

# NEBRASKA

# JAIL BULLETIN

FEBRUARY/MARCH 1996

NUMBER 125

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 III

### IX. Inmate Violation Code

Rules and regulations are essential in maintaining order and security in a correctional facility. A sound disciplinary process that is fair and used consistently goes a long way toward promoting staff and inmate morale. Properly used the disciplinary system is the foundation of a safe and orderly jail environment for staff, public and inmates. However, simply having a disciplinary system and rules is never enough. For the rules to be effective, they must be:

- A. reasonable, and logically related to some identifiable purpose;
- B. easily understandable by both inmates and staff; and,
- C. clear as to exactly what the prohibited act is, to promote consistency.

It is also necessary that all the rules be known to all inmates and staff. The old adage,

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.

"Ignorance of the law is no excuse" does not apply in corrections--inmates can only be held accountable for following those rules of which they have been properly notified.

For this reason, Nebraska Jail Standards requires that inmates receive "...a listing of all prohibited acts, a range of possible sanctions that could be imposed, and the procedures outlined in a disciplinary action." (Ahrens v. Thomas, 434 F.Supp. 873, aff'd, 570 F.2d 288 and Rodriguez v. Jiminez, 409 F.Supp. 582) Jail facilities in Nebraska comply with this by issuing each inmate a copy of the Inmate Handbook (which contains a list of the facility rules and a discussion of the disciplinary process), at the time they are first lodged. This is an important first step, so much so that it bears repeating: the inmate must be issued a copy of the rules upon admission, or s/he cannot be held accountable for violating them.

It is equally important that a signed receipt for the rules is obtained and placed in the inmate file. If no record exists that the inmate received the rules, s/he may successfully claim that s/he never received them.

## **Types of Violations**

As mentioned in Section I, the inmate violation code recognizes two different types of violations: major violations and minor ones. To review, major violations are seen as posing the more serious threat to the safety, security or operation of the facility; they therefore carry stiffer sanctions, and because of that require a greater degree of due process.

## **Classes of Major Violations**

There is only one class of minor violations. This is not necessarily the case with major violations where it may be appropriate to distinguish major violations according to severity. Some major violations present more serious risks to the facility than do others. Major violations can be divided into several classes, each class carrying different sanctions. For example, your departmental policy may break major violations into four (4) classes; classes I, II, III and IV, each class would include violations of similar severity. The sanctions they carry are progressively more stringent, with Class IV carrying the lightest sanctions and Class I the harshest.

## **Violation Elements**

In order to make the inmate violation code (or inmate rules) as understandable as possible, each individual violation should be broken down into one or more elements. An element is a statement of a specific action or condition that must be present in order for an inmate's act to constitute a violation, For example, Violation 308 - Forgery contains the following two elements:

- A. An inmate falsifies any Department document, form or identification; **or**

- B. signs the name of any other person to such item.

Frequently, the elements of a violation may contain "operative words". These are words such as "and", "or", "while", etc. These words determine whether the presence of a single element is sufficient to constitute a violation, or if other elements must also be present. For instance, when a violation has two elements that are connected by the word "and", both elements must be present for the inmate to have committed a violation. When a violation has two elements that are connected by the word "or" (as in the Forgery example above), the presence or either element by itself will constitute a violation.

## **Sanctions**

The possible sanctions for each class of violations or specific rule violations, must be clearly defined in departmental policy **and** the inmate handbook ie., "if you violate rule x the consequence is x, y, and/or z". When an inmate is found guilty of a charge, the supervisor will select from the range of sanction(s) that are defined in the inmate handbook and departmental policy as a possible consequence for that specific rule violation.

## **X. PROCEDURES FOR MAJOR VIOLATIONS**

When you are preparing to conduct a major disciplinary hearing there are a series of steps that you must take to assure that the disciplinary hearing process protects the inmates' due process rights. Those steps include:

- A. All misconduct reports documenting major violations will be forwarded to the Disciplinary Hearing Officer (DHO).
- B. Notice of hearing:
  - 1. The DHO or designee will issue the inmate a written Notice of Hearing at least 24 hours in advance of the hearing. The notice will include:
    - a. The specific violation or violations the inmate is charged with.
    - b. The date and approximate time of the hearing.
    - c. A copy of the misconduct report and all related investigative reports. The names of any confidential informants and any information which may suggest the identity of the informant will be withheld.

2. At the time the notice is issued the inmate will be asked to notify the DHO or designee of any witness s/he plans to call, and also whether or not s/he wishes to waive the presence of the reporting officer.

**C. Hearing Procedures**

1. Disciplinary hearings will be held within 96 hours of the violation (or of staff becoming aware of it) in cases where privileges have been suspended. In all other cases, the hearing will be held within ten working days. Hearings may be postponed for reasons of legitimate institutional interests. In such cases, the DHO will document the reasons for the postponement.
2. The DHO may require the presence of any employees as witnesses, including the reporting employee, even if the inmate has waived the reporting employee's presence.
3. Attorneys are not allowed to participate, as this is an administrative hearing.
4. Inmates or the Department may ask for a continuance. The DHO will make a decision to grant or deny the request and shall support their decision with appropriate documentation.
5. Proceedings, except the DHO's deliberation and any discussion and/or material that might identify an informant, will be tape recorded. A written summary of the hearing will also be maintained.
6. The inmate will be asked if s/he has read the report and understands the charges. If necessary, the DHO will read the report to the inmate and/or explain the charges.
7. The inmate will be asked to enter a plea of either Guilty or Not Guilty. If the inmate chooses not to enter a plea, the DHO will enter a plea of Not Guilty in the inmate's behalf.
8. The inmate will be given an opportunity to respond to the report, and may present witnesses and documentary evidence in his/her behalf.
  - a. The DHO may exclude witnesses for reasons of legitimate institutional interest, or if the witnesses are deemed irrelevant, redundant or unnecessary. Each time a witness is excluded the DHO will specifically document the reasons for not allowing the witness to testify.
  - b. Only employees of the Department and inmates currently in the Department's

custody may be called as witnesses.

- c. Inmates may not question witnesses directly, but will direct their question(s) to the DHO. If the DHO determines the question is relevant and appropriate, the witness will be directed to answer.
9. The DHO's standard of proof will be sufficient evidence (defined as 51% chance the inmate committed the offense, in other words it is more likely that the inmate committed the offense than not).
10. Informants may be used. If used:
- a. it must be disclosed that the information came from a confidential source.
  - b. the content of the information must be disclosed, to the accused, to the extent disclosure will not identify the informant.
  - c. the DHO must find the informant and the information to be reliable and credible, based on information presented to the supervisor or otherwise known to him/her.
  - d. the DHO must document and state for the record that the information is considered reliable and credible.

#### **E. Assistance**

1. Inmates who are unable to fully appreciate or understand the charges or who are unable to represent themselves may request or be provided assistance in presenting their case. In such cases the DHO will appoint an employee or an inmate residing in the same facility to assist.
2. Where it appears the inmate may need assistance in preparing or presenting his/her case and the inmate has not requested assistance, the DHO should ask the inmate if assistance is desired. Where the DHO believes the inmate is not capable of preparing or presenting his/her case alone, the DHO should appoint an assistant regardless of the inmate's request.

#### **F. Disposition**

1. The DHO may make a finding of:
  - a. Not Guilty

- b. Guilty as charged
  - c. Guilty of a lesser included violation (example, not guilty of first degree assault, but guilty of second degree assault).
2. If the inmate is found guilty or guilty of a lesser included violation, the DHO must impose a sanction(s) from the list of applicable sanctions found in the Inmate Violations Code.
3. The inmate will be advised of his/her right to appeal.
4. The finding and the sanction imposed will be documented on the hearing summary, accompanied by a written finding of fact setting forth the evidence relied upon and the reasons for the finding. A copy of the written hearing record will be provided to the inmate.
5. A copy of the misconduct report with the hearing summary and all relevant documentation attached will be filed.
  - a. Reports on which the inmate was found guilty will be filed in the inmate's criminal history file.
  - b. Reports on which the inmate was found not guilty will be maintained in a separate departmental file, and will not be placed in the inmate's files.

## **G. Appeals**

1. All decisions of the DHO may be appealed to the facility Director within seven calendar days of the decision.
2. The Director will consider the appeal's merit based on the following factors:
  - a. Was there sufficient evidence (defined as 51% chance the inmate committed the offense, in other words it is more likely that the inmate committed the offense than not) to support the finding?
  - b. Was there compliance with the appropriate policies and procedures?
  - c. Were the sanctions imposed appropriate to the violation?
3. The Director may:

- a. Uphold the decision of the DHO.
  - b. Impose a lesser sanction.
  - c. Suspend the sanction. The Director may prescribe the conditions of the suspension.
  - d. Find the inmate guilty of a lesser included violation and impose a sanction.
  - e. Reverse a finding from Guilty to Not Guilty.
4. The Director may not increase the sanctions.
  5. The Director shall render a decision within five working days of receipt of the appeal.

If you 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, 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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**FEBRUARY/MARCH 1996**

**NUMBER 125**

**SUBJECT: Inmate Disciplinary Process  
Part III**

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

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

1. Notice is to be given to an inmate at least \_\_\_\_ hours prior to the hearing.  
(Check One)

- a. 48
- b. 24
- c. 12
- d. 96

2. The accused inmate must receive a copy of the misconduct report.

\_\_\_\_\_ True          \_\_\_\_\_ False

3. Inmates can obtain assistance from attorneys during the disciplinary hearing.

\_\_\_\_\_ True          \_\_\_\_\_ False

4. Can inmates present witnesses and documentary evidence in their own defense during the hearing?

\_\_\_\_\_ Yes          \_\_\_\_\_ No

5. Witnesses may be excluded by the hearing officer for what four reasons.

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

6. Can inmates cross examine witnesses? Check one.

\_\_\_\_\_ Yes          \_\_\_\_\_ No

7. What standard of proof is acceptable for a hearing officer's finding of guilt?

- 1) Reasonable evidence
- 2) Some evidence

- 3) Sufficient evidence
- 4) Preponderance of evidence

8. When an inmate is obviously not capable of preparing or presenting his/her case alone, staff assistance must be provided.

\_\_\_\_\_ True          \_\_\_\_\_ False

9. All disciplinary decisions may be appealed to the facility director. (Check One)

\_\_\_\_\_ True          \_\_\_\_\_ False

10. The disciplinary hearing officer can reduce the charges to a lesser violation. (Check One)

\_\_\_\_\_ True          \_\_\_\_\_ False

11. Which of the following best describes a major violation? (Check One)

- 1) Where an officer is called names
- 2) Where there is little or no threat to person
- 3) Where there is a serious threat to safety and security
- 4) Where there is no threat to security and order

12. An inmate must be issued a copy of the rules upon admission so:

- 1) They will know what hygiene items are available
- 2) They can be held accountable for violating them
- 3) More paperwork can be generated during booking
- 4) An inmate will have something to read while incarcerated

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

# QUIZ

(Answer Sheet)

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2. The accused inmate must receive a copy of the misconduct report.

**True**       **False**

3. Inmates can obtain assistance from attorneys during the disciplinary hearing.

**True**       **False**

4. Can inmates present witnesses and documentary evidence in their own defense during the hearing?

**Yes**       **No**

5. Witnesses may be excluded by the hearing officer for what four reasons.

1) **Legitimate institutional interests**

2) **Irrelevant**

3) **Redundant**

4) **Unnecessary**

6. Can inmates cross examine witnesses? Check one.

**Yes**       **No**

7. What standard of proof is acceptable for a hearing officer's finding of guilt?

- 1) Reasonable evidence
- 2) Some evidence
- < 3) **Sufficient evidence**
- 4) Preponderance of evidence

8. When an inmate is obviously not capable of preparing or presenting his/her case alone, staff assistance must be provided. (Check One)

  X   **True**                   False

9. All disciplinary decisions may be appealed to the facility director. (Check One)

  X   **True**                   False

10. The disciplinary hearing officer can reduce the charges to a lesser violation. (Check One)

  X   **True**                   False

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**Answer sheet should be retained by the Jail Administrator.**