

## STANDARD 3.1

### DISCIPLINARY SYSTEM

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#### I. POLICY

The facility shall promote a safe and orderly living environment for detainees by establishing a fair and equitable disciplinary system, requiring detainees to comply with facility rules and regulations, and imposing disciplinary sanctions on those who do not comply.

#### II. STANDARDS AND PROCEDURES

##### A. Guidelines

1. Facilities holding detainees will have a detainee disciplinary system with progressive levels of reviews, appeals, procedures, and documentation. Disciplinary policy and procedures shall clearly define detainee rights and responsibilities.
2. Disciplinary action may not be capricious or retaliatory.
3. Staff may not impose or allow imposition of the following sanctions: corporal punishment; deviations from food services or availability of water; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence privileges; deprivation of legal visitation, legal mail, access to the law library, and the removal of legal papers; or deprivation of physical exercise unless such activity creates an unsafe condition.
4. The facility shall not hold a detainee accountable for his or her conduct if a medical authority finds him or her mentally incompetent.
5. When a detainee has a suspected or diagnosed mental illness or cognitive impairment, a mental health professional shall be consulted to provide input as to the detainee's competence to participate in the disciplinary hearing and any impact the detainee's mental illness may have had on his or her responsibility for the charged behavior.
6. The disciplinary process shall consider whether a detainee's cognitive impairment, disability, or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
7. At all steps in the disciplinary process, any sanctions imposed shall be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to conform with rules and regulations in the future.

## **B. Incident Reports**

Officers who witness a prohibited act, or have reason to suspect one has been committed, shall promptly report the incident per facility policy and identify the officer(s), the detainee(s), and all witness(es) to the incident.

Minor transgressions involving detainees may be settled informally and by mutual consent whenever possible.

## **C. Investigations**

The facility shall have procedures in place to ensure that all alleged rule violations are reviewed within 24 hours of the time the violation is reported. The investigation shall be completed within 72 hours of receipt of the Incident Report, barring exceptional circumstances.

The investigating officer shall have had no prior involvement in the incident, either as witness or officer at the scene.

## **D. Unit Disciplinary Committee (UDC)**

Facilities may establish an intermediate level of adjudication for low or moderate infractions known as the UDC. Before hearing a case, the UDC shall ensure that the detainee is afforded all the rights listed under “Notice of Rights,” below.

The UDC will have authority to consider written reports, statements, and physical evidence, hear pleadings on the part of the detainee, make findings that a detainee did or did not commit the rule violation(s) or prohibited act(s) as charged, based on the preponderance of evidence, and impose minor sanctions.

The UDC shall not include the reporting officer, the investigating officer, or an officer who witnessed or was directly involved in the incident, except in the unlikely event that every available officer witnessed or was directly involved in the incident.

The UDC shall:

1. Refer to the Institutional Disciplinary Panel (IDP) any incident involving a serious violation, with or without a UDC hearing, as appropriate.
2. Serve the detainee with:
  - a. A copy of the UDC decision and sanctions imposed; or
  - b. Written notification of charges and hearing before the IDP.

3. If the detainee's case is being referred to the IDP, advise the detainee, in writing, of the right to:
  - a. Call witnesses and present evidence before the IDP; and
  - b. A staff representative before the IDP.

The detainee notifications listed above shall be communicated in a language or manner that the detainee understands.

#### **E. Institutional Disciplinary Panel (IDP)**

The facility shall have an IDP to adjudicate detainee incident reports. Only the IDP can place a detainee in disciplinary segregation. It shall be the responsibility of the IDP to ensure that the detainee does not have documentation in his or her medical record of suspected or diagnosed mental illness or cognitive impairment prior to placing the detainee in disciplinary segregation.

Barring extraordinary circumstances, the panel shall not include the reporting officer, the investigating officer, any member of the referring UDC, or anyone who witnessed or was directly involved in the incident.

The IDP shall have authority to:

1. Conduct hearings on all charges and allegations.
2. Call witnesses to testify.
3. Consider written reports, statements, physical evidence, and oral testimony.
4. Hear pleadings by detainee and staff representative.
5. Make findings that the detainee did or did not commit the rule violation(s) or prohibited act(s) as charged, based on the preponderance of evidence.
6. Impose sanctions as listed and authorized in each category.

#### **F. Notice of Rights**

The UDC or IDP will advise the detainee in a language or manner the detainee understands before the hearing of his or her right to:

1. Remain silent at any stage of the disciplinary process.

2. Due process, including a UDC hearing (or IDP hearing if the facility does not have a UDC) within 24 hours of the end of the investigation. If there is a UDC hearing, then the IDP hearing must be held within 48 hours after the conclusion of the UDC hearing.
3. Attend the entire hearing (excluding committee deliberations). If security considerations prevent the detainee's attendance, the committee must document the security considerations.
4. Present statements and evidence in his or her own behalf.
5. Have language services to be able to participate meaningfully in the hearing.
6. Appeal the committee's determination through the detainee appeal process, or waive the right to appeal.

#### **G. Detainee Assistance**

A detainee may be provided staff assistance in preparing his or her defense. This assistance will automatically be offered for detainees who are illiterate, have limited English proficiency, have disabilities that prevent them from having equal access to the facility's discipline process, and/or are unable to collect or present evidence (including detainees in segregation).

#### **H. Postponement of Disciplinary Proceedings**

The facility shall permit hearing postponements or continuances. Postponements beyond 72 hours from the time of referral to the IDP will be documented.

#### **I. Duration of Sanctions**

The duration of punishment shall be within established limits. Neither the panel recommending sanctions nor the facility administrator making the final decision shall impose sanctions arbitrarily or outside these limits.

1. Time in segregation or the withholding of privileges after a hearing shall generally not exceed 30 days per incident, except in extraordinary circumstances.
2. Time served in segregation pending the outcome of the proceedings should be credited towards disciplinary segregation time.
3. The disciplinary report and accompanying documents shall not be placed in the file of a detainee who is found not guilty. However, the facility may retain the material in its own files for institutional uses such as statistical or historical recordkeeping, etc.

**J. Disciplinary Severity Scale and Prohibited Acts**

The facility shall have graduated scales of offenses and disciplinary consequences, as provided in this section.

**K. Documents**

All documents relevant to the incident, subsequent investigation, hearing(s), etc., will be completed and distributed in accordance with facility procedures.

**L. Confidential Information**

When a decision relies on information from a confidential informant, the UDC or IDP shall include in the hearing record the factual basis for finding the information reliable.

**M. Notice to Detainees**

The facility handbook shall provide notice of the facility's rules of conduct, and of the sanctions imposed for violations of the rules. Among other things, the handbook shall advise detainees of the following, and the contents shall be communicated to detainees in a language or manner that they understand:

1. The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment;
2. The right to freedom from discrimination based on race, religion, national origin, color, gender, sex, age, sexual orientation, disability, or political beliefs; and
3. The right to due process, including the prompt resolution of a disciplinary matter in accordance with the rules, procedures, and sanctions and procedures for appealing disciplinary findings provided in the handbook.