

# NEBRASKA

# JAIL BULLETIN

JUNE/JULY 1996

NUMBER 127

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 V

### XIII. Evidence and Standards of Proof

#### Evidence

Evidence is anything submitted for consideration which tends to either induce a belief of guilt or a belief of innocence in the mind of the hearing officer.

The main types of evidence presented in disciplinary hearings are testimony from witnesses, written reports, documentary evidence (such as activity logs or responses to requests), and physical evidence (e.g. an item of destroyed property or contraband). Hearsay evidence, statements from confidential informants, and signed statements may also be acceptable.

For a thing to qualify as evidence, it must be relevant to the

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issue at hand; that is, it must go directly to the issue of proving or disproving that the inmate committed the violation.

The first task of the supervisors is to determine how much weight to assign to each individual piece of evidence. This "weight" is a result of the evidence's power to convince, or its ability to lead someone to believe that something is true or false. In weighing a piece of testimony, the supervisor must not only listen to what the witness says, but must also evaluate how credible is the witness; whether or not the witness has sufficient knowledge of the facts; and how much bearing the testimony has on the case. This same evaluation process takes place with all other types of evidence as well.

### **Standard of Proof**

After the supervisor decides how much weight to give each item of evidence, there remains the question of how much evidence is enough to find the inmate guilty. In other words, what is the standard of proof required for a finding of guilt?

The American justice system uses different standards of proof in different circumstances. "Beyond a reasonable doubt" is an example we have all heard of. It is the one usually used in criminal trials.

In an administrative disciplinary hearing most corrections facilities will require a lesser standard, called "**sufficient evidence**".

Sufficient evidence merely means that, in the mind of the supervisor, there is at least slightly more evidence indicating guilt than there is indicating innocence.

Another way of saying this is that there is a greater probability that the inmate is guilty than there is that s/he is innocent. In other words, this is more than just a process of adding up pieces of evidence (i.e. 3 pieces indicating guilt, 2 pieces indicating innocence). It is a taking into account the credibility, reliability, relevance and relative importance of all the evidence reviewed.

Sufficient evidence is the standard for the DHO in major

hearings as well as the shift supervisor in minor hearings.

#### **XIV. MINOR DISCIPLINARY HEARINGS**

##### **General Procedures**

Disciplinary hearings for minor violations should be conducted by a shift supervisor or ranking jail officer. Any supervisor or ranking officer may conduct a hearing, except in the following circumstances:

1. The supervisor in question was the employee who wrote the misconduct report.
2. The supervisor filed the charge(s).
3. The supervisor was directly involved in the incident.

"Direct involvement" requires more than just prior knowledge of the incident. It requires that the supervisor was physically present and witnessed or participated in it.

As a supervisor, you are ordinarily informed of all incidents as or immediately after they occur, and usually are involved in deciding how to handle them and whether inmates are to be written up.

Minor disciplinary hearings are by nature very informal and are essentially little more than a meeting between the inmate and the supervisor. There is little emphasis on procedure, and the supervisor has a great deal of latitude and responsibility in conducting the hearing.

The goal of the supervisor in conducting the hearing is to get to the truth, to find out what exactly occurred. This means that there is a little bit of the role of an "investigator" involved. The supervisor needs to take the initiative to gather whatever facts or information s/he may need to reach a decision.

The steps for conducting a minor hearing are as follows:

**1. A supervisor should check the minor misconduct log at the beginning of each shift.**

- Minor violations should be heard within 48 hours of the occurrence of the violation, or of the reporting employee becoming aware of it.

**2. Prepare in advance for the hearing.**

- Read over all the reports and examine any evidence. Make sure everything is in order and that you understand all the issues.
- Review the inmate's disciplinary history. There are three reasons for doing this.

**First**, in the interest of progressive discipline, it will help determine the appropriate sanction(s) should the inmate be found guilty.

**Second**, if the inmate already has been found guilty of two minor violations within the last 90 days, conviction of a third could require that s/he be written up for a major violation..

**Third**, an extensive history of misconducts may indicate that a referral of Administrative Housing is in order.

**3. Gather all the required materials.**

- Two copies of the misconduct report.
- The "Hearing Summary" form for each charge.
- Any evidence which was submitted.

**4. Conduct the hearing.**

- The hearing should be held in a quiet place where there will be a minimum of interruptions.
- If the inmate refuses to attend the hearing it may be held in absentia (any refusal to attend should be

documented on the hearing summary).

- Whether or not witnesses or evidence are allowed is discretionary in the part of the supervisor holding the hearing. When deciding whether or not to use witnesses or evidence the rule of thumb should be, "Will this help me determine what really took place?"
- Ask the inmate to enter a plea (either guilty or not guilty). If the inmate refuses to enter a plea, enter one of "not guilty" in his/her behalf.
- Allow the inmate to state his/her response. Summarize his/her statement on the hearing summary form.
- Make a finding of either "guilty" or "not guilty" of the violation the inmate is charged with. If the inmate is found guilty, state the reason on the form. The supervisor conducting the hearing may not dismiss charges or find the inmate guilty of a different violation.
- Impose a sanction from the Schedule of Sanctions. It is permissible to impose more than one sanction when appropriate. Sanctions may not be suspended.

## **XV. CONDUCTING MAJOR DISCIPLINARY HEARINGS**

### **1. Disciplinary Supervisor (DHO)**

The Disciplinary Supervisor serves as an impartial body who hears matters of discipline and makes a decision based on evidence provided through: written report, physical evidence, oral testimony or any combination of the above. The Hearing Officer for major violations is from the non security staff in most cases and the Shift Supervisor serves as the Supervisor for minor violations.

Upon completion of the hearing, the inmate will be given the opportunity to appeal the decision of the DHO. If s/he wishes to appeal, s/he will be provided with an appeal form at that time and informed that it must be filed within (7) seven calendar days of the hearing. The appeal form should state the basis of appeal in writing

and should be forwarded to the Administrator for Major convictions.

## **2. Documenting the Decision**

It is the responsibility of the Supervisor to enter the violation and sanction information into the inmate file. A copy of the Hearing Summary should be forwarded to the Records staff for filing in the inmate's permanent file.

## **3. Serving Notice of the Hearing to the Inmate**

All inmates pending hearings for any major violation will be given notice of the hearing 24 hours prior to the hearing. Minor violation hearings (other than violation mischief) do not require notification of the hearing in advance. The staff member notifying the inmate of the pending hearing will:

- Provide copies of all investigative reports to the inmate.
- Complete the "DISCIPLINARY HEARING NOTICE" form.
  - determine if the inmate will need assistance in the hearing (see also ASSISTANCE).
  - note all witnesses requested (see also WITNESSES).
- Ensure the inmate signs the "Disciplinary Hearing Notice Form" or that the form indicates the inmate declined when offered the opportunity to sign.
- Notify any staff member requested as a witness of the hearing date and time and indicate their presence is needed.

## **4. Preparing for the Disciplinary Hearing**

- Review all reports and documents pertaining to the case.
- Review the inmate's History of Disciplinary Violations during this incarceration to ensure progressive discipline, should the inmate be found guilty of the violations alleged against him/her.

- Take one copy of the "HEARING SUMMARY" for each violation charged to the inmate.
- Take one copy of the "APPEAL FORM" for each violation charged to the inmate.
- Take two copies of each report pertaining to the violations against the inmate.
  - one copy of each report is for the DHO for use in the hearing.
  - one copy of each report is for the inmate's use in the hearing.
- Ensure a working tape recorder is available for the hearing. All major violation proceedings should be recorded for the protection of the inmate and the Disciplinary Supervisor. (See also HEARING PROCEDURE).

#### **5. If the Hearing Pertains to a Major Violation**

- Begin recording the hearing.
- Introduce the hearing for the record. The introduction will include the alleged violations and the names of all persons present. (see also HEARING PROCEDURE)

#### **6. For all Disciplinary Hearings**

- Instruct all participants who will be offering testimony in the hearing that they are expected to provide truthful testimony. All participants must agree to tell the truth if they wish their testimony to be accepted as **evidence**.
- The inmate will be asked if he/she has read the report(s). if the inmate has not read the report(s) or can not read well enough to understand the report(s), the DHO will read the report(s) for the record.
- The inmate will be asked if he/she understands the violations alleged against him/her.
  - if the inmate does not understand the violation alleged against him/her, the DHO will read the elements of the

violation from the INMATE VIOLATION CODE for the record.

- The inmate will then be asked to enter a plea of Not Guilty or Guilty.  
If the inmate refuses to enter a plea, the DHO will enter a plea of Not Guilty for the inmate. (see also ABSENTIA HEARINGS).
- The DHO will hear all testimony of the inmate and witnesses (when applicable) will be called individually. (See also WITNESSES)
- the DHO is permitted to question the inmate pertaining to the documentation and his/her testimony.
- The DHO will render a decision for each violation.
- If the inmate is found guilty, the inmate will be given sanctions according to the SCHEDULE OF SANCTIONS taking into consideration the violation, the circumstances of the violation and the inmates past disciplinary history to ensure that progressive discipline is followed. (see also SANCTIONS).
- Inform the inmate of his/her option to appeal the decision.
  - if the inmate wishes to appeal the decision a copy of the APPEAL FORM will be provided.
  - instruct the inmate to write the basis of the appeal and submit the appeal form within 7 (seven) calendar days.
  - indicate on the appeal form the date the appeal must be filed.
- Ask the inmate to sign the HEARING SUMMARY form and give him/her the yellow copy. Indicate “declined when offered” if the inmate refuses to sign the hearing summary form.

## **7. Additional Information**

The following is a listing of additional information which may be helpful to the individual conducting a disciplinary hearing.



## **A. Appeals**

Upon completion of the hearing, the individual will be afforded the opportunity to appeal the decision of the DHO. If the inmate wishes to appeal the decision, an appeal form will be provided. For major violations the appeal should be forwarded to the Department Director. The inmate will be informed that the appeal must be completed and filed within (7) seven calendar days of the hearing and should state the basis of appeal in writing. The Director/Superintendent has the following options when considering an appeal:

1. **Affirm** the decision of the DHO,
2. **Reverse** the decision of the DHO,
3. **Modify** the decision of the DHO,
4. **Suspend** the decision of the DHO.

## **B. Assistance**

Inmate assistance in a Disciplinary Hearing is limited to those individuals who are mentally, physically or linguistically unable to comprehend the proceedings. In determining whether assistance is needed, the following factors should be considered:

**Literacy.** Can the inmate read or understand English?

**Ability to speak English.** If the inmate is unable to understand or speak English an interpreter will be needed.

**Complexity of the issue.** Consider the overall intelligence and mental/emotional status of inmate. Is the inmate able to speak and present his/her case?

**Location of the inmate.** Does the inmate's housing status allow for the gathering of evidence to present case?

After considering the above factors, if it is determined that assistance is needed, a staff member will be appointed by the DHO. The role of the assistant is to help the inmate understand the violation and the disciplinary process. The assistant does not serve as an advocate.

## **C. Notice of Hearing**

The DHO will provide the inmate notice of the date and time of the hearing at least 24 hours prior to the hearing. The inmate will receive a copy of any Investigative Reports pertinent to the alleged violation and will be asked if there is reason to have the reporting officer present at the hearing. The inmate will be asked for the names of any inmate witnesses he/she wishes to call to the hearing along with the reason for calling each witness. The notice will need to be signed by the person serving notice and by the inmate.

Minor violation hearings should be conducted within 48 hours of the occurrence of the violation.

#### **D. Absentia Hearings**

If the inmate refuses to participate in the hearing, the DHO will enter a Not Guilty plea on the Hearing Summary form. The DHO will then conduct the hearing and render a decision based on the information contained in the investigative report. The inmate's refusal to participate in the hearing will be documented on the Hearing Summary form.

If documented behaviors of the inmate suggest that a threat to security exists in having the inmate present at the hearing, the inmate will be notified in writing and given copies of any Investigative Reports supporting this threat. The inmate will be allowed to forward written testimony to be used in the hearing. If witnesses are called, the inmate will need to provide the DHO with questions to be asked of the witnesses in the absence of the inmate.

#### **E. Hearing Procedures**

Disciplinary Hearings are generally held in a private area adjacent to the living unit where the inmate is housed. In the event that inmate witnesses are from different housing units, the hearing may be moved to accommodate the circumstances.

All hearings for Major violations should be taped. The recording will include the case number, report number, alleged violations and names of all persons present.

#### **F. Informants**

When disciplinary violations are based on information provided by confidential informants, staff member should conduct a thorough interview of the informant and then complete the following:

1. An Investigative Report must be filed including all information with the exception of the name of the confidential informant and any other specific information that would reveal the informant's identity. **The informant's name should never appear in documentation generated in the inmate disciplinary reports which will be reviewed and available to the accused.**
2. The reporting officer should submit the name of the confidential informant along with the number of the Investigative Report to the Jail Superintendent's secretary where the information will be kept on record. For example: The confidential informant used for Investigative: Report #0000000 is John Doe.
3. The DHO will hear testimony from the confidential informant without the presence of the inmate implicated in the violation.

#### **G. Evidence**

1. Any evidence an officer uses to support violation must be tagged with the inmate's name and report number and forwarded to the Disciplinary Hearing Officer. When this is not possible as in the case of damage to unmovable property, a photo will suffice.
2. After final disposition of the hearing the evidence will then be sent to the Office of the Superintendent for storage/disposal.

#### **H. Witnesses**

The inmate, as well as the DHO may question the witnesses; however, the inmate must do so through the DHO and not directly to the witness.

All witnesses (staff or inmates) will need to stand by in a nearby location, but are not permitted to be present or participate in the hearing until his/her testimony is necessary.

## **I. Rendering a Decision**

The Disciplinary Supervisor will render a decision based on the testimony and evidence (including the investigative report) presented during the hearing. The DHO may find the inmate guilty of the violation alleged if a sufficient evidence of guilt exists.

## **J. Good Time, Segregation and Restitution**

- A. If the DHO finds an inmate guilty of a violation, he/she must impose sanctions according to the SCHEDULE OF SANCTIONS which outlines possible sanctions according to the class of the violation. The DHO must also take into consideration the history of disciplinary violations for this incarceration so that progressive discipline is exercised.
- B. When the SCHEDULE OF SANCTIONS warrants a loss of Good time as part of the sanction, the DHO will document that loss and the inmate's release date will immediately reflect the loss.
- C. If the sanction imposed includes DISCIPLINARY SEGREGATION, the inmate will be credited for the number of days spent in segregation pending the hearing.
- D. One of the sanctions available to the Disciplinary Hearing Officer for the Violation Mischief charges is Restitution for damage to County property.

### **Procedure for taking Restitution**

- 1. Check inmate account balance. \*
- 2. If inmate has a balance, withdraw the amount owed or any part of it. Enter the following information:
  - a. **W** for Withdrawal
  - b. By: **County Corrections Facility**
  - c. Date and Time
  - d. Enter a short description of restitution.
  - e. Enter the name of the person who imposed the sanction.
- f. Make **Three (3)** copies of the receipt:
  - place one in tray for Account Clerk
  - place one in DHO's tray
  - send one to inmate

**\* If the account shows a zero balance, forward the name of the inmate, amount owed, and description of what was damaged to the DHO so that individual's account can be frozen.**

## **XVI. DISCIPLINARY SANCTIONS**

Individuals lodged in the County Jail will receive a copy of the Inmate Handbook containing the rules for the facility.

Rule violations are divided into the categories of Major violations and Minor violations.

**Major Violations will result in one or more of the following:**

**1. Written or verbal reprimand**

- Written reprimand is seldom used but would require the inmate to receive something in writing about the reprimand and the violation.
- Verbal reprimand consists of talking to the inmate and writing verbal reprimand down as the sanction.

**2. Temporary or permanent loss of one or more privileges**

- This could be loss of visits, phone usage, commissary, etc.

**3. Restitution for lost or damaged County property**

- In charges involving restitution, if the inmate is found guilty they will have to pay restitution, serve the min. on disciplinary seg. and the loss of good time if they are a sentenced inmate.

**4. Loss of Good Time**

- This is not a department decision but Nebraska State Law. Good time is credit given to a sentenced inmates as a reward for following facility rules. So, if a sentenced inmate is found guilty of a major then they will lose good time. This will occur for each offense they are found guilty of. The department calculates a tentative release date based on their good time. When an inmate has their good time taken away their release date is recalculated.

**5. Disciplinary Segregation:**

Class I            30 days Disciplinary Segregation when violence or

	threats to jail security exist. Loss of Good Time for that 14-day period
Class II	20-29 days Disciplinary Segregation when violence or threats to jail security exist. Loss of Good Time for that 14-day period
Class III	10-15 days Disciplinary Segregation Loss of Good Time for that 14-day period
Class IV	01-09 days Disciplinary Segregation Loss of Good Time for that 14-day period
Class V	See sanctions for the class just below the class of the violation paired with. (Accessory and attempt type charges)
Class VI	See sanctions for the class just above the class of the violation paired with. (Assaults and sanction violations)

**Minor Violations will result in one or more of the following:**

- 1) Written or verbal reprimand
  - 2) Temporary loss of one or more privileges
  - 3) 1 to 4 days room or dormitory restriction
- Cell restriction can not exceed 96 hours per sanction. If the cell restriction is given in excess of 48 hours the DHO will need to schedule visiting times and phone usage.
  - Inmates on cell restriction cannot be assigned a cell mate. The DHO will make the necessary arrangements to ensure this.
  - Exercise will be offered to those on cell restriction.
  - Showers will be offered to those on cell restriction.
  - Law Library will be offered to those on cell restriction.

- Inmates will receive their medications and meals in their cell.
  - Inmates may retain their property while on cell restriction.
  - Inmates on cell restriction will not be offered haircuts.
  - A disciplinary status record sheet will be completed by the DHO for inmates on cell restriction. These records will be kept in the "Passdown" books in the control center. It will be the assigned officer's responsibility to ensure they are properly maintained.
  - During the inmate's cell restriction, any behavior that disrupts or obstructs the housing unit's operation may result in additional disciplinary charges and the inmates move to disciplinary segregation.
4. Extra cleaning or work assignments sentenced inmates;
  5. Or any combination of the above.
  6. Extra cleaning duties or work assignments for sentenced inmates.

## 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 127**

**SUBJECT: Inmate Disciplinary Process  
Part V**

**NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

1. Sufficient Evidence is: (Circle One)
  - A. Proof beyond a reasonable doubt.
  - B. Proof beyond a shadow of a doubt.
  - C. Slightly more evidence indicating guilt than innocence.
  - D. Some evidence to indicate guilt.
  
2. Minor disciplinary hearings should be conducted by: (Circle One)
  - A. The facility administrator.
  - B. The County Attorney.

- C. The officer writing the report.  
D. A shift supervisor or ranking officer.
3. In a disciplinary hearing for a minor rule violation, the hearing officer has the discretion to interview witnesses. (Check One)  
 True       False
  4. Minor violation hearings do not require a 24 hour advance written notice to the inmate. (Check One)  
 True       False
  5. List the four factors to be considered when deciding if staff assistance should be offered to an inmate going through a disciplinary hearing.  
1) \_\_\_\_\_  
2) \_\_\_\_\_  
3) \_\_\_\_\_  
4) \_\_\_\_\_
  6. If the accused inmate presents a threat to jail security, they still must be allowed to be present at the hearing. (Check One)  
 True       False
  7. Accused inmates have the right to directly question witnesses. (Check One)  
 True       False
  8. A confidential informant's name is only to be documented with the administrator and their secretary. (Check One)  
 True       False
  9. The Disciplinary Hearing Officer will render a decision of guilty or not guilty based on the testimony and evidence presented at the hearing. (Check One)  
 True       False
  10. List the six sanctions that can be applied to an inmate convicted of a major rule infraction.  
1) \_\_\_\_\_  
2) \_\_\_\_\_  
3) \_\_\_\_\_  
4) \_\_\_\_\_  
5) \_\_\_\_\_  
6) \_\_\_\_\_
  11. List the three exceptions to a supervisor or ranking jail officer conducting a minor disciplinary hearing.  
1) \_\_\_\_\_  
2) \_\_\_\_\_  
3) \_\_\_\_\_



12. Which of the following is not something a disciplinary hearing officer will base his/her determination of guilt or innocence on?
- A. Written reports
  - B. Physical evidence
  - C. The inmate's past behavior of similar misconduct
  - D. Oral testimony
13. If an inmate cannot read well enough to understand or has not read the misconduct and related reports, the disciplinary hearing officer will read the reports for the disciplinary hearing records. (Check One)
- \_\_\_\_\_ True                      \_\_\_\_\_ False
14. A DHO should be an administrative staff member and not a security officer. (Circle One)
- \_\_\_\_\_ True                      \_\_\_\_\_ False

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

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 **True**                       False
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5. List the four factors to be considered when deciding if staff assistance should be offered to an inmate going through a disciplinary hearing.
- 1) **Literacy**
  - 2) **Ability to speak English**
  - 3) **Complexity of the issue**
  - 4) **Location of the inmate**
6. If the accused inmate presents a threat to jail security, he still must be allowed to be present at the hearing. (Check One)  
 True                       **False**
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9. The Disciplinary Hearing Officer will render a decision of guilty or not guilty based on the testimony and evidence presented at the hearing. (Check One)  
 **True**                       False
10. List the six sanctions that can be applied to an inmate convicted of a major rule infraction.
- 1) **Written or verbal reprimand**
  - 2) **Temporary or permanent loss of one or more privileges**
  - 3) **Restitution**
  - 4) **Loss of Good Time**
  - 5) **Disciplinary segregation**
  - 6) **Extra cleaning duties for sentenced inmates**
11. List the three exceptions to a supervisor or ranking jail officer conducting a minor disciplinary hearing.
- 1) **The supervisor in question was the employee who wrote the misconduct report**
  - 2) **The supervisor filed the charges**
  - 3) **The supervisor was directly involved in the incident**
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the reports for the disciplinary hearing records. (Check One)

**True**                       **False**

14. A DHO should be an administrative staff member and not a security officer.  
(Circle One)

**True**                       **False**

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**CREDIT: One hour credit for jail in service training requirement.**  
**Answer sheet should be retained by the Jail Administrator.**