

Sixth District Department of Correctional Services POLICY	Issue Date 04/23/93	Effective Date 07/10/17	Policy Number 2354-17
Subject <b>DISCIPLINARY PROCESS</b>		Review Month March	Author 0253 (MST)
Rescinds 2354-14	References Code of Iowa 903A,904.505, WR/OWI-38		

**PURPOSE:**

To determine if facility regulations have been violated and to impose appropriate sanctions pursuant to Classification of Violations.

**POLICY:**

Residents who violate facility regulations are held accountable for such behavior, in accordance with applicable due process safeguards.

**DEFINITION:**

1. Disciplinary Hearing - Formal administrative proceeding conducted by staff following the issuance of a disciplinary report.
2. Extra House Duty - Specified extra duty assigned by staff and performed by residents which occur on facility premises.
3. Restriction - Disciplinary action which prohibits a resident from certain privileges in the facility or in level system.
4. Warning - Reprimand imposed by staff for violations which are technical in nature and/or where no intent to violate the rule is indicated. Generally, issued to clarify facility rules.

**PROCEDURE:**

1. Staff takes action after becoming aware that a violation may have occurred by completing a Disciplinary Report in ICON.
2. If the violations are Major violations the Residential Discipline-Formal Report is completed.
3. If the violation(s) is a Minor violation(s) the Residential Discipline-Informal Report is completed.
4. The report is completed by the staff who observes/becomes aware of the incident.

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**PROCEDURE:** (continued)

5. Information to be included in Section I and II of the Residential Discipline-Formal Report is as follows.
  - A. Report Date;
  - B. Name of the resident(s) involved;
  - C. Alleged rules or laws violated;
  - D. Date(s) and time(s) the incidents allegedly occurred;
  - E. Location(s) where the incidents allegedly occurred;
  - F. A complete description of the incidents providing a summary of all pertinent details which includes a factual account - using the formula of: who, what, when, where, and how;
  - G. Any immediate action taken;
  - H. Any indication if confidential information is involved;
  - I. The name(s), if available, of any witnesses to the incidents;
  - J. The disposition of any evidence involved (chain of evidence, where the evidence is being held, etc.);
  - K. Name of the reporting staff/staff recording the incident;
  - L. Name of the staff serving notice (do not enter until notice has been served on the resident).

NOTE: When the information could jeopardize the revealing source of confidential information, it is excluded from the report.
6. One Disciplinary Report is written for each incident, unless there is a reasonable break in time between the acts of violation.
7. Staff provides official notice of the report by completing Section II, Residential Discipline-Formal Report and provides a copy to the resident within twenty-four (24) hours of the report being written. For residents who have escaped and is not available, notice is provided after the resident's return to local custody.
8. The resident may waive, in writing the mandatory twenty four hour notice in Section III of the Residential Discipline-Formal Report. The resident signs the waiver. The waiver is scanned, time and date included, in the Residential Attachment in the discipline module.

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**PROCEDURE:** (continued)

9. Resident may waive, in writing, the right to be present at the hearing and by doing so they waive their right to appeal, in Section III, of the Residential Discipline-Formal Report. Scan signed waiver, with date and time included, in Residential Attachment, in discipline module.
10. Staff explains resident hearing entitlements/rights and legal consequences of information in the hearing, indicated on the form (Section III).
11. Investigation:
  - A. Staff ensures that investigations are conducted as soon as practicable after the disciplinary notice has been served. The investigation is done by staff not involved in the incident as either a witness or reporting staff and documented in Section IV, as follows:
    - 1) Written statements may be obtained from witnesses:
      - a. If the investigator determines the number of witnesses given by the resident substantially burdens the investigatory process and that certain witness statements are cumulative or irrelevant, the investigator may limit the number interviewed provided that a written record states the reason for same. The investigator encourages the resident to prioritize witnesses in these situations.
      - b. Failure by the resident to name witnesses to the investigator results in no further opportunity to have the witness interviewed unless the hearing committee agrees of a legitimate need.
    - 2) The investigator interviews and documents the preceding in Section IV, Resident Discipline-Formal Report.
    - 3) If the resident refuses to be interviewed, the investigator documents this in Section IV;
    - 4) If legal charges are pending, the investigator reiterates the right to remain silent.
    - 5) The investigator also reviews all information in the report and from other sources to ensure the Hearing Committee has all necessary information to conduct the hearing. This typically occurs in cases of Escape when details pertaining to apprehension are obtained after the report incident and prior to the investigation. Staff conducting disciplinary report investigations often need to interview other parties to the incident. This often includes taking statements from community members, employers, service providers, etc.

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**PROCEDURE:** (continued)

- 6) The Disciplinary Hearing Committee will attempt to hear the report with the resident after twenty-four (24) hours of the investigation. If there is no written waiver of the resident's presence at the hearing.

12. Disciplinary Hearing:

- A. Hearings are conducted within seven (7) days of the resident receiving notice unless:
  - 1) The resident can show cause or need for further investigation;
  - 2) The disciplinary authority continues the hearing for further investigation or other causes;
  - 3) The resident is not available for the hearing.
- B. When the hearing is continued the resident is advised in writing of the reason(s) for the continuance within seven (7) working days.
- C. The hearing is conducted by one (1) or two (2) staff who have not been directly involved in the incident as a witness, investigator or reporting staff.
- D. The hearing process ensures the following standards are enforced regarding witness testimony during the hearing:
  - 1) The resident has no right to confront or cross-examine witnesses;
  - 2) Staff is not obligated to interview a witness or consider a witness statement unless the investigator was previously notified by the resident in the allotted time frame. The resident is entitled to at least twenty-four (24) hours from the time the report is served to provide the names of witnesses to the investigator.
  - 3) If a witness is approved, staff may interview the witness or consider a witness statement;
  - 4) If calling a witness threatens the safety of other residents or order of the facility, be detrimental to correctional goals, or if the resident attempts to call more than one (1) witness in person and additional witnesses unduly burdens the hearing process without significantly promoting the resident's defense, staff may refuse to allow the calling of the witnesses.
  - 5) Reasons for refusing to allow a witness or accept a witness statement are documented in Section V of the Residential Discipline-Formal Report.

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**PROCEDURE:** (continued)

- E. Resident does not have the right to legal counsel. Staff assistance is allowed to residents when the complexity of the issue makes it unlikely the resident is able to collect and present evidence necessary for an adequate comprehension of the case.
13. Hearing Procedures:
- A. Staff conducts the hearing as follows:
    - 1) Resident is called (unless appearance waived), read charges and rule(s) cited;
    - 2) All sections are reviewed to ensure due process compliance. If not, the hearing is suspended, the report is remanded to the Residential Supervisor for correction and the resident notified.
    - 3) Determine if continuance for good cause is necessary;
    - 4) Review, with the resident, the evidence available. Confidential information is not reviewed with the resident. If the resident previously gave a statement to the investigating officer, the statement is reviewed.
    - 5) The resident is excused if deliberation is needed to determine whether or not the alleged rule violations occurred.
    - 6) Review all pertinent evidence. The committee may draw an adverse inference if the resident chooses to remain silent.
    - 7) Staff apply standard program rules regarding resident conduct during the hearing. If the resident becomes unruly during the hearing and the hearing cannot be continued, hearing staff treats such conduct as a refusal to appear. Staff completes the hearing without the resident present.
    - 8) If staff determines due process or procedural errors during any aspect of the disciplinary process (writing, investigating, hearing), the process is stopped and correction made. If the disciplinary notice (Section I) is not accurate, complete or concise, the notice is corrected and reissued by the reporting staff.
  - B. Following the hearing, staff completes Section V, which includes where applicable:
    - 1) Rule(s) not violated;
    - 2) Rules violated and type of violation (non-major or major);

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**PROCEDURE:** (continued)

- 3) A statement of facts found to support the determination of the rule violation (who, what, when and how of the offense);
  - 4) An indication of what the findings are based upon (staff report, resident statement of guilt, etc.);
  - 5) Sanctions imposed;
  - 6) If resident is found not guilty of all alleged violation(s), the incident is inactivated from the resident's record.
  - 7) Dismissal of alleged individual rule violations constituting only part of the entire incident will not require inactivation.
  - 8) Hearing Committee notifies the resident of the right to appeal. If the resident wishes to appeal the sanction is imposed and not delayed because of the appeal process. Resident is provided with a written notification of time loss (in the case of work release or OWI 321J) and an opportunity to appeal the decision of the Administrative Law Judge to the OSO.
  - 9) Any finding of a Major rule violation for Work Release/OWI 3321J results in a review of the hearing record by the Administrative Law Judge to determine if the resident forfeits any earned time/good time credits.
  - 10) In cases where personal or facility safety may be jeopardized by including certain elements of evidence in the statement to the resident, these items are deleted. Staff documents that certain omissions have been made. Refer to Confidential Information.
- C. Sanctions are applied progressively and include, but are not limited to:
- 1) Warning/Reprimand;
  - 2) Written assignment;
  - 3) Special conditions added to case plan, Work Release plan;
  - 4) Placement in any phase of the level system;
  - 5) Extra house duty;
  - 6) Loss of privileges;
  - 7) Referral to prosecuting attorney for violation of the law;
  - 8) Recommend work release be terminated;

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**PROCEDURE:** (continued)

- 9) Furlough restriction;
  - 10) Room Curfew.
- D. Staff may suspend all/part of the sanction as follows:
- 1) Time frames are specified not to exceed sixty (60) days;
  - 2) Conditions of the suspension (duration and reasons for invoking penalty) are documented;
  - 3) The suspension may be invoked when the terms of the suspension are violated.
  - 4) Residents (work release or OWI 321J) will not lose earned time/good time if all sanctions are suspended. However the Administrative Law Judge may enter a suspended amount of earned time/good time.
  - 5) The violation is not expunged.
- E. Following the hearing, staff informs the resident of the decision. Sanctions are implemented regardless of whether an appeal is filed.
- F. The Residential Supervisor reviews the disciplinary action. Corrections are made of any policy or due process error. A re-hearing may be ordered.
14. Minor Violation:
- A. Staff takes the following steps after discovering the resident has committed a non-major violation:
- 1) Reviews the Residential Disciplinary Sanction Report in ICON and determines if previous violations of the same nature have occurred. A Residential Formal Disciplinary Report may be written if previous minor violations have been cited.
  - 2) Completes section I and II in the Residential Discipline-Informal as outlined in #5.
  - 3) Imposes the appropriate sanction commensurate with the violation and documents in Residential Discipline-Informal.
  - 4) Verbally informs the resident of the sanction imposed and reason for same. If the resident is unavailable, document this in the Generic Notes allowing the next shift to inform the resident.

BY ORDER OF:

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Bruce Vander Sanden, District Director