted in the Notice of Charges, the Hearing Officer or Disciplinary Committee may mitigate the sanction pursuant to Inmate Disciplinary Sanctions in 707.2.

I. The inmate's misconduct shall be documented and the finding may include a finding of guilt. However, the sanction for an inmate who is diagnosed as SMI or has a medical condition that directly affects the inmate's conduct shall not include Disciplinary Segregation or Disciplinary Detention.

J. If an inmate's mental health or medical condition is of such a nature that the inmate is a threat to self or others or is disruptive to the orderly operation of the facility or institution, the inmate may be placed in administrative segregation. The placement in administrative segregation shall not be considered part of the disciplinary action taken. The placement in administrative segregation shall be temporary until more suitable placement is identified or the condition is treated.

K. If, after the sanction has been mitigated, it is determined that the inmate was not SMI or that there were no medical conditions that should have affected the behavior and the outcome of the hearing, the information relative to the inmate's manipulation shall be documented and the documentation shall be used to process disciplinary action against the inmate.

L. The Preliminary Hearing Officer has the authority to "amend" a charge, as appropriate, but cannot add any additional charges.

M. A Hearing Officer may reduce the severity of sanction for a violation, if the inmate pleads guilty to the charge. Inmates cannot appeal a guilty plea.

N. A Hearing Officer may reduce the actual sanction for an inmate in a transitional center. This would include, but not limited to, tobacco or other violations that do not include new charges of violations of existing statutes.

O. The designated Preliminary Hearing Officer shall serve notice within 15-calendar days of the date of discovery of the violation; (or)

P. Within 15-calendar days of the completion of investigative work concerning the incident; (or)

Q. In the case of an escapee, within 15-calendar days after the escapee's return to NDOC custody.

R. If the inmate chooses not to waive the NDOC's disciplinary hearing process, a hearing shall be conducted and the inmate's decision not to waive the hearing shall be documented on the disciplinary hearing documents, which the inmate will sign.

S. At least 24 hours prior to any formal hearing before an impartial Disciplinary Hearing Officer, the Notice of Charges shall be served to the inmate. An inmate shall have an opportunity to call witnesses with substantive knowledge of the issues. The witnesses may be present during the hearing at the discretion of the Hearing Officer, and may provide documentary evidence germane to the Notice of Charges.

T. An inmate shall be provided with a written statement by the Disciplinary Hearing Officer as to the evidence relied on, provided that to do so would not jeopardize institutional safety or security or safety of others.

U. A finding of guilt shall be based on "some" evidence. The finding will not be arbitrary or capricious and the finding can be supported by the hearing officer's review of the evidence.

12. Reliance on any published standard, the use of mandatory language, if such exists, or the creation or procedures related to the conduct of the disciplinary process, including, but not limited to timeframes, witnesses or appeals is solely for the purpose of providing guidance for employees and shall be considered representative of the manner in which the Department has chosen to exercise the Department's discretion in such matters. The failure of any employee of the Department to follow any procedure shall not result in any mandatory outcome (e.g., dismissal of charges), but shall be one of many factors to be considered in exercising discretion as to the outcome of any violation. A rehearing may be ordered by the Warden, if warranted.

13. Any disciplinary case may be continued so that the Preliminary Hearing Officer or the Disciplinary Hearing Officer may obtain guidance from the Attorney General's Office concerning any matter in the inmate disciplinary process.

A. Inmate(s) do not have any right or privilege to request or participate in obtaining guidance from the Attorney General's Office.

B. The Department may seek guidance in writing or verbally.

C. The Department's request(s) for guidance shall be made only if there is confusion as to the application of the guidelines set forth in this Code.

D. The Office of the Attorney General shall not be asked to render any opinion as to the guilt or innocence of an inmate facing disciplinary charges.

707.02 DISCIPLINARY OFFENSES (Note: Deleted infractions will not lead to the renumbering of charges.)

1. All offenses listed below in section 707.02.3 through 6, shall also include an attempt or conspiracy to commit that violation.

2. Work Release violations may only be charged if the inmate has minimum or community trustee status.

3. Minor Infractions (All Class E Violations)

- M1- Purchasing, selling, trading, giving, receiving or possessing any item of property, with a value less than $50, in a manner other than that which is authorized by Administrative Regulation 711.

- M3 - Possession of unauthorized items with a combined value of less than $25.00.

- M4 – Roughhouse or horseplay.

- M5 - Failure to keep one's person or assigned area neat and clean.

- M6 - Failure to perform work as instructed or a failure to attend work, school or other assignment.

- M7 - Unauthorized use of institutional supplies, tools, equipment or machinery.

- M10 - Failure to produce inmate identification card upon request of correctional employee.

4. General Violations (All Class D Infractions)

- G1 - Disobedience of an order from any correctional employee or anyone who has the authority to supervise inmates in work or other special assignments.

- G2 - Unauthorized contact with any on- or off-duty correctional employee or member of the correctional employee's family; or any unwanted contact with any private citizen, not amounting to harassment or threats.

- G3 - Organizing, participating in, operating any gambling game or betting pool, or possessing any equipment used for gambling or betting purposes.

- G4 - Intentionally destroying, altering or damaging property of another or state property which has a combined replacement value of less than $50.00.

- G5 - Self mutilation.

- G6 - Fighting or challenging another to fight.
- G7 - Issuing a brass slip with knowledge that it is not covered by sufficient funds.
- G8 - Possession of another inmate's identification card.
- G9 - Abusive language or actions toward another person.
- G10 - Tampering with evidence or influencing a witness involved in any disciplinary process, not amounting to threats.
- G12 - Failure to appear at the proper time and place for count or interfering with the count.
- G13 - Cutting into line.
- G14 - Failure to follow any Department's rules and regulations.
- G15 - Presence in areas identified as off limits to inmates by posted regulations or signs that identify areas that are restricted, not amounting to an attempted escape.
- G18 - Delaying, hindering or interfering with a correctional employee in the performance of their duties.
- G20 - Preparing, soliciting, or giving false or misleading information to or about a staff member and representing the statement as fact.
  NOTE: ***G20 Cannot be plea-bargained or sanction bargained.***
- G21 – Possession of gang materials including, but not limited to, jewelry, stationary, emblems and patches.
- G24 - Possession of prescribed medication that is not a controlled substance without the approval of the proper authority.
- G25 - Purchasing, selling, trading, giving, receiving or possessing any item of property, with a combined value equal to or greater than $50.00, in a manner other than that which is authorized by Administrative Regulation 711.
- G27 Abuse of inmate grievance process.
  NOTE: ***1) This notice of violation may be charged by the Director or any Deputy Director; and 2) G27 Cannot be plea-bargained or sanction bargained.***

5. Major Violations

- MJ1 - Arson: Setting a fire with the potential of causing damage or injury to persons or property. (Class A)

- MJ2 - Assault: unlawful attempt coupled with present ability to commit a violent injury on the person of another. (Class A)

- MJ3 - Battery: any willful use of force or violence upon the person of another. (Class A)

- MJ4 -Burglary: The entering of a building, structure or vehicle with the intent to commit crime therein. (Class B)

- MJ5 - Embezzlement: The fraudulent conversion of the property of another by one who is already in lawful possession of it. (Class B)

- MJ6 - Escape: The departure or absence from custody of a person who is imprisoned, before he is entitled to his liberty by the process of law. This violation shall be charged in cases of walk-a-ways from assignments of minimum or community custody where no weapons, force or injury to others was involved. (Class B)

- MJ7 - Extortion: The obtaining of property or money from another by wrongful use of actual or threatened force, violence or fear. (Class A)

- MJ8 - False Imprisonment: The unlawful violation of the personal liberty of another, which consists of confinement or detention without sufficient legal authority. (Class A)

- MJ9 - False Pretenses: A false representation of a material present or past fact, which causes the victim to pass title to his property to the wrongdoer who knows his representation to be false and intends thereby to defraud the victim. (Class B)

- MJ10 - Security Threat Group Activities: A validated Security Threat Group member who has engaged or is engaging in criminal activities, threatens the order and security of the institution and/or promotes racism. (Class A).
  NOTE: ***1) Only an Associate Warden or above may charge the inmate with a MJ10 violation; and 2) MJ10 Cannot be plea-bargained or sanction bargained.***

- MJ11 - Kidnapping: The unlawful taking, holding and carrying away of a human being by force or against his will. (Class A)

- MJ12 - Larceny: The trespassory taking and carrying away of personal property of another with intent to steal it. (Class C)

- MJ13 - Larceny by Trick: Obtaining possession of another's property by falsehood with the intent to convert it for his own use. (Class C)

- MJ14 - Manslaughter: The unlawful killing of another human being without malice either expressed or implied. It may be either voluntarily, in the heat of passion, or involuntarily. (Class A)

- MJ15 - Mayhem: The infliction of an injury, which disfigures, disables, or dismembers another. (Class A)

- MJ16 - Murder: The unlawful killing of another human being with malice aforethought, either expressed or implied, and all lesser included offenses. (Class A)

- MJ17 - Receiving Stolen Property: One must receive stolen property, know it is stolen, and intend to deprive the owner of it. (Class C)

- MJ18 - Robbery: A larceny where the taking of the property must be from the person of the victim or in his presence and the taking must be by means of violence or intimidation. (Class A)

- MJ19 - Sexual Assault/Sexual Abuse: Subjecting another person to any sexual act or sexual abuse, if the victim does not consent, is coerced into such act by over or implied threats of violence, is unable to consent or refuse; is against their will and/or understanding. Sexual Assault/Sexual Abuse includes any other intentional touching, either directly or through the clothing. (Class A)

- MJ21 - Theft: the taking of property without the owner's consent. (Class C)

- MJ22 - Tampering with any locking device. (Class B)

- MJ23 - Intentionally destroying, altering or damaging the property of another or state property with a combined replacement value equal to or greater than $50. (Class C)

- MJ24 - Adulteration of any food or drink. (Class A)

- MJ25 - Threats: issuing a threat, either verbally, by gesture or in a written statement to or about any person. (Class B)

- MJ26 - Possession of contraband, including items that present a threat to safety and security of the institutions, excluding drugs or drug paraphernalia. (Class A)

- MJ27 - Rioting or inciting others to riot. (Class A)

- MJ28 - Organizing, encouraging or participating in a work stoppage or other disruptive demonstration or practice. (Class B)

- MJ29 - Charging or collecting a fee or favors for services as a counsel-substitute, legal assistant or "writ writer". (Class C)

- MJ30 - Sexually stimulating activities, including but not limited to caressing, kissing or fondling, clothed or unclothed, between consensual sexual and/or amorous relationships between inmates. (Class A)

- MJ31 - The unauthorized or inappropriate use of telephone, mail, computer, state equipment, or supplies. (Class A)

- MJ32 - Being in an unauthorized area, or hiding on the prison grounds or hiding at a place of assignment or classification. (Class B)

- MJ33 - Bribery: Giving or offering a bribe to any person. (Class B)

- MJ34 - Trading, bartering, lending or otherwise engaging in any personal transactions when such transaction has not been specifically authorized. (Class C)

- MJ35 - Counterfeiting, forging or making an unauthorized reproduction of any document. (Class B)

- MJ39 - Running from a correctional employee when ordered to halt. (Class C)

- MJ40 - Propelling any substance toward any person that strikes them or has the potential to strike them. (Class A)

- MJ41 - Gathering around, blocking, or impeding any correctional employee or visitor, in a threatening or intimidating manner and exhibiting conduct, which causes the person to fear for his safety. (Class A)

- MJ42 - Unauthorized contact, including harassment, of any on-duty or off-duty correctional employee; their family member(s) or private citizen. (Class A)

- MJ44 - Failure to submit to a drug and/or alcohol screening. (Class A)

- MJ46 - The possession or use of a recording device. (Class C)

- MJ47 - Escape: The departure or absence from custody of a person who is imprisoned, before he is entitled to his liberty by the process of law. This violation shall be charged in cases of escape from assignment of medium custody or above, or escapes from any custody where weapons, force, violence, the taking of hostages or injury to others was involved. (Class A)

- MJ48 - Any violation of the Rules of Court, contempt of court, submission of forged or otherwise false documents, submissions of false statements, violations of Rules of Civil Procedure, Criminal Procedure or Appellate Procedure and/or receiving sanctions and/or warnings for any such actions from any court. Although not necessary for disciplinary purposes, any Order from any court detailing such action shall be sufficient evidence for disciplinary purposes. (Class C)

- MJ49 - Possession of any confidential prison regulation. Any prison regulation, which is not specifically delineated as accessible to inmates, is considered confidential. A prison regulation includes, but not limited to, Administrative Regulations, Institutional Procedures, Emergency Response Regulations, and Post Orders. (Class A)

- MJ50 - Sexual Harassment: Conduct that is sexually abusive or offensive to any person and that may include, but is not limited to, unwelcome sexual advances, requests for

sexual favors, or verbal comments, suggestive language, gesture, or actions of a derogatory or offense sexual nature by one inmate directed to another, or as an aside; unwanted or inappropriate touching; exposing one's self; performing a sex act with knowledge that it will be observed by another; displaying sexually provocative or explicit materials/drawings. (Class A)

- MJ51 - Compromising Staff, Volunteer or Vendor: Conduct that includes, but is not limited to, bribery, extortion, sexual conduct, or any other behavior designed to violate the safety and security of an institution and/or obtain favorable treatment. (Class A)

- MJ52 - Refusal to complete or participate in a mandatory, structured program. (Class C)

- MJ53 - Possession, introduction, or sales of any narcotics, drugs, alcohol, or other intoxicants or possession of materials/items suitable for such manufacture and/or use. (Class A)

- MJ54 – Possession and/or use of any narcotics, drugs, alcohol, or other intoxicants. (Class B)

- MJ55 – Possession, introduction, or sales of any tobacco product; or possession of materials/items suitable for such manufacture and/or use. (Class B)

- MJ56 - Tattooing: tattooing and/or body piercing oneself or another; or possession of tattooing and/or body piercing equipment. (Class C)

- MJ57 – Failure or refusing to cell as assigned. (Class C)

- MJ58 – False Reporting: Charge should be applicable for inmates who file false reports against staff and/or other inmates (Class A). Reporting a felony, misdemeanor or violation of any Department regulation has been committed, to include but not limited to the knowledge that the information reported, conveyed or circulated is false, circulating a false report or warning of an alleged occurrence or impending occurrence knowing that the false report is likely to cause the agency to conduct unwarranted criminal or internal investigation. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

6. Work Release Violations (All Class C)

- W1 - Failure to comply with travel arrangements outside the facility.

- W2 - Failure to report to the work assignment contacts in the community as specified and agreed upon in the release plan.

- W3 - Failure to remain in the particular area designated in the release plan.

- W4 - Operation of a motor vehicle, unless such operation is a condition of the job and prior Department authorization was approved.

- W7 - Failure to return to the facility on or before the time specified in the schedule of the release plan. This includes leaving or hiding from supervision or custody.

- W8 - Failure to report an incident that delays the inmate's return to the facility.

- W9 - Failure to complete or participate in a structured program.

- W10 - Performing work for private persons that are not authorized by the Department.

- W11 - Any violation or attempt to violate rules or conditions of the work program contract.

- W13 - Possession of coin, currency, checks, money orders or other negotiable instruments in excess of the amount authorized by regulation.

707.03 INMATE TRANSFERS

1. When conduct requires an inmate be transferred from one institution or facility to another, any pending disciplinary cases should be completed prior to the transfer. All inmate transfers must be handled by approved regulatory procedures through the Office of Offender Management.

A. If circumstances are such that the transfer must proceed prior to completion of the disciplinary process, the sending institution shall prepare the Notice of Charges and the receiving institution shall complete the disciplinary process.

B. The receiving institution will review the inmate's status within three (3) working days of receipt.

C. Copies of the completed disciplinary will be returned to the sending institution.

2. The Associate Warden/designee at the sending institution or facility is responsible for insuring that the pending case is properly transferred within seven (7) to 14 days from the date of transfer.

APPLICABILITY

1. This regulation requires an operational procedure for the Department and all institutions and facilities.

2. The regulation requires an annual audit.

REFERENCES

ACA Standards: 4-4226- 31, 4-4238-48, 4-4236, 4-4236, 4-4248, 4-4281

James Dzurenda, Director

5/25/17
Date