



<b>OPERATING PROCEDURE</b>	<b>Detainee Discipline – Laying a Charge</b>
<b>OPERATING PROCEDURE NO.</b>	<b>D11.1</b>
<b>SCOPE</b>	<b>Alexander Maconochie Centre / Court Transport Unit</b>

## PURPOSE

To provide instructions to staff on the process for reporting an alleged breach of discipline, reviewing the report on the alleged breach, and laying a disciplinary charge.

## DEFINITIONS

### Investigating Officer

The ACTCS staff member responsible for investigating alleged breaches of discipline.

### Presiding Officer

The officer responsible for reviewing *Disciplinary Offence* reports and the Investigating Officer's Report and determining whether to lay a charge for the alleged disciplinary breach or take other action.

The officer responsible for presiding and determining outcomes at a disciplinary hearing.

The Presiding Officer for the hearing must not be the same officer as the Presiding Officer who laid the charge.

## PROCEDURES

### 1. Breach of Discipline – Correctional officers

1.1. Correctional officers who believe, on reasonable grounds, that a detainee has committed a disciplinary breach may decide to take one or more of the following actions:

- a. counsel, warn or reprimand the detainee and case note the action on the detainee's electronic record
- b. complete an *Incident Report* and *Disciplinary Offence Report* in CORIS about the alleged disciplinary breach.

1.2. Correctional officers must submit the *Incident Report* and *Disciplinary Offence Report* as soon as practicable and by the end of the shift in which a breach of discipline has occurred or was discovered. In exceptional circumstances (for example where the officer needs to go to hospital to seek medical attention after an incident) the Area Supervisor may allow the officer to complete the report as soon as reasonably possible.

- 1.3. Where a detainee has committed multiple offences, officers are to complete Incident Report and Disciplinary Offence Report for the most serious breach and detail all the information relating to the incident.

*Example: during a fight with another detainee several items of AMC property are broken. The detainee also verbally abuses and threatens staff who intervene. The fight is the most serious offence. The other offences are taken into account.*

- 1.4. Officers may submit more than one Incident Report and Disciplinary Offence Report where multiple serious breaches of discipline are clearly differentiated.

*Example: a detainee assaults an officer then, while being examined after a resulting Use of Force, they abuse a nurse and assault a different officer. Although following on from each other, these are separate offences.*

- 1.5. Officers must:

- a. ensure that all the facts are correctly recorded and accurately described in the Incident Report
- b. select all staff witnesses in the 'Participants' page in the Incident Report
- c. ensure that where a Use of Force has occurred, the details are fully and correctly recorded in the 'Participants' page
- d. submit the Incident Report
- e. select the detainee in the 'Participants' page, select the 'Discipline' tab and complete the Disciplinary Offence Report, including type of offence, area and any witnesses.
- f. save, but not 'submit' the Disciplinary Offence Report
- g. submit the Incident Report and complete the Disciplinary Offence Report by the end of their shift, subject to section 1.2.

- 1.6. All staff witnesses must also complete an Incident Report.

## **2. Breach of Discipline – action by first Presiding Officer (CO3)**

- 2.1. Correctional Officers Grade 3 (CO3) must search for newly submitted Disciplinary Offence Reports and process these in their role of first Presiding Officer.

- 2.2. The Investigating Officer supports the Operations Manager (CO4) to ensure all reported breaches of discipline are being processed by a first Presiding Officer (CO3).

- 2.3. The first Presiding Officer (CO3) must review the completed Disciplinary Offence Report and related Incident Reports, and gather any other information as necessary to make a decision on further action.

- 2.4. The first Presiding Officer may:

- a. take no further action
- b. counsel, warn or reprimand the detainee
- c. refer the alleged breach of discipline to the Investigating Officer for investigation
- d. decide to lay a charge
- e. refer the incident to the police.

- 2.5. If the first Presiding Officer decides that no further action is to be taken or decides to counsel, warn or reprimand the detainee, the first Presiding Officer must update the status in the CORIS Discipline module and document their decision and reasons.
- 2.6. If another action is to be taken, the first Presiding Officer must refer to sections 5-7 of this procedure.
- 2.7. The first Presiding Officer must:
  - a. upload all relevant documents to 'external documents' within the Discipline module
  - b. direct the Investigating Officer to update the *Disciplines Log*.

### **3. Investigative segregation**

- 3.1. The first Presiding Officer may direct that the detainee be placed in investigative segregation in accordance with section 161 of the Corrections Management Act 2007 and the Management of Segregation and Separate Confinement Policy. Such a Direction must be formally authorised either before placement or as soon as practicable in accordance with the Segregation Operating Procedure.
- 3.2. The Presiding Officer may only recommend investigative segregation if the Presiding Officer believes, on reasonable grounds, that segregation of the detainee is necessary or prudent for the purposes of the disciplinary investigation, including to prevent risk of:
  - a. harm or threatened harm to detainees
  - b. perversion, or attempted perversion, of the investigation
  - c. to the security and/ or good order within the correctional centre.
- 3.3. The detainee may apply to an adjudicator for a review of the direction for investigative segregation within seven (7) days of the direction being given, in accordance with the Management of Segregation and Separate Confinement Policy and section 164 of the Corrections Management Act 2007.

### **4. Investigation – Investigating Officer**

- 4.1. Where the first Presiding Officer decides to refer an alleged breach of discipline to the Investigating Officer for further investigation, the first Presiding Officer must:
  - a. Direct the Investigating Officer to the relevant Disciplinary Offence report
  - b. provide any other relevant information they wish to be taken into account to the Investigating Officer.
- 4.2. The Investigating Officer must:
  - a. gather the relevant evidence (officers' reports, CCTV, photos, injury reports, emails etc.) where required
  - b. complete a D11.F3: Investigating Officer's Report and upload it to 'external documents' within the Discipline module
  - c. provide all relevant evidence to the first Presiding Officer.

- 4.3. The Investigating Officer may make a recommendation to the first Presiding Officer on whether to lay a charge or take another action and provide the reasons for the recommendation.

**5. Laying a Charge – first Presiding Officer**

- 5.1. Where the first Presiding Officer determines that laying a charge is necessary, the first Presiding Officer must open a D11.F2: Charge Notice in the 'Launcher', complete it, and save it to 'external documents' in the Discipline module.
- 5.2. The first Presiding Officer must print and sign a copy of the D11.F2: Charge Notice and print a D11.F7: Detainee Statement form and provide them to the detainee within three (3) business days of the alleged breach being discovered. The first Presiding Officer should, where possible, provide the documents to the detainee by email as well as in hard copy.
- 5.3. The first Presiding Officer must ensure the D11.F2: Charge Notice includes a proposed penalty and a date for a disciplinary hearing, which must be within five (5) business days of the notice being issued to the detainee.
- 5.4. The first Presiding Officer must take reasonable steps to ensure the detainee understands the following:
- a. the discipline breach charge
  - b. details of the alleged conduct to which the charge applies including the relevant date and time or time period
  - c. the proposed penalty
  - d. the discipline charge process, including:
    - i. the option to elect to have the charge dealt with by consent by admitting the disciplinary breach charged and accepting of the proposed disciplinary action in writing within two (2) days (unless granted an extension by the presiding officer)
    - ii. the option to contest the charge and proceed to a disciplinary hearing before a second Presiding Officer
  - e. if proceeding to hearing, the detainee may make submissions to the Presiding Officer
  - f. the detainee is entitled to obtain their own legal representation if the second Presiding Officer consents.
- 5.5. The first Presiding Officer must ensure the detainee is made aware of the support networks available to the detainee (ALO, translator, SIU staff, etc.).
- 5.6. If the detainee admits to the charge and accepts the proposed penalty by signing the D11.F2: Charge Notice within two (2) days, the first Presiding Officer must apply the penalty from the day the detainee agrees to the penalty.
- 5.7. Where the detainee signs the D11.F2: Charge Notice, the first Presiding Officer must:
- a. update the status in the Discipline module
  - b. record the detainee's decision in the comments section

- c. scan the D11.F2: Charge Notice signed by the detainee and upload it to 'external documents' within the Discipline module.
- 5.8. If a detainee refuses to sign the D11.F2: Charge Notice and/or remains silent to whether they admit to the charge, it must be deemed that the detainee is contesting the charge.
- 5.9. If the detainee does not admit to the charge and/or does not accept the proposed penalty, the First Presiding Officer must:
- update the status in the Discipline module
  - if the detainee has signed the D11.F2: Charge Notice, upload the signed document to 'external documents' within the Discipline module.
- 5.10. The First Presiding Officer must direct the Investigating Officer to:
- proceed with scheduling a disciplinary hearing on the date indicated in the D11.F2 Charge Notice
  - update the Disciplines Log.

## 6. Referral to police

- 6.1. Where a breach of discipline incident is referred to the police, the first Presiding Officer must open a D11.F8: Notice of Incident Referral in the 'Launcher', complete it, and save it to 'external documents' in the Discipline module.
- 6.2. The first Presiding Officer must print and sign a copy of the D11.F8: Notice of Incident Referral and provide it to the detainee. The first Presiding Officer should, where practicable, provide the document to the detainee by email as well as in hard copy.
- 6.3. The first Presiding Officer must update the status in the Discipline module and document their decision and reasons in the comments section.
- 6.4. The referral to police must be in writing and accompanied by a report by the first Presiding Officer.
- 6.5. No further disciplinary action must be taken when a referral to police is made. Where police do not act on a referral, or charge the detainee following investigation, the first Presiding Officer may resume disciplinary proceedings under this policy.

## 7. Defined breaches of discipline

<u>Corrections Management Act 2007 (ACT)</u>	
Section	Breach
152(a)	Contravening a direction given to the detainee by the Director-General or a corrections officer under the <u>Corrections Management Act 2007 (ACT)</u> or the <u>Crimes (Sentence Administration) Act 2005 (ACT)</u>
152(b)	Being in a prohibited area, without a corrections officer's approval
152(c)	Smoking in a non-smoking area at a correctional centre
152(d)	Taking (in any way) alcohol or a drug into the detainee's body

152(e)	Providing a positive test sample for alcohol or a drug when directed, under the <i>Corrections Management Act 2007 (ACT)</i> or the <i>Crimes (Sentence Administration) Act 2005 (ACT)</i> , to provide a test sample
152(f)	Making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the Director-General's approval
152(g)	Gambling
152(h)	Being disrespectful or abusive towards a corrections officer in a way that undermines the officer's authority
152(i)	Being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent
152(j)	Intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the detainee or anyone else
152(k)	Fighting
152(l)	Assaulting someone else
152(m)	Theft
152(n)	Possessing stolen property
152(o)	Possessing or dealing in things without the Director-General's approval
152(p)	Intentionally or recklessly damaging or destroying property belonging to someone else
152(q)	Interfering with property belonging to someone else, without approval by the owner of the property
152(r)	Interfering with anyone's personal monitoring device without the Director-General's approval
152(s)	Creating or participating in a disturbance, or other activity, likely to endanger security or good order at a correctional centre
152(t)	Contravening a condition of any of the following: (i) a direction under section 204 (Local leave directions) (ii) a local leave permit (iii) an interstate leave permit
152(u)	Doing anything for the purpose of escaping, or assisting a detainee to escape, from detention
152(v)	Offering, giving or taking a bribe
152(w)	Attempting, or assisting anyone else attempting, to commit another disciplinary breach
152(x)	Threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (s)
152(y)	Anything else prescribed by regulation
<b><u>Corrections Management Regulation 2010 (ACT)</u></b>	
<b>Section</b>	<b>Breach</b>
48(a)	Failing to maintain an acceptable standard of behaviour towards people, including behaving in an obscene, indecent, offensive, racist or disorderly manner

48(b)	Failing to comply with health, hygiene and dress standards, including keeping a cell, room or cottage in good order, and keeping clothing and bedding, and any other article issued to the detainee, clean and in good order
48(c)	Leaving a location without the approval of the director-general or a corrections officer
48(d)	Feigning illness
48(e)	Entering another detainee's cell, room or cottage unit without a corrections officer's approval
48(f)	Going within 10 metres of a fence separating different areas of the Alexander Maconochie Centre without a corrections officer's approval
48(g)	If the detainee is housed in a cottage—going within 10 metres of a cell block without a corrections officer's approval
48(h)	If the detainee is housed in a cottage—passing an item to, or receiving an item from, a detainee housed in a cell block
48(i)	Failing to attend a muster

#### RELATED DOCUMENTS AND FORMS

- Detainee Discipline Policy
- Detainee Discipline – Hearings Operating Procedure
- Detainee Discipline - Penalties Operating Procedure
- Incident Report
- Disciplinary Offence report
- D11.F2: Charge Notice
- D11.F3: Investigating Officer's Report
- D11.F7: Detainee Statement
- D11.F8: Notice of Incident Referral
- Management of Segregation and Separate Confinement Policy
- Segregation Operating Procedure

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12 July 2023

**Document details**

Criteria	Details
Document title:	<i>Corrections Management (Detainee Discipline – Laying a Charge) Operating Procedure 2023</i>
Document owner/approver:	Assistant Commissioner Custodial Operations, ACT Corrective Services
Date effective:	The day after the notification date
Review date:	3 years after the notification date
Responsible Officer:	Senior Director Operations
Compliance:	This operating procedure reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>

Version Control			
Version no.	Date	Description	Author
V1	September 2021	First Issued	S Leedham
V2	June 2023	First revision	S Viereck