

EXHIBIT C

BOARD OF PRISON COMMISSION MEETING

4/8/08

PUBLIC COMMENT

To be entered into the record

1) **There is no NRS adopting a disciplinary code for infractions other than those that are unlawful. Therefore nothing included in AR 707 is valid unless it violates a law.**

NRS 209.361 Director to adopt regulations and penalties for violations. The Director shall:

1. Adopt with the approval of the board such regulations as are necessary to:

(a) Maintain proper custody of an offender in accordance with his current classification.

(b) Prevent escapes and maintain good order and discipline.

2. Establish procedures by regulation for disposing of cases involving violations of law in institutions or facilities of the Department.

3. Establish sanctions appropriate to the type and severity of such violations.

(Added to NRS by 1977, 850; A 1983, 722)

2) **The Board is responsible for much more than it is doing.**

NRS 209.111 Powers and duties of Board. The Board has full control of all grounds, buildings, labor, and property of the Department, and shall:

1. Purchase, or cause to be purchased, all commissary supplies, materials and tools necessary for any lawful purpose carried on at any institution or facility of the Department.

2. Regulate the number of officers and employees of the Department.

3. Prescribe regulations for carrying on the business of the Board and the Department.

(Added to NRS by 1977, 845; A 1979, 888; 1983, 719)

3) **Does the Board have a copy of the document or criteria used in the assessment and if so, how can one obtain a copy of it?**

NRS 209.341 Director to establish system of initial classification and evaluation for offenders; assignment of offender to appropriate institution or facility of Department. The Director shall:

1. Establish, with the approval of the Board, a system of initial classification and evaluation for offenders who are sentenced to imprisonment in the state prison; and

2. Assign every person who is sentenced to imprisonment in the state prison to an appropriate institution or facility of the Department. The assignment must be based on an evaluation of the offender's records, particular needs and requirements for custody.

(Added to NRS by 1977, 849; A 1979, 1125; 1983, 722; 1987, 2238; 1997, 906)

4) **What programs have been established by the board pursuant to this NRS? (see NRS 209.391 for directors duties.)**

NRS 209.389 Board to establish programs for general education, vocational education and training and other rehabilitation.

1. The Board shall establish by regulation programs of general education, vocational education and training and other rehabilitation for offenders.

2. The regulations must take appropriate account of the following matters:

(a) The educational level and needs of offenders;

(b) Opportunities for employment when the offender is released from custody;

(c) Interests of offenders; and

(d) The number of offenders desiring participation in such programs.

3. The regulations must provide for an assessment of these programs at least every 3 years by qualified persons, professional groups or trade associations.

4. No offender has a right to be admitted to a program of education, vocational education and training or other rehabilitation programs established pursuant to this section, and it is not intended that the establishment of such programs

or the failure to establish such programs creates any right or interest in liberty or property or establishes a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments officers or employees.

(Added to NRS by 1979, 308; A 1979, 1379; 1989, 1884)

5) **The Director is not following the laws of the state.**

NRS 209.131 Director of Department: Duties. The Director shall:

1. Administer the Department under the direction of the Board.
 2. Supervise the administration of all institutions and facilities of the Department.
 3. Receive, retain and release, in accordance with law, offenders sentenced to imprisonment in the state prison.
 4. Be responsible for the supervision, custody, treatment, care, security and discipline of all offenders under his jurisdiction.
 5. Ensure that any person employed by the Department whose primary responsibilities are:
 - (a) The supervision, custody, security, discipline, safety and transportation of an offender;
 - (b) The security and safety of the staff; and
 - (c) The security and safety of an institution or facility of the Department,
- is a correctional officer who has the powers of a peace officer pursuant to subsection 1 of NRS 289.220
6. Establish regulations with the approval of the Board and enforce all laws governing the administration of the Department and the custody, care and training of offenders.

NRS 209.134 Director of Department: Submission to county clerk of list of offenders released from prison or discharged from parole. On or before the fifth day of each month, the Director shall submit to each county clerk in this State a list which provides:

1. The name of each offender who was released from prison by expiration of his term of imprisonment during the previous month or who was discharged from parole during the previous month; and
2. The case number of each offense for which the offender was released or discharged.

(Added to NRS by 2003, 668)

NRS 209.391 Director to administer programs of education, training and rehabilitation, to establish programs for counseling, research, statistics and planning and to purchase textbooks. The Director shall:

1. Establish programs to provide medical, psychological, psychiatric and other appropriate forms of counseling to offenders under the jurisdiction of the Department in accordance with classification requirements.
 2. Administer programs of general education, vocational training and other rehabilitation for offenders established by the Board.
 3. Within the limits of legislative appropriations, purchase textbooks for use by offenders who are enrolled in courses of general education and vocational training offered by any branch or facility of the Nevada System of Higher Education. Any textbooks purchased pursuant to this section must remain the property of the State and must be reissued to offenders as appropriate.
 4. Within the limits of legislative appropriations, establish programs of research, statistics and planning to:
 - (a) Determine and review periodically the effectiveness of the Department's programs of education, vocational training and other rehabilitation for offenders;
 - (b) Provide annually, and at other times when so requested, to the Board, the Governor and the Legislature information pertaining to:
 - (1) The number of offenders who are participating in and who complete those programs;
 - (2) The effectiveness of those programs in accomplishing their purposes; and
 - (3) The number of offenders who are returned to prison after their release; and
 - (c) Effect appropriate changes in the programs established by the Board.
- (Added to NRS by 1977, 850; A 1979, 309, 1379; 1987, 1174; 1993, 365)

NRS 209.4236 Director to establish therapeutic communities.

1. The Director shall, in conjunction with the Health Division and with the approval of the Board, establish one or more therapeutic communities to provide treatment to certain offenders who are substance abusers. A therapeutic community must include, but is not limited to, the requirements set forth in this section.
2. A therapeutic community must provide an offender with:

- (a) Intensive treatment for substance abuse;
- (b) A clearly defined set of goals;
- (c) A clearly defined structure of authority; and
- (d) A highly structured schedule that includes, but is not limited to, the treatment listed in paragraph (a) and, if practicable, programs of employment, general education or vocational training.

3. Except as otherwise provided in NRS 209.4231 to 209.4244, inclusive, offenders who are assigned to a therapeutic community, to the extent practicable as determined by the Director or a person designated by the Director:

(a) Must be housed in areas of a facility or institution that are segregated from other areas of the facility or institution in which offenders who are not assigned to the therapeutic community are housed; and

(b) Must participate in the therapeutic community for a period of 1 year and a program of aftercare for a period of 1 year if a program of aftercare is required pursuant to NRS 209.4238.

(Added to NRS by 1997, 2652; A 2001, 433)

6) **There is nothing in the NRS that says:**

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

Or this:

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

7) **Conduct of the Board regarding citizen advocates.**

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321-3277 cell

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TO BE ENTERED INTO THE RECORD

NEVADA DEPARTMENT OF CORRECTIONS

ADMINISTRATIVE REGULATION

707

INMATE DISCIPLINARY PROCESS

Supersedes: AR 707 (11.01.04)

Effective Date: 5.8.08

AUTHORITY NRS 209.246

RESPONSIBILITY

The Associate Warden of Operations is responsible for the management of the inmate disciplinary process.

All staff and inmates are responsible to have knowledge of and to comply with this procedure.

707.01 DEPARTMENT POLICY

NRS 209.356 Director to establish program of regimental discipline. The Director, with the approval of the Board, shall establish and administer a program of regimental discipline for persons who are ordered to undergo such a program pursuant to NRS 176A.780. The program must include:

1. Incarceration and segregation of the persons in an appropriate facility of the Department;
 2. Strenuous physical exercise and hard labor;
 3. Military drills; and
 4. Sessions for instruction in:
 - (a) The recognition and prevention of the abuse of alcohol and drugs;
 - (b) The management of stress;
 - (c) Building character;
 - (d) Learning to behave in a rational manner; and
 - (e) Preparing for and obtaining employment.
- (Added to NRS by 1989, 1852)

This does not apply as it's intent is to set a program for "boot camp"

NRS 209.361 Director to adopt regulations and penalties for violations. The Director shall:

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 - (a) Maintain proper custody of an offender in accordance with his current classification.
 - (b) Prevent escapes and maintain good order and discipline.
 2. Establish procedures by regulation for disposing of cases involving violations of law in institutions or facilities of the Department.
 3. Establish sanctions appropriate to the type and severity of such violations.
- (Added to NRS by 1977, 850; A 1983, 722)

1. All inmates committed (including safe keepers) to the Department shall be subject to disciplinary action for violations of rules and regulations. Where is this in the NRS???

NRS 209.361 Director to adopt regulations and penalties for violations. The Director shall:

1. Adopt with the approval of the board such regulations as are necessary to:
 - (a) Maintain proper custody of an offender in accordance with his current classification.
 - (b) Prevent escapes and maintain good order and discipline.
2. Establish procedures by regulation for disposing of cases involving violations of law in institutions or facilities of the Department.
3. Establish sanctions appropriate to the type and severity of such violations.
(Added to NRS by 1977, 850; A 1983, 722)

2. Disciplinary action should be taken as soon after the misconduct as is practicable. Set a time frame
3. Discipline should be applied in an impartial and consistent manner.
4. Corporal punishment or inhumane treatment is prohibited.
5. Prison disciplinary proceedings are an administrative process, unrelated to and not bound by the rules for criminal procedure, civil trials, administrative codes or procedures. There is no NRS that says this. Who decided this and when?
6. Upon entry, all inmates shall be issued, and required to sign for, a copy of the inmate disciplinary manual.
 - 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.

Where is the procedure for informing inmates of any changes to the disciplinary rules?

7. 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.
8. All inmates are assumed to have notice of this manual.
9. Within the prison disciplinary process an inmate has access to three procedures:
 - a. At least 24 hours prior to any formal hearing before an impartial Disciplinary Hearing Officer a Notice of Charges will be served.
 - b. A qualified opportunity to call witnesses with substantive knowledge of issues and present documentary evidence provided that to do so will not jeopardize institutional security or correctional goals.
 - c. A written statement by the Disciplinary Hearing Officer as to the evidence relied on and the reasons for the disciplinary findings.

Where is the procedure for grievance if the inmate feels they have been wronged, or that the process was unfair?

10. Reliance on any published standard, the use of mandatory language, if such exists, or the creation of 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 its 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. **This is problematic and should be changed.**

11. 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. **The inmate does not have any recourse? How can this be legal?**

- a. Inmates do not have any right or privilege to request or participate in obtaining guidance from the Attorney General's Office.
- b. The guidance may be sought either in writing or verbally.
- c. Such requests 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 or additional infractions will not lead to the renumbering of charges.

1. All offenses listed below will also include an attempt or conspiracy to commit that violation.

So any violation then constitutes 2 violations instead of only one?

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 value less than \$25.00.
- M4 - Roughhouse, horseplay or "gunsling".
- 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.

What if the inmate is ill?

- 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.

What recourse does the inmate have if they are ordered to do something illegal or immoral?

- G2 - Unauthorized contact of 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 replacement value 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. Define abusive, what NRS ?
- 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 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 his duties.
- G20 - Preparing, soliciting, or giving false or misleading information to or about a staff member and representing the statement as fact. NOTE: ➤ 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 value equal to or greater than \$50.00, in a manner other than that which is authorized by Administrative Regulation 711.
- G26 - Smoking in an unauthorized area.
- G27 Abuse of inmate grievance process. NOTE: ➤ This violation may be charged by the DDO. ➤ Cannot be plea-bargained or sanction bargained.

Who decides it is abuse? What recourse does the inmate have if they disagree?

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: ➤ Only the AWO may charge the inmate with this violation. ➤ Cannot be plea-bargained or sanction bargained.
- MJ11 - Kidnapping: The unlawful taking and carrying away of a human being by force or against his will. (Class A)
- MJ12 - Larceny: The trespasser 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, known 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: Subjecting another person to any sexual act against their will and/or understanding. (Class A)
- MJ20 - Tattooing: tattooing oneself or another or possession of tattooing equipment. (Class C)
- 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 replacement value equal to or greater than \$50. (Class C)
- MJ24 - Adulteration of any food or drink. (Class A) **TOO VAGUE, define adulteration.**
- **What NRS**
- 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) **Does this include passing out materials from prisoner advocates?**
- 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, except as authorized by Departmental visitation regulations. (Class A) **how can this be constitutional?**
- MJ31 - The unauthorized or inappropriate use of telephone, mail, computer, state equipment, or supplies. (Class A)

Define inappropriate

- 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)

Too vague – under this you would be guilty if you accidentally stepped on a ketchup packet.

- 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 or other private citizen. (Class A)
- MJ44 - Failure to submit to a drug and/or alcohol screening. (Class A)
- MJ46 - The possession or use of a tape recording devices. (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)

Isn't this double jeopardy? It is up to the court to impose sanctions for improper conduct, etc... it is not up to the DOC. This gives the DOC the same power as the courts, and is inappropriate.

- 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) *Either Define this better or remove it.*

Why would the prison need confidential administrative regulations? Isn't the prison run by the government and therefore subject to oversight by the taxpayers of the state? Shouldn't the inmate know what the administrative regulations are? How else could they know the rules they need to follow?

- MJ50 - Sexual Harassment: Conduct that is sexually abusive or offensive to any person and that may include, but is not limited to, suggestive language 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) *mandated by whom? The prison or the courts?*
- 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 - Use of any narcotics, drugs, alcohol, or other intoxicants. (Class B)

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 the Department prior 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.
 - 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 of Operations (AWO)/designee at the sending institution or facility is responsible for insuring that the pending case is properly transferred within 30 days from the date of transfer.

707.04 APPLICABILITY

1. This regulation requires an operational procedure for the Department and all institutions/facilities.
2. The regulation does require annual audit by Department Administration

Mitchell Rawell