

N E B R A S K A

JAIL BULLETIN

NOVEMBER/DECEMBER 1995

NUMBER 123

The *Jail Bulletin* may be used as a supplement to your jail in-service training program. If officers study the material and complete the attached "open book" quiz, they may receive **one hour of credit**. The bulletin and quiz may be reproduced for staff use as necessary. **We welcome any material you would like to contribute to the *Jail Bulletin*.**

INMATE DISCIPLINARY PROCESS PART I

In order to provide safe and secure housing for incarcerated individuals, a set of rules governing inmate behavior is maintained by every detention facility. As such, when inmates violate these rules, it is important to have an established set of standards, which governs facility responses to these violations. A process called a disciplinary hearing ensures an inmate's right to due process and provides guidelines for the person conducting the hearing.

It is the responsibility of the person conducting the disciplinary hearing to ensure that the process is handled in a professional and impartial manner. All the facts must be weighed and the decision made on the basis of sufficient evidence. It is therefore imperative that the reporting officer write a clear and concise account of the events that lead up to the rule violation by the inmate. The officer's word and a sloppy report may not be enough.

Have you ever reviewed an inmate's disciplinary proceedings and wondered how the Disciplinary Hearing Office (DHO) came to the conclusion? It is the intent of this bulletin to provide staff with an explanation of the procedure before, during and after the disciplinary hearing, to provide a better understanding and to encourage more consistent application of the disciplinary hearing process.

The following bulletins will cover the inmate's right to due process, provide some background on the disciplinary system, show the difference between major and minor violations, explain the role of the Disciplinary Hearing Officer, explain the appeals process and explain what goes into conducting the disciplinary hearing.

I. OVERVIEW OF THE DISCIPLINARY SYSTEM

The purpose of this section is to help staff develop a basic understanding of where the inmates' due process rights come from, what they are, and how they are reflected in the Inmate Disciplinary System.

INMATE'S RIGHTS

Sometimes the most tedious and frustrating aspects of the Correctional Officer's job can be coping with the procedures that are part of maintaining inmate discipline and control. It is one thing to observe a rule violation occurring and to take the appropriate steps to intervene. That's the action part of the job. It is quite another thing, however, to write reports, prepare the related documents and serve the notices. Then there is the disciplinary hearing. It can involve many staff and inmates, create an even greater mass of paperwork, proceed according to mysterious rules, and sometimes result in a finding of "not guilty" on a technicality.

Sometimes it is hard to see the point of all this. It seems as though lengthy and involved procedures tend to cancel out staff efforts to maintain order and keep the facility safe.

But this perception is not wholly accurate. It is important to recognize that each one of the steps in the disciplinary process is grounded in law. This has important implications for corrections staff. On the one hand, as a government agency detention facilities have an obligation to protect the rights of the inmates. On the other, both State and Federal courts are willing to closely scrutinize disciplinary procedures. In cases where violations of inmates' rights are found the detention facility officials and/or individual staff members can be found liable. It simply does not pay to cut corners on disciplinary procedures in the name of efficient rule enforcement.

The purpose of the Inmate Disciplinary System is to insure that the inmate's Constitutional right to due process is preserved in disciplinary actions.

The contents of the *Jail Bulletin* represent the views of the author(s) and do not necessarily reflect official views or policies of the Nebraska Crime Commission or the Nebraska Jail Standards Board.

Let's look briefly at some specific inmate rights and how they evolved. This should help take some of the "mystery" out of much of the disciplinary process and help us understand the reasons behind some of the procedures.

PROCEDURAL DUE PROCESS

As a corrections professional, you have already heard much about procedural due process. It is the right assured to all U.S. citizens under the Fifth and Fourteenth Amendments to the Constitution. In a detention facility due process is especially important in the areas of classification and discipline.

"Procedural due process" means that the things that we have rights to, including our possessions our privacy and our liberty, cannot be taken away by the government unless it has followed certain procedures that are designed to insure fairness.

At issue here is not whether the decision itself was fair or correct (those are topics for the law), but whether the steps followed in reaching the decision insured fairness. This is an important distinction. It means that, for instance, the detention facility cannot place an inmate in disciplinary segregation (i.e. deprive him or her of a degree of liberty) without first following set procedures whose intent is to insure that the action is arrived at fairly. The actual decision (guilty or not guilty of the violation) is left to the judgement of the hearing officer; but the process by which s/he arrived at the decision must be fair and impartial.

The Constitution itself does not tell us exactly what these procedures must be. However, beginning about a quarter of a century ago the courts started getting more involved in how prisons and jails are run, and one of the areas they became involved in was the disciplinary process.

In the 1974 case Wolff v. McDonald the United States Supreme Court stated for the first time what it considered to be the basic elements of due process in corrections disciplinary cases. These can be summarized as follows:

1. The right to be present at the hearing.
2. Written notice of the hearing at least 24 hours in advance.
3. The opportunity to present witnesses and documentary evidence.
4. A decision made by an impartial third party.
5. A written statement of the evidence relied upon and the reasons for the decision.
6. The right to assistance, in some circumstances, in presenting their case.

Each of these rights exists in order to promote some aspect of fairness. For instance, the right to be present at the hearing insures that the inmate can tell his side of the story; the advance notice of the

hearing is to insure that the inmate has adequate opportunity to prepare a defense.

As you read the your facility's disciplinary policy you will recognize that each one of these rights have been incorporated into it.

The court's ruling is not detailed and specific, and many questions remained. As a result, numerous cases have followed Wolff and clarified or expanded upon it. It will not be possible to present a detailed discussion of all of them here. As with the rights set out in Wolff, the decisions in these other rulings have been incorporated into the detention facility disciplinary procedures, and where appropriate they will be pointed out in this bulletin. But staff are not expected to be experts in corrections law; therefore it is most important that policy and procedure are carefully followed.

DEGREES OF PROCEDURAL DUE PROCESS

As we examine the rights listed in Wolff v. Mcdonald we may notice that although they guarantee a basic level of due process, they are not as extensive as those associated with a trial in a law court. There are three reasons for this.

The first is that it is recognized that a violation of an institutional rule is not the same as a law violation, and that the institutional hearing body (whether it is a committee or a hearing officer) is not a judge in a courtroom. While the latter is judicial or adversarial in nature, the former is simply administrative.

The second is found in the severity of the punishment that may be imposed. In general terms, the more a person stands to lose, or the greater the potential penalty they face, the greater are the due process requirements. Jail disciplinary codes are comparatively quite limited in the sanctions they may impose.

Third, the courts acknowledge the legitimate interests of jails and prisons in regulating behavior and maintaining order. They attempt to balance these interests against the rights of the inmates in determining how much due process is required.

Consequently, inmates at disciplinary hearings are not afforded the full range of procedural safeguards. Rather, their basic right to a fair proceeding is protected by basic due process requirements. These are often referred to as "minimal due process". Inmates do not, in fact, have many of the rights which a civilian might take for granted in a courtroom. Among them:

- < There is no right to cross-examine witnesses. They have a right to call witnesses (for major violations), but asking them questions is regulated by the hearing officer.
- < There is no right to an attorney. (As noted earlier, there is a right to assistance by a staff

- member or another inmate under certain circumstances.)
- < There is no right to avoid self-incrimination.

MAJOR VERSUS MINOR VIOLATIONS

Most facilities differentiate between two broad categories of violations: major violations and minor violations. The severity of the possible sanctions, and consequently the degree of procedural due process required, differ between them.

Major violations are seen as serious in nature and carry stiffer sanctions than do minors. Therefore, inmates charged with a major violation are afforded the full range of procedural due process rights as delineated in Wolff and its successors.

Nebraska Jail Standards defines minor violations as "...those where no danger to life, security or property exists...", and specifies that disciplinary action be pursued "...informally." As a result, minor violations are heard by facility administrators or a designee rather than a Disciplinary Hearing Officer, and the following due process steps apply:

- < A written report must be filed;
- < The inmate must be allowed to make a response to the hearing officer;
- < The action must be documented.

THE OFFICIAL RECORD

We now understand some of the reasons behind the structure of our inmate disciplinary system. But what if an inmate files a law suit alleging that his/her rights were violated in a disciplinary action?

The crucial item now becomes the official record of the action. This includes the entire record, consisting of:

- < The original misconduct report;
- < Any supplemental or corroborative reports, or other documents used at the hearing;
- < The Notice of Hearing;
- < The written hearing summary prepared by the hearing officer;
- < The tape recording of the hearing;
- < Appeals records.

As mentioned earlier, the issue will generally not be the decision itself. The suit will usually allege a violation of some procedural due process right, and this is what the court will look at. Witnesses may be called, but the "witness" that will be relied upon the most will be the hearing record.

It is entirely possible that a detention facility could follow all due process requirements to the letter but still have a judgement entered against it, if the hearing record did not reflect everything that took place. Always remember, if it is not in the official record, the court will probably conclude that it didn't happen. The implications of this for corrections staff are clear: careful documentation must be maintained of each and every step in the disciplinary process.

INMATE DISCIPLINARY SYSTEM

Policy and Procedure is the official document that establishes the structure of the facility's philosophy on inmate discipline and specific procedures to be followed. The system itself consists of five major components:

1. A set of clear and understandable rules, known as the Inmate Violations Code.
2. A system for reporting violations of these rules, and for placing the proper charges on the reports.
3. An impartial hearing.
4. Appeals process.
5. Documentation and filing.

We will be discussing each one of these components in depth as we progress through this manual. It needs to be stressed, however, that it is the responsibility of each staff member to keep themselves familiar with and understand both their Department's policy and the procedures and the Inmate Violations Code.

The next jail bulletin will cover a model disciplinary policy and procedure manual.

The "Inmate Disciplinary Process" was contributed by the Lancaster County Department of Corrections. If you or your agency wish to write for the *Jail Bulletin* or if you have a special need you wish to be addressed through the bulletin, please contact: Jail Standards Division, P.O. Box 94946, Lincoln, Nebraska 68509-4946, Telephone 402-471-3710; FAX 402-471-2837.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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NUMBER 123

**SUBJECT: Inmate Disciplinary Process
Part I**

NAME: _____

DATE: _____

1. Inmates are to receive the same due process rights in an administrative hearing as they would receive in criminal court proceedings (Check One) _____ True
_____ False
2. The most significant case decided in the United State Supreme Court regarding due process in correctional settings was:
 1. Smith v. Wade
 2. Bounds v. Smith
 3. Wolff v. McDonal d
 4. Bell v. Wol fish
3. List at least four due process el ements as required by case law.
 - 1) _____
 - 2) _____
 - 3) _____
 - 4) _____

4. A major rule infraction is one that presents a threat to life, security and property.
Check one. _____ True _____ False
5. List the major components of the inmate discipl inary system.
 - 1) _____
 - 2) _____
 - 3) _____
 - 4) _____
 - 5) _____
6. Applying the necessary due process in an inmate discipl inary hearing wil l insure that the detention facility will not have a judgement entered against it by a Court. (Check One)

_____ True _____ False
7. A minor rule violation can be handl ed informal ly. (Check One)

_____ True _____ False

CREDIT: One hour credit for jail in service training requirement.

QUIZ

(Answer Sheet)

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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_____ **X** _____ **False**
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 1. Smith v. Wade
 2. Bounds v. Smith
 3. **Wolff v. McDonald**
 4. Bell v. Wolfish
3. List at least four due process elements as required by case law. (Six basic elements are summarized below):
 1. **The right to be present at the hearing**
 2. **Written notice of the hearing at least 24 hours in advance.**
 3. **The opportunity to present witnesses and documentary evidence.**
 4. **A decision made by an impartial third party.**
 5. **A written statement of the evidence relied upon and the reasons for the decision.**
 6. **The right to assistance, in some circumstances, in presenting their case.**
4. A major rule infraction is one that presents a threat to life, security and property.
(Check one) _____ **X** _____ **True** _____ **False**
5. List the major components of the inmate disciplinary system. (The five components are listed below):
 1. **A set of clear and understandable rules, known as the Inmate Violations Code.**
 2. **A system for reporting violations of these rules, and for placing the proper charges on the reports.**
 3. **An impartial hearing.**
 4. **Appeals process.**
 5. **Documentation and filing.**
6. Applying the necessary due process in an inmate disciplinary hearing will insure that the detention facility will not have a judgement entered against it by a Court. (Check One)
_____ True _____ **X** _____ **False**
7. A minor rule violation can be handled informally. (Check One)
_____ **X** _____ **True** _____ **False**

Answer sheet should be retained by the Jail Administrator.

CREDIT: One hour credit for jail in service training requirement.