

## 1.3.C.2 Inmate Discipline System

### I Policy Index:



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### II Policy:

A system shall be in place at all Department of Corrections' (DOC) institutions to impose discipline for inmate conduct and behaviors that violate DOC policy or institutional rules (ACA 4-4227). The disciplinary system supports maintenance of order and control of institutional safety, justice, modification of inmate behavior (rehabilitation). Inmates shall not be disciplined unfairly and shall be afforded all applicable rights regarding due process.

### III Definitions:

#### **Administrative Detention:**

A temporary form of separation from general population used when the continued presence of the inmate within the general population poses a serious threat life, property, self, staff or other inmates or to the security and order of the institution. Inmates pending investigation for trial on a criminal act or pending transfer for trial can be housed in AD.

#### **Disciplinary Hearing Officer (DHO):**

Staff member responsible for conducting the institutional disciplinary hearing in response to an inmate who is allegedly to have committed a High-level offense in custody. The DHO shall determine if substantial evidence exists to support a finding the inmate has committed the offense in custody. The DHO may impose an appropriate sanction(s) when it is determined an inmate has committed an Offense in Custody.

#### **Disciplinary Housing:**

A punitive form of separation from the general population, in which inmates found guilty of committing an offense in custody are confined by order of the DHO or UDC, for short, specified periods of time, to designated housing that is separate from the general population. Placement in disciplinary housing may only occur after an affirmative finding an inmate has committed an offense in custody through an impartial hearing. Inmates may be placed in disciplinary housing in the best interest of discipline, justice, rehabilitation, and to protect the inmate and others (See SDCL § 24-2-12).

#### **Unit Disciplinary Committee (UDC):**

One or more unit staff members assigned the duty of convening an initial hearing concerning charges brought against an inmate for misconduct. The UDC may determine if some evidence exists to support an inmate committed an offense in custody and determine an appropriate sanction.

## IV Procedure(s):

### 1. Offenses in Custody:

- A. The *Inmate Living Guide* contains a list of high and low level offenses. Offenses in Custody are prohibited behaviors that have direct and adverse effects on inmates, institutional order and the security of the institution (ACA 4-4226).
- B. All offenses in custody and rules which inmates found guilty of committing, may receive a sanction, shall be made known and available to all inmates. Rules and directives not found in the *Inmate Living Guide* shall be posted, announced or otherwise made known and available to inmates.
- C. All inmates are offered avenues to access the *Inmate Living Guide*, either electronically through the inmate tablet system and kiosks or as printed matter. The *Inmate Living Guide* is made available to all inmates upon admission to a DOC facility.
- D. Inmates requiring accommodation to access materials documenting offenses in custody, rules or directives and inmates who require accommodation to participate in the disciplinary system, such as but not limited to, language translation, braille, literacy, or those with a cognitive disability that affects their ability to understand such materials or processes, should contact unit staff or the ADA Facility Coordinator (See DOC policy 1.1.E.7 [Americans with Disabilities Act \(ADA\)](#)), in advance, to request accommodation, if such accommodation is not already provided. Staff will assist inmates who request assistance with understanding offenses in custody or the disciplinary process (ACA 4-4228).
- E. Staff and volunteers shall be provided access to the *Inmate Living Guide* during pre-service training and should familiarize themselves with the offenses in custody and applied rational for rules and sanctions within DOC institutions (ACA 4-4229). Staff may access the current version of the *Inmate Living Guide* within the Policy Tech system.

### 2. Informal Resolution and Reporting Offenses in Custody:

- A. When staff have some information/evidence supporting an inmate has committed a low-level offense in custody, the staff member will determine if it is appropriate to attempt to resolve the matter informally. The Officer in Charge (OIC) or supervisor may be consulted as necessary. The DOC encourages informal resolution, when possible. This requires agreement to the sanction or staff response by the inmate and charging staff member. Informal resolution may include, but is not limited to:
  1. Motivational Interviewing.
  2. Staff reporting of the incident to the inmate's program staff for follow-up. Program staff will review the reported behavior(s) for possible non-compliance with programming requirements, as applicable.
  3. Verbal reprimand.
  4. Verbal instruction, explanation, response or warning.
- B. The informal resolution may be documented on an Incident Report or as a case note in COMS. Informal resolution shall not be included as part of an inmate's disciplinary history

and does not count towards violations that may determine an inmate's classification, compliance, work eligibility, etc.

- C. Acceptance of the informal sanction by the inmate shall be interpreted as no contest to the allegation and charge the inmate committed the offense or rule violation and shall preclude any appeal of the charge unless the charge is re-initiated because of failure by the inmate to comply with the informal sanction. If an inmate does not complete or comply with the informal sanction, the inmate may be served a disciplinary report for committing the offense, provided this is with 5 days of when the offense was committed.
- D. When DOC staff have some information/evidence supporting an inmate has committed an Offense in Custody, and informal resolution is not appropriate or found to be ineffective, staff will generate an Incident Report in the Comprehensive Offender Management System (COMS).
- E. Non-DOC staff with some information/evidence supporting an inmate has committed an offense in custody, will document the information in an Informational Report within twenty-four (24) hours of first becoming aware of the information/incident (See [Attachment 1](#)); unless the violation is discovered through an investigative process or extenuating circumstances prevent such.
  - 1. Informational Reports must be forwarded to a DOC staff member. Typically, this is the supervisor or the shift commander/OIC.
  - 2. The supervisor shall inspect the report to check for grammatical errors, completeness and the accuracy of stated facts, i.e. date, time.
- F. Each staff member witnessing an inmate commit a violation or who have information collaborating an inmate has committed an Offense in Custody, which is not duplicated in another staff report, must document the information in an Informational Report.

### **3. Discipline System Processes:**

- A. Within twenty-four (24) hours of receiving the Informational Report or Incident Report/ disciplinary report, the shift commander, OIC or other authorized staff member may conduct an investigation into the alleged offense in custody or rule violation, unless there are exceptional circumstances to delay the investigation (ACA 4-4234).
- B. Exceptional circumstances that may delay or postpone investigation include, but are not limited to:
  - 1. The inmate is housed at a non-DOC facility or a community work site.
  - 2. The inmate is out to court.
  - 3. The inmate is in the custody of another law enforcement agency.
  - 4. The inmate is in a city/county jail awaiting transport to a DOC facility.
  - 5. The inmate is under investigation for pending criminal charges.
  - 6. Emergency medical care.

7. Circumstances supporting a delay in the initial investigation will be documented in COMS.
- C. The preliminary investigation may include interviews with the charging staff member, the accused inmate and other witnesses to the incident. Staff shall gather all relevant evidence, including any documentary evidence submitted by the inmate during the investigation. Staff conducting the investigation will not be one of those who reported the offense and shall remain a neutral party by making no determination of guilt or innocence. The staff member conducting the investigation will determine if the violation requires formal resolution, and if so, shall provide an investigation report documenting an affirmation of the offense or rule violation.
1. The inmate will be served the report, usually by Unit staff, the shift commander or OIC within forty-eight hours after the report has been affirmed by the supervising staff member, or as promptly as practical, but no less than twenty-four (24) hours prior to the disciplinary hearing (ACA 4-4236). The inmate will be considered "charged" upon receipt of the report. The staff member serving the inmate will:
    - a. Advise the inmate of his/her right to remain silent throughout the entire disciplinary process. The inmate must be read his/her rights prior to asking any questions of the inmate.
    - b. Read the charge(s) to the inmate (ACA 4-4236).
    - c. Provide the inmate with a copy of the report (written statement of the charges). The hearing may be held within 24 hours with the inmate's written consent.
      - 1) The date and time the inmate received a copy of the report(s) will be noted in COMS.
    - d. Document any statement provided by the inmate.
    - e. Document any adverse or hostile attitude, behavior, negative demeanor or insolence presented by the inmate.
  2. The inmate may waive the right to a hearing and/or plead guilty. The inmate's waiver of their right to a hearing must be documented (ACA 4-4230). Staff serving the inmate must ensure the inmate understands that waiving the right to a hearing will constitute a plea of guilty. The waiver or plea of guilty also constitutes a waiver of any appeal by the inmate of his/her guilt; however, the resulting sanction may be appealed by the inmate.
    - a. The reviewing staff person will enter their review of the incident, and any resolution accepted by both parties, including any resulting sanction, into COMS.

#### **4. Unit Disciplinary Committee (UDC) Hearing:**

- A. The Unit Manager will designate unit staff to form a Unit Disciplinary Committee (UDC), as soon as practical, but no later than seven (7) days from the date the inmate is charged with the offense (See ACA 4-4238). Any delay must be noted and documented.
1. The committee will be comprised of one or more impartial unit staff members.

- a. The staff member generating the Incident Report and any staff who submitted an Informational Report related to the violation, shall not serve on the UDC (ACA 4-4240).
  - b. A staff member witnessing the violation may serve on the UDC when virtually every staff member in the institution witnessed the inmate commit the alleged offense in custody, provided the staff member did not submit a report documenting the violation.
- B. The UDC must advise the inmate of his/her rights, including his/her right to remain silent.
- C. The inmate shall be present at the UDC hearing, unless, after receiving notice of the hearing, he/she waives their right to appear. The waiver must be in writing. An inmate is considered present if he/she participates in the hearing telephonically.
- D. If the inmate's behavior at the hearing poses an immediate threat to institutional safety or legitimate correctional objectives, the UDC has authority to postpone or delay the hearing. The inmate will be provided a minimum of 24-hour notice of the rescheduled time and date of the hearing.
- E. If the Incident Report is for a low-level offense in custody:
  1. The UDC will ensure the inmate has received a copy of all written reports and information to be entered as evidence or summary of confidential information to be considered. The UDC will ensure the inmate understands the charges.
    - a. The UDC may change the offense in custody to one that more accurately represents the inmate's alleged actions, based on information provided. Charges may be reduced from a high-level offense to a low-level offense, but not increased from a low to high level offense.
    - b. If the identifying description of the offense is changed, the inmate must be given the opportunity to recess for a minimum of 24 hours to allow time to prepare a defense. The inmate may waive this delay and continue with the hearing. The UDC member who changed the offense does NOT become the charging staff member and remains an unbiased member of the UDC for the purpose of the hearing.
  2. The inmate is entitled to make a verbal statement or submit a written statement in their defense and present documentary evidence on his/her own behalf or remain silent. The UDC may make a negative inference if the inmate chooses to remain silent; however, an inmate's silence alone cannot be used to find the inmate committed an offense in custody. Silence will be considered a plea of innocence.
  3. The inmate will not be represented by a staff representative or legal counsel, unless, the inmate has requested accommodation for a disability and requires a staff representative to assist with the process, or the UDC has appointed a representative on the inmate's behalf because of an apparent need for accommodation which requires a staff representative.
  4. The inmate may not call witnesses.
  5. Reporting staff will be represented by their written report(s).

6. The inmate may enter a plea or agree to a plea bargain, e.g. reduction of the charge from a high to low level offense. If an inmate enters into a plea agreement and accepts the sanction, the inmate's right to a hearing before the DHO shall be waived. The inmate may plead guilty and agree to the sanction. The inmate shall waive their right to a hearing before the DHO and any appeal regarding their plea of guilt.
7. The UDC will consider all evidence presented at the hearing and make a decision based on at least "some evidence" supporting their finding.
  - a. The phrase "some evidence" refers to evidence showing the inmate did or did not commit the alleged offense or rule violation.
8. The UDC will decide on one of the following dispositions:
  - a. A finding the inmate did not commit the violation; or
  - b. A finding the inmate committed the offense/violation and the appropriate sanction.
8. Each violation contained within the report must have a resolution.
- F. The UDC's decision shall be based solely on information obtained in the hearing process, including staff reports, statements, evidence and facts presented (ACA 4-4244).
- G. If the report is for a high-level offense in custody, and the inmate did not accept the offer of the UDC, the UDC will inform the inmate the matter will be referred to the Disciplinary Hearing Officer (DHO) for a hearing. The report and attached information and documents will be forwarded to the DHO. The DHO shall schedule a date and time for the hearing.

## **5. Staff Representatives and Inmate Witnesses:**

- A. Inmates may request the assistance of a staff representative (ACA 4-4243).
  1. The inmate may select a staff representative from the list of available staff. The staff representative must be a full-time staff member who is reasonably available and agrees to serve as an unbiased representative of the inmate. The staff representative will be familiar with the disciplinary procedures, due process requirements, and applicable DOC policy and facility rules.
    - a. The following staff is exempt from serving as a staff representative:
      - 1) The Warden;
      - 2) Deputy Warden;
      - 3) Associate Warden;
      - 4) DHO or his/her alternate;
      - 5) Unit Manager;
      - 6) Staff reporting the incident;
      - 7) Staff reviewing/investigating the incident;
      - 8) Witnesses to the report; or
      - 9) Committee members of the UDC.
    - b. Any staff member may be excluded when a potential conflict is identified which may impair or otherwise the inmate's right to an unbiased hearing.

- c. If the staff member selected declines the assignment or is unavailable, the inmate may:
      - 1) Select another staff representative; or
      - 2) Wait a reasonable period for the staff member's return, in the case of absence, or
      - 3) Proceed with the hearing without a staff representative.
  2. If it appears at any time during the disciplinary process that an inmate is incapable of presenting a defense on his/her own behalf or understanding the charge(s), due to a disability, including a significant behavioral health issue, the UDC or DHO may appoint a representative to assist the inmate (ACA 4-4243).
    - a. Inmates who do not have the mental or cognitive capacity to present their defense or understand the charge(s) may request accommodation, including staff representation, by contacting a member of their unit team at least 24 hours prior to the date and time set for the hearing, or the UDC or DHO may appoint a representative.
    - b. Behavioral Health staff may request the inmate complete an evaluation to determine whether the inmate is capable of presenting a defense or understanding the potential consequences of a finding of guilt.
    - c. Staff shall arrange for an interpreter to assist inmates with a language barrier.
- B. The staff representative will be available to meet with and assist the inmate prior to the hearing. The staff representative will attend the disciplinary hearing with the inmate and will be impartial in representation of the inmate. The staff representative will:
  1. Consult with the inmate before the hearing.
  2. Explain the charge(s) against the inmate and answer questions regarding potential consequences.
  3. Explain the ramifications of a guilty plea.
  4. Assist the inmate in investigating and presenting evidence.
  5. Question witnesses.
  6. Assist the inmate in presenting their case and defense.
- C. The inmate will be provided the opportunity to make a statement, present documentary evidence on their behalf and request witnesses (ACA 4-4242) (See [Attachment 6](#)). Any denial of a witness by the DHO shall be made a part of the disciplinary record, including the reason for denial.
  1. Witnesses must be named at the end of the UDC hearing. The inmate must state the relevancy of any testimony or statements to be provided by the witness (See [Attachment 6](#)). If the inmate fails to request witnesses at this time, this shall be considered a waiver by the inmate to call any witnesses. To the extent possible, and provided the request was made within established time frame, every effort will be made to allow witnesses requested by the inmate.

2. Outside witnesses; e.g. specialists, consultants, legal counsel, DOC/contractual staff, will not be permitted to appear at the hearing. Inmates may consult with private counsel at their own expense, prior to the hearing.
  3. Witnesses must have material knowledge of the incident that is the subject of the hearing.
  4. Witnesses who are reasonably available at the time of the hearing may be called upon by the DHO to provide testimony at the hearing. The DHO may elect to take written statements in lieu of allowing direct testimony. Testimony may be obtained from witnesses in-person, telephonically or via written and sworn statement (ACA 4-4244).
    - a. Statements must be signed and dated by the inmate-witness. The DHO will initial and date the written statements during the hearing as these are read into the record.
  5. If an inmate does not request a staff representative, but has submitted a list of witnesses, the inmate must provide the DHO with a list of questions for the witnesses prior to the start of the hearing.
  6. Inmates may not confront or cross-examine witnesses. The DHO or staff representative will normally direct questions submitted by the inmate to the witness (ACA 4-4243). Inmates will not be allowed to question the witness for the purpose of harassing the witness or to be unduly repetitious or irrelevant.
  6. The DHO may limit the number of witnesses or decline the presence of a witness, if it can be determined the testimony would be repetitive, cumulative or irrelevant.
  7. Witnesses may decline to testify or refuse to answer.
  8. The DHO may terminate or disqualify witness testimony if the testimony is not material to the incident, repetitive or duplicative or it can be determined the witness has no knowledge of the incident. Any such action by the DHO must be documented.
  9. Witnesses may be denied appearance or participation in the hearing on the basis of institutional safety or posing a threat to other legitimate correctional objectives. Inmate victims may be denied the opportunity to present as a witness or offer testimony to ensure protection of the victim from verbal or physical abuse or harm.
  10. The hearing officer may exclude the accused inmate during the witness testimony if such exclusion is deemed necessary to protect the confidentiality or safety of the witness. Reasons for the inmate's exclusion shall be documented and part of the record (ACA 4-4241).
- D. The DHO will accommodate the presence of the staff representative assigned to the hearing.
1. The staff representative will typically be present at the DHO hearing, unless an alternate means of appearance (telephonic), has been approved and arranged by the DHO.
  2. The absence or alternate means of appearance of the staff representative must be agreed to by both the DHO and the inmate before the hearing may proceed.

- E. The DHO will afford the staff representative adequate time to speak with the inmate and inmate-witnesses prior to the commencement of the hearing. The DHO shall allow the inmate to ask questions and advice from their representative.
- F. While it is expected a staff representative will have ample time to prepare prior to the hearing, a delay in the hearing to allow adequate preparation may be granted by the DHO, if requested by the staff representative.

## **6. Disciplinary Hearing Officer (DHO) Hearing:**

- A. Upon receipt of the report and other supporting documents involving a High-Level offense in custody, the DHO will schedule a hearing. The inmate will be provided notice of the time and date set for the hearing. The hearing may not be held within 24 hours of when the inmate was served unless the inmate waives this right in writing.
  - 1. In order to ensure impartiality, the DHO may not be the charging staff member or staff who ordered the writing of the report, a witness to the incident, participant in the investigation of the charges or a member of the UDC. However, the DHO may preside over a hearing involving an incident where virtually every staff member in the institution witnessed the incident.
- B. The DHO is responsible for performing the following duties:
  - 1. Ensuring the hearing is recorded.
    - a. Taped records of DHO hearings will be retained for three (3) years from the date of the hearing, unless possible criminal charges are pending, or the matter is subject to any other court or legal action, in which case the record may be retained longer. Recordings of DHO proceedings are considered confidential.
  - 2. Read the Incident Report and any applicable/related reports to the inmate and explain the charge(s).
  - 3. Advise the inmate of his/her right to remain silent. A negative inference may be drawn from the inmate's silence, but an inmate's silence alone cannot support a finding that the inmate committed an Offense in Custody. Silence shall be considered a plea of not guilty.
  - 4. Based on factual evidence presented at the hearing, the DHO may change the offense in custody to another offense within the same level, to accurately reflect the inmate's actions. The DHO may reduce a high-level offense to a low-level offense.
    - a. Whenever the DHO changes the charged offense to another offense, the inmate will be advised of his/her right to a recess.
    - b. If the inmate requests a recess, the hearing will be moved to recess for a minimum of twenty-four (24) hours. The inmate may utilize this time to prepare his/her defense to the changed charge.
    - c. If the inmate does not request a recess, the hearing will proceed.
  - 5. Offer the inmate time to make a statement and record any statement.

6. Ensure the inmate has a copy of all written information which the DHO will admit as evidence during the hearing, unless disclosure of such information would threaten the safety, security and disciplined operation of the institution or endanger the informer. Reasons for nondisclosure of any information must be documented. In cases where information is not disclosed, the contents shall be summarized for the inmate, to the extent institutional order and individual safety are preserved and the legitimate penological interests of the DOC are not jeopardized.
  - a. Only evidence presented during the hearing may be considered when determining an inmate's guilt or innocence. An inmate's prior disciplinary record may be considered as evidence to support the inmate's habits or patterns of behavior, in similar past incidents, when determining an appropriate response/sanction.
7. Ensure the inmate is present at all stages of the hearing, except during deliberation or the testimony of any witness who has requested anonymity or been promised anonymity or is identified as a confidential informant. Inmates may waive their right to be present at all or part of the hearing, in writing or by refusing to attend. Refusal shall be documented by staff.
8. Question any witnesses present at the hearing.
9. Read any inmate-witness statements received.
10. The DHO may postpone the hearing at any point for good cause (See ACA 4-4239). The postponement must be documented in the Record of the Hearing in COMS, and the date and time of the rescheduled hearing included in the record. The inmate must be provided notice of the date and time set for the continuation of the hearing, a minimum of 24 hours prior to commencement of the hearing. Reasons for postponement may include:
  - a. The inmate's continued preparation of a defense;
  - b. Illness or unavailability of the inmate, DHO or staff representative;
  - c. Further investigation of factual matters relevant to the hearing;
  - d. Pending a decision to pursue criminal prosecution;
  - e. Need for accommodation of a disability not previously noted or requested; or
  - f. Unacceptable or disruptive behavior by the inmate during the hearing, or the inmate's refusal to participate in the hearing in a reasonable manner.
11. Upon receipt of all oral testimony and presentation of all evidence and information, the DHO may excuse the inmate to deliberate. Deliberation is not part of the hearing and the inmate's presence is not required.
12. The DHO will inform the inmate of their findings/decision, the basis for the finding/decision (evidence considered unless doing so would jeopardize security) and any sanction imposed (ACA 4-4245).
  - a. The decision will be based solely on evidence, information and testimony presented during the hearing, including staff reports, inmate statements and witness testimony (See ACA 4-4244).

- b. If the DHO finds the inmate committed the offense, the inmate must be provided notice of their right to appeal the finding of guilt and/or sanction, through the Administrative Remedy Process (See SDCL § 24-2-17 and DOC policy 1.E.3.2 [Administrative Remedy for Inmates](#)).
- c. A disposition is required for each offense/charge listed within the report. Each disposition must be entered in COMS.
- d. If the inmate is found to have committed an offense in custody, a summary report of the offense will become a permanent part of the inmate's institutional record in COMS (unless overturned through a response to the inmate's request for Administrative Remedy) and a copy provided to the inmate (See SDCL § 24-2-17).
- e. If the disposition of the offense is not listed in COMS, and this is not included in the recording of the hearing, it is presumed the inmate did not commit the offense.
- f. If the inmate is found not guilty of the offense/charge, the disciplinary report will not be placed in the inmate's disciplinary file or will be removed from the inmate's file (ACA 4-4246). All disciplinary reports, regardless of disposition, may be retained and used for statistical research or reporting.

## 7. Disciplinary Sanctions:

- A. When it is determined by the UDC or DHO, upon the preponderance of the evidence, that some evidence exists to support a finding the inmate is guilty of committing an offense in custody, the UDC or DHO may impose a sanction (See SDCL § 24-2-9). The finding of guilt must be documented by a written statement by the DHO on the report and a copy provided to the inmate. The reasons must point out the essential fact upon which the inferences were based, including what evidence or summary reference to the evidence which was relied upon to reach the decision (ACA 4-4245). The DHO may suspend the execution of any sanction, or a portion of the sanction. Sanctions may include:
  - 1. Withholding of good time (maximum of 60 days per offense) in accordance with SDCL § 24-2-12 and DOC policy 1.4.B.5 [Withholding Good Time Pursuant to SDCL 24-2-18](#) (See [Attachment 9](#)).
  - 2. Punitive confinement (maximum of fifteen (15) days per offense, only applies to high level offenses). The inmate may receive multiple sanctions, set to run concurrently for multiple violations committed during a single incident.
  - 3. Imposition of fines (inmate banking should be consulted to ensure the inmate is not indigent, as this creates another obligation).
  - 4. Restriction of privileges, i.e. room restriction, loss of recreation time, loss of commissary privileges.
  - 5. Loss of work privileges.
  - 6. Additional labor (extra duty) without compensation.

7. Referral to rehabilitative programming to provide the inmate with means of correcting negative behaviors.
  8. Transfer to a more secure/restricted housing unit to provide additional supervision of the inmate and correction of negative behaviors.
- B. No corporal punishment may be inflicted upon an inmate (See SDCL § 24-2-9).
- C. The UDC or DHO will inform the inmate verbally of his/her decision immediately following the hearing.
1. In the case of a DHO hearing, the DHO has five (5) days following the hearing to provide the inmate with written notice confirming the final disposition (See [Attachment 8](#)).
- D. The UDC and DHO may take into consideration the inmate's overall disciplinary record when determining final disposition.
1. The disciplinary sanction may not be capricious or retaliatory and shall be proportional to the offense committed. Sanctions will be effective immediately, unless otherwise noted.
- E. The Warden or designee will randomly review disciplinary hearings, dispositions and sanctions to ensure hearings are conducted in accordance with accepted standards, procedures and policy (ACA 4-4247). The Warden or designee may affirm or reduce sanctions or charges, dismiss charges or require that the matter be remanded for rehearing or additional investigation.
1. In the event a rehearing is ordered, the justification shall be clearly documented. Such reasons generally include procedural errors, overwhelming evidence, inappropriate charges or additional information not known at the time which is compelling and may affect the previous decision.

## 8. Inmate Appeal Rights:

- A. Disciplinary decisions, including the withholding of good time, may be appealed by the inmate utilizing the Administrative Remedy process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)) (ACA 4-4248), except when an inmate admits to committing the offense in Custody. Acceptance shall be considered a waiver of the inmate's right to appeal a finding of guilt. The inmate may; however, appeal the sanction.
- B. When considering an inmate's request for Administrative Remedy, the Warden or Secretary will consider three factors:
1. Whether there is substantial compliance with all institutional standards, procedures and Department policy, including any argument raised by the inmate that their procedural rights were violated; and
  2. Whether the disciplinary committee's decision was based on some evidence that supports the inmate committed the offense in custody; and
  3. Whether under the circumstances, the sanction imposed was proportionate to the violation.

- C. Clerical errors contained in reports, testimony or related documentation will not typically constitute grounds for dismissing the report or testimony, support a finding of innocence, or invalidate the report or testimony.
  - 1. Corrections to the report may be made by the charging staff member, reviewing supervisor, investigator, DHO or UDC. Copies of corrections will be provided to the inmate. If the corrected information is material to a finding of guilt, an additional twenty-four (24) hours must be offered and provided to the inmate, unless this is waived. Items such as misspelled names, incorrect inmate ID, failure to put a.m. or p.m. on the report is not usually material to a finding of guilt and can be corrected without extension.
- D. Inmates requiring assistance or accommodation to access the Administrative Remedy process must contact a member of their unit team and submit their request within the time frame set forth in the policy.
- E. If a finding of guilt is overturned, and the inmate is found not guilty of an alleged violation, the disciplinary report shall be removed from the inmate's files (ACA 4-4246).

## 9. Criminal Investigation:

- A. If it appears an inmate's actions or involvement in an incident, may be subject to criminal investigation or criminal charges, the shift commander or Special Investigations Unit staff will ensure investigations into the violation are suspended and deliver a copy of the Incident Report to the inmate.
  - 1. The shift commander will advise the inmate of his/her right to remain silent and document the inmate has been advised of these rights in COMS. The inmate will be informed of the violation he/she is alleged to have committed and permitted to enter a plea.
    - a. Designated security staff will contact the Division of Criminal Investigation (DCI) at the direction of the Warden or designee (See ACA 4-4231). Staff will not take the inmate's statement unless otherwise directed by the Division of Criminal Investigations (DCI).
    - b. The inmate may be placed in Administrative Detention, consistent with DOC policy 1.3.D.1 [Disciplinary Housing](#).
    - c. The Warden or designee shall be provided updates on the status of the criminal investigation as information becomes available.
  - 2. If a criminal case is not being pursued, or the investigation is terminated, the report will be referred to the shift commander or other staff member with authority to investigate the violation. A decision not to pursue a criminal case or the dismissal of the case shall not be interpreted as innocence or that the inmate did not commit an offense in custody.

## 10. Confidential Informant Information:

- A. Confidential informant information may be admitted as evidence. Confidential witnesses may provide testimony.
- B. The DHO must be advised in advance if confidential information will be presented at the hearing. The information must be provided to the DHO prior to the hearing.

1. If confidential information will be presented at the disciplinary hearing, the accused inmate shall be advised of such, at least twenty-four (24) hours prior to the hearing. A summary of the confidential information shall be included in the report or described to the inmate by the DHO in general terms, that protect the confidential informant and/or legitimate penological interests of the DOC.
- C. A confidential informant is a person (usually an inmate), who provides information about the offense/violation committed, including confirming the inmate's identity and involvement in the offense/violation.
1. A confidential informant's identity may be withheld, as deemed appropriate, by the DHO or UDC, if there is reason to support the safety of the informant may be compromised through such disclosure, or that disclosure is likely to threaten the safety, security and good order of the institution (penological interests).
  2. The reliability of a confidential informant must be established before the information may be admitted as evidence.
    - a. The reliability of the confidential informant shall be established by review of past reliability and other factors supporting the credibility of the informant.
    - b. The staff member providing the information obtained from a confidential informant (usually the Special Investigations Unit) will include:
      - 1) The frequency which the confidential informant has provided information.
      - 2) The period of time during which the confidential informant has provided information to staff.
      - 3) A brief statement describing the accuracy of past information provided by the informant.
    - d. Staff providing the information to the DHO or UDC has an affirmative obligation to determine whether there is any basis for concluding the confidential informant is providing false information. The DHO or UDC shall not determine the genuineness of the information but shall consider the information with all other information and facts.
  4. Confidential information will not be accepted in exchange for avoiding disciplinary action, charges, sanctions, the granting or denial of privileges or intervening in an inmate's status or sentence.
  5. A finding of guilt (that an inmate committed an offense in custody) must be supported by more than one confidential informant, or in combination with other evidence and information presented during the proceeding which corroborates the inmate committed the offense.
    - a. Uncorroborated confidential information from a single informant is insufficient as the sole basis for a finding an inmate committed an offense in custody.
  6. Confidential informant information will not be relied on when other information and evidence exists.
  7. An informant who has provided staff with information regarding the offense is not required to be revealed within the findings, provided other information and evidence exists which supports the inmate committed an offense in custody.

- D. Confidential information presented to the UDC or DHO will be in writing and must state facts and the manner in which the confidential informant gained knowledge of those facts.
1. The statement(s) will be signed by the confidential informant.
  2. If the confidential informant does not write a statement, the staff member receiving the information will provide that information in language as close to the confidential informant's description as possible, and have the inmate sign the statement or record the testimony, which shall include the date and time which the testimony was provided. If the inmate refuses to sign the statement, the refusal shall be noted.
- E. Information received anonymously does not meet the reliability standard and may not be relied upon during disposition.

## 11. Referral to Behavioral Health Services:

- A. If, at any stage of the disciplinary process, staff believe an inmate may require evaluation to determine level of function, staff shall refer the inmate to Behavioral Health staff. Inmates who appear to be experiencing a mental health crisis, including but not limited to, suicidal threats, self-injurious behavior or displaying signs and symptoms of severe mental illness, must be referred to Behavioral Health for evaluation.
- B. Behavioral Health staff will be notified within three (3) business days of an inmate with a Mental Health (MH) Code of MH2, MH3, or MH4 being charged with a high-level offense in custody.
- C. If Behavioral Health staff, through assessment/evaluation of the inmate, determines the inmate's condition may have impaired their ability to make decisions or to understand the severity of their actions and/or potential consequences of such actions, staff may recommend alternative sanctioning or nonpunitive responses which shall encourage the inmate to make changes to their behavior and promote rehabilitation. The inmate's IPD and/or treatment plan should be reviewed to determine an appropriate response and identify behavior goals.
- D. If it is determined at any time during the disciplinary process that an inmate is impaired to the extent that they are unable to make important decisions relevant to the disciplinary hearing process and/or their defense, the process may be terminated, postponed or a representative assigned to assist the inmate.

## V. Related Directives:

SDCL § 24-2-9, 24-2-12, 24-2-17 and 24-5-1.

[Inmate Living Guide](#)

DOC policy 1.3.C.1 – [Living Guide](#)

DOC policy 1.3.D.1 – [Disciplinary Housing](#)

DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)

DOC policy 1.4.B.5 -- [Withholding Good Time Pursuant to SDCL 24-2-18](#)

## VI. Revision Index:

**March 2006:** **Added** language on time requirement upon completion of Special Security Investigation in Reporting Violations of Prohibited Acts section. **Added** B.1. to Appeal Rights section. **Added** provision for UDC to reduce a category 5 Prohibited Act to a category 4. **Changed** to allow inmates a copy of a related informational report under certain situations. **Changed** Central Records computer

file to Mainframe computer file. **Clarified** that DOC staff and contractual staff will normally not attend the DHO hearing. **Clarified** that an inmate under investigation for possible criminal activity will still be advised of his/her right to remain silent when served with a copy of the disciplinary report. **Added** language on maintenance of records on expunged disciplinary action and maintenance of disciplinary reports/findings that an inmate did not commit any Prohibited Act. **Deleted** reference to Use Immunity. **Added** reference to DOC policy 1.3.C.1, 1.3.D.1 and 1.5.D.1 and SDCL § 24-2-9, 24-15A-4 and 24-5-1. **Added** a definition of Working Day. **Revised** information on confidential informants. **Revised** the policy statement. **Revised** the definitions of Disciplinary Segregation and Disciplinary Report. **Clarified** that an inmate can only call inmate-witnesses before the DHO. **Added** visitation limits for inmates on Administrative Detention. **Added** clarification on an inmate's right to remain silent.

**July 2007:** **Revised** the definitions of Unit Disciplinary Committee, DHO and Disciplinary Segregation. **Revised** the criteria for placing an inmate on administrative detention. **Added** specific language for inmates to receive credit for time served on administrative detention. **Added** language to allow the UDC to change a major Prohibited Act to another Prohibited Act within the same category. **Added** attachments 11 and 12.

**Revised** the section on Mentally Ill/Developmentally Disabled Inmates. **Revised** the disciplinary record keeping process to note that the Citrix disciplinary database is used now instead of the mainframe computer (QD screen). **Revised** attachment 4.

**June 2008:** **Added** reference to SDCL 24-15A-5. **Added** language under the Appeals Section explaining that if an inmate admits to the Prohibited Act and accepts the sanction that they waive their right to appeal. **Changed** "Shift Supervisor" to "Officer in Charge (OIC)" language throughout the policy. **Revised** language regarding inmates with a mental illness and/or developmental disability to use People First Language. **Revised** language throughout policy and attachments when appropriate to read "appeal rights" vs "their right to appeal". **Deleted subsection** (A of Appeal Rights section) stating "An inmate can appeal the decision, and/or the sanction imposed to the Warden pursuant to SDCL §24-2-17. **Deleted** the 30-day time frame notation on Attachment 3. **Added** language to Attachment 6 explaining that an inmate has a right to present their case to an "impartial" DHO. **Deleted** "at the UDC hearing" on # 6 of Attachment 6 regarding an inmate who admits to committing the Prohibited Act(s) and accepts the sanction(s). **Revised** language in Attachment 6 that if the inmate admits to committing the Prohibited Act and accepts the imposed sanction that the inmate waives their appeal rights and their sanction will be imposed as soon as possible. **Revised** the inmate acknowledgement statement on Attachment 6 to include him/her admitting to the Prohibited Act(s) and accepting the sanction(s) (as listed below acknowledgement statement) and waive their rights to appeal the Prohibited Act(s) and imposed sanction(s). **Added** header, footers and hyperlinks (to include updated formatting to attachment pages) to Attachments 1-12. **Clarified** the titles for Attachments 1-12 to ensure the titles of the attachments in the policy and on the attachments are the same as found on the WAN.

**June 2009:** **Replaced** "will" with "may" in ss (D), **revised** ss (D) into new ss (D1), **added** reference of not be given credit for time served pending hearing, unless time has expired, **deleted** Administrative Segregation within ss (D1) and **deleted** former ss (E) all within Placing inmates on Administrative Detention. **Revised** formatting of policy to be in accordance with DOC policy 1.1. A.2. **Revised** layout of section V. **Revised** title of DOC policy 1.5.D.1 throughout policy. **Added** hyperlinks throughout policy. **Added** reference to the 6-month period starting over and **updated** Attachment 1. **Revised** title of "Disciplinary Informational Report" to "Informational Report", **deleted** "Inmate" from the watermark and **added** "if applicable to an inmate" when referencing copy provided to inmate and placed in inmates file all within Attachment 2. **Revised** watermark for Attachments 2, 3, 4, 6, 7, 9 and 10.

**June 2010:** **Revised** formatting of Section I.

**June 2011:** **Added** "an inmate is found guilty of committing or admits to committing" to Section 1 C. **Added** "involvement in or is suspected of committing" to Section 3. A. 1. **Deleted** "causes a delay or" and **Replaced** with "is pending" **Added** "or there is a delay" to Section 4 A. **Added** "the staff member assigned to review the report/incident cannot be directly involved in the incident." to Section 4. B. **Added** "include clarifications obtained during the review" to Section 4. B. 4. **Deleted** "Except for Prohibited Acts considered major violations" **Added** "and the report does not involve a major rule violation" to Section 4. B. 5. **Deleted** "or witness" **Added** "or witness who submitted an Information Report" from Section 5. A. 1. a. **Added** "thereby waiving their rights to be present or if they notify the UDC in advance they are waiving their right to appear. Staff will document an inmate's decision not to appear and include any written documentation provided by the

inmate stating they refuse to appear” to Section 5. B. **Added** C. “If an inmate exhibits unacceptable behavior, refuses to cooperate or refuses to participate in a reasonable manner, the hearing may be delayed or the UDC shall document the inmate’s behavior and proceed with the hearing without the inmate being present” to Section 5. **Added** “temporarily” to Section 5. D. 5.b. **Renumbered** 6, 7,8 in Section 5 D. **Deleted** “to staff who normally works in the same building the inmate is housed in” from Section 5 E. 5. **Added** “The staff representative should be trained in and familiar with the facility rules, disciplinary procedures and due process requirements”. to Section 6. A.1. **Added** “by the UDC” to Section 6 A. 2. **Deleted** “if the inmate desires” **Deleted** “assisting” **Replaced** with “communicating with” **Deleted** “information” **Deleted** “currently” from Section 6 B. **Deleted** “in advance and” **Replaced** with “at the conclusion of the UDC hearing. The inmate must state the relevancy of any testimony provided by the witnesses regarding the incident.” to Section 6. B. 1.a. **Deleted** “must be” **Replaced** with “who are” **Deleted** “and arrangements for his/her attendance” **Replaced** with “at the time of the DHO hearing will be called upon by the DHO to provide testimony” **Deleted** “will be made by” **Added** “may assist in arranging for the inmate-witnesses attendance at the hearing or obtaining written statement(s) from those inmates who were named but are unavailable to attend.” to Section 6. B. 1. d. **Deleted** “wants to call inmate witnesses” **Replaced** with “has submitted a list” and “following the UDC hearing”. **Added** “inmate-witness” **Deleted** “The inmate wants asked of the inmate witnesses to the DHO prior to the hearing and **Replaced** with “to the DHO prior to the start of the hearing” to Section 6. B. 1.e. **Added** f. “inmates may not cross-examine inmate-witnesses. The DHO or staff representative may question inmate-witnesses. to Section 6. B. 1. **Added** g. “The staff representative or DHO shall present the list of questions submitted by the inmate to the inmate-witness(es).” to Section 6. B. 1. **Deleted** “may” **Replaced** with “will” **Added** “Statements should be signed and dated by the inmate-witness.” to Section 6. B. 2. **Added** 5. “Inmate witnesses may decline to testify or to answer questions directed to them by the DHO, staff representative or inmate” to Section 6 B. **Added** “typically” **Deleted** “unless he/she has been excused or” in Section 6. C.1. **Added** “before the hearing can proceed outside the presence of the inmate’s staff representative.” to Section 6. C. 2. **Deleted** “requested” “where appropriate” from Section 6. D. **Added** “if requested by the staff representative (See Section 7. E.2) to Section 6. E. **Added** “and inmate-witness statements” to Section 7 B. 5. **Added** “or if the evidence was provided by a confidential informant” to Section 7 B. 7 c. **Added** “or waives their right to appear” in Section 7 C. 7 a. **Deleted** “regarding the disciplinary report and **Replaced** with “make a statement, present documentary evidence and call witnesses.” to Section 7. C. 1. **Added** 1. “Staff will document an inmate’s refusal to appear or decision to waive their appearance and include any written documentation provided by the inmate stating their refusal or waiver to attend the hearing. **Added** “or continue the hearing until a later date” **Deleted** “or continue the hearing until a later date whenever further investigation or more evidence is needed.” to Section 7 E. 2. **Added** “Reasons for postponement or continuance include but are not limited to:” to Section 7. E. 2. **Added** a. “The inmate’s continued preparation of a defense.” to Section 7 E. 2. **Added** b. “Illness of unavailability of the inmate of the staff representative.” to Section 7 E. 2. **Added** c. “Further investigation of factual matters relevant to the hearing or;” to Section 7 E. 2. **Added** d. “Pending a decision to pursue criminal prosecution.” to Section 7 E. 2. **Added** “and should be proportional to the offense committed.” to Section 8. D.1. **Added** “alleged” **Deleted** “involves” **Replaced** with “may lead to” **Added** (Typically such a criminal investigation would involve the commission of a Category 5 Prohibited Act.” to Section 10. A.2. **Added** 5. “If a criminal case is not pursued, the Disciplinary Report may be referred back to the OIC or his/her designee for possible referral to the UDC. A decision not to pursue a criminal case, or the dismissal of a criminal investigation by an outside agency does not support a finding the inmate did not commit a Prohibited Act.” to Section 10. A. **Added** “and/or can identify the inmate(s) who may have committed the Prohibited Act(s).” to Section 11 A. **Deleted** “must be” and **Replaced** with “may be” **Deleted** “and protected for the individual’s personal safety” and **Replaced** with “as deemed appropriate by DOC staff.” from Section 11 A. 2. **Added** “of the confidential informant” **Deleted** “determined” and **Replaced** with “established and supported” to Section 11 A. 3. a. **Added** “the informant has provided to DOC staff.” to Section 11 A. 3. b.3. **Deleted** “a history of reliability” and **Replaced** with “those listed above”. **Added** within the written statement” to Section 11. A. 3. c. **Deleted** “opened up or is part of an investigation” **Replaced** with “provided staff with information pertaining to the commission of a Prohibited Act” **Added** “Supporting the inmate committed the Prohibited Act.” to Section 11 A. 6. **Deleted** “relied upon” and **Replaced** with “used in the investigation” to Section 11. B. 4. **Deleted** “used as evidence” in Section 11. C. **Deleted** “has” **Replaced** with “may have” **Deleted** “professional” **Replaced** with “services” in Section 12. A.

**Deleted** "Human Services" and **Replaced** with "Social Services" **Deleted** "mental" and **Replaced** with "behavioral" in Section 12 B. **Added** "has committed a Prohibited Act and is determined to be" **Deleted** "or not responsible for his/her conduct and **Replaced** with "at the time they are said to have committed the Prohibited Act." to Section 12 C. **Deleted** "disease of defect" and **Replaced** with "deficiency (lack of I.Q., mental deterioration, defect, illness of psychosis)" to Section 12 C.1. **Added** "or impaired in such a manner they are unable to make important decisions relevant to the disciplinary hearing process." to Section 12 C. 2. **Added** 3. "Mental Health Services staff, or other staff qualified to assess the inmate may assist DOC staff in determining if an inmate is incompetent or should not be held responsible for their actions at the time of the conduct." to Section 12 C.

**July 2012:** **Deleted** definition of "Working Day" **Deleted** "compromise the safety, security or disciplined operation of the institution" and **Replaced** with "pose a threat to life, property, self, staff, other inmates or to the security or disciplined operation of the institution" in Section 3 A. 3. **Deleted** "working day" in Section 3 B. 1. **Deleted** "for an investigation" and **Deleted** "and the period of time will not exceed the time reasonably needed to complete the investigation" and **Replaced** with "and no longer than necessary" in Section 3 C. **Added** "substantiated reason" to Section 4 A. **Added** e. to Section 4 A. 1. **Deleted** "receiving the OIC's review" and **Replaced** with "the date the inmate was served the disciplinary report" and **Deleted** "two (2) working days and **Replaced** with "four (4) days" in Section 5 A. **Added** "as deemed necessary for the best interests of discipline, justice, rehabilitation and the protection of the inmate and others" in Section 8 B. 2. **Deleted** "two (2) working days and **Replaced** with "four (4) days" in Section 8 C. 1.

**February 2013:** **Deleted** "Prohibited Act" and **Replaced** with "Offense in Custody" throughout entire policy. **Deleted** "Disciplinary Report" and **Replaced** with "Incident Report" throughout the entire policy. **Added** references to COMS throughout the policy. **Deleted** "(or a combination of a major and minor prohibited acts) in definition of DHO. **Deleted** definition of "Disciplinary Report". **Deleted** definition of "Working Day".

**Deleted** "five categories ranging from minor offenses in categories 1, 2, and 3 to major offenses contained in categories 4 and 5. The higher the category, the more serious the offense" and **Replaced** with "minor and major offenses. Major offenses are divided into three categories which are low, moderate and high" in Section 1 B. **Deleted** "three violations of any minor Prohibited Act by an inmate within a 6 month period, the Warden or designee may declare that all future violations of any minor prohibited act an inmate is found guilty of committing or admits to committing constitutes a major violation" and **Replaced** with "five violations of any minor offense by an inmate within a three month period, all future violations may constitute a major violation" in Section 1 C. **Deleted** D. "The UDC will give prior notice to the inmate concerned that future violations of the minor prohibited acts will constitute a major violation" in Section 1. **Deleted** "four (4) working days" and **Replaced** with six (6) working days" in Section 3 B. **Deleted** 5. "Inmates on AD are not allowed visits from friends or family members" in Section 3 B. **Added** "typically" to Section 3 D. 1. **Deleted** "and a criminal investigation is pending" in Section 4 A. **Deleted** "The staff member will forward the findings to the inmate's Unit Manager at the conclusion of the investigation" and **Replaced** with "The staff member serving the report will enter their findings into COMS" in Section 4 B. 5. **Deleted** "four (4) days and **Replaced** with "seven (7) days" in Section 5 A. **Deleted** "The Chairman will complete all areas of the Disciplinary Report that pertain to the UDC action taken" in Section 5 D. 7. **Deleted** "a copy of the Disciplinary Report, which includes the UDC action taken and **Replaced** with "a summary of the findings and UDC action taken" in Section 5 F. **Deleted** "a category 4 or 5 prohibited act to a minor offense or may reduce a category 5 prohibited act to a category 4 prohibited act" and **Replaced** with "any major offense in custody to a lower category of offense in custody, major or minor" in Section 7 3. c. and d. **Deleted** "statement" and **Replaced** with "hearing summary" in Section 7 D. **Deleted** "four (4) days" and **Replaced** with five (5) days in Section 8 C. **Deleted** "(Typically such a criminal investigation would involve the commission of a category 5 prohibited act" in Section 10. **Deleted** "With the exception of confidential informant information, the UDC or the DHO will forward Disciplinary Reports and records to the unit team, who will ensure the information is placed in the appropriate inmate's institutional file." in Section 13 A. **Deleted** 2. "Documentation on expunged disciplinary action/disciplinary reports in which an inmate was not found to have committed any Prohibited Act will be maintained by the DHO for a minimum of three (3) years." in Section 13 A. **Deleted** 3. "Computerized records on expunged disciplinary action will be maintained in the Citrix disciplinary database unless such records are ordered sealed by a court." in Section 13 A. **Deleted** D. "After the UDC hearing, the second page of all Disciplinary Reports will be sent to a designated staff person of the applicable facility" in Section 13. **Deleted**

E. "The designated staff person will maintain Disciplinary Reports in chronological order for a minimum of three (3) years" in Section 13.

**August 2014:** Numerous revisions to the policy to improve readability.

**October 2018:** Numerous revisions.

*Denny Kaemingk (original signature on file)*

Denny Kaemingk, Secretary of Corrections

*12/03/2018*

Date



## **Attachment 2: Incident Report**

The *Incident Report* is available within COMS.

### Attachment 3: Administrative Detention Order

The *Administrative Detention Order* is available within COMS.

	DEPARTMENT OF CORRECTIONS ADMINISTRATION 3200 East Highway 34 c/o 500 East Capitol Avenue Pierre, SD 57501-5070 Phone: (605) 773-3478; Fax: (605) 773-3194
	<b>ADMINISTRATIVE DETENTION ORDER</b>
Facility: _____	
To: <u>Special Housing Unit Officer/ UM Administrative Detention</u>	
From: _____ (Staff Name and Title)	
Re: Placement of Inmate: _____	
DOC #: _____ In Administrative Detention	
From: _____ Unit to: _____	
<b>Note:</b> Is the inmate currently on the Awareness List?	
AIMS Code: _____ Current Custody Level: _____ PREA Code: _____	
Separation Requirements: _____ If yes, from whom? _____	
<input type="checkbox"/> Is pending an investigation and/or hearing for a violation of a Prohibited Act(s) or is pending and investigation on a criminal act.	
<input type="checkbox"/> Is to be admitted because the inmate has requested admission for protection or a threat exists to the inmate's safety as perceived by staff.	
<input type="checkbox"/> Is pending transfer or classification.	
It is the officer's decision based on the available information and/or circumstances that the above named inmate continued presence in the general population poses a threat to life, property, self, staff, other inmates, or to the security or orderly running of the institution because: _____	
Therefore, the above named inmate is to be place on Administrative Detention until further notice. The inmate received a copy of this order on: Date: _____ Time: _____	
<u>X</u> _____ Staff Witness: Printed Name / Signature	_____ Date
Original: To the Head of Security Copy 1: To the Inmate's Unit Manger. (This copy is attached to the disciplinary paperwork at the UDC before being forwarded.) Copy 2: To the SHU officer/ UM Administrative Detention Copy 3: To the Inmate	



## Attachment 5: Disciplinary – Your Rights

The *Disciplinary – Your Rights* is available within COMS.

 <p>DEPARTMENT OF CORRECTIONS ADMINISTRATION 3200 East Highway 34 c/o 500 East Capitol Avenue Pierre, SD 57501-5070 Phone: (605) 773-3478; Fax: (605) 773-3194</p> <p><b>DISCIPLINARY – YOUR RIGHTS</b> Your Rights When Appearing Before the Disciplinary Hearing Officer</p> <p>Inmate Name: _____ DOC Number: _____ Date: _____</p> <p>These rights apply when you have been charged with committing a Major Prohibited Act(s), which may result in your placement on Disciplinary Segregation and/or the loss of Good Time (where applicable).</p> <ol style="list-style-type: none"><li>1. You must have received a copy of the Disciplinary Report as submitted by the reporting employee</li><li>2. A hearing before the Disciplinary Hearing Officer on this matter may not be scheduled until a minimum of twenty-four (24) hours have passed after your Unit Disciplinary Committee (UDC) hearing. However, you may request an earlier hearing by submitting a written request to the Disciplinary Hearing Officer.</li><li>3. You have the right to present your case to an impartial Disciplinary Hearing Officer who shall not have personal knowledge of material facts related to the alleged violation prior to the hearing. You may also submit a written statement or present documentary evidence.</li><li>4. You have the right to a staff representative to assist you with matters that you cannot do yourself in preparing for the hearing before the Disciplinary Hearing Officer.</li><li>5. At the hearing before the Disciplinary Hearing Officer, you have the right to call a reasonable number of inmate witnesses who are reasonably available and who were present at the scene of the incident or would testify as to mistaken identity (alibi witnesses). Any questions you have of these inmate witnesses must be asked through your staff representative or through the Disciplinary Hearing Officer. You must submit these questions in writing to the Disciplinary Hearing Officer prior to the start of the hearing. The Disciplinary Hearing Officer may accept written statements from unavailable inmate witnesses.</li><li>6. Should you desire to admit to committing the Prohibited Act(s) and accept the sanction(s) you waive your appeal rights and the penalty described below will be imposed upon you as soon as possible.</li></ol>	<p>I Personally Advised The Inmate of The Above Rights.</p> <p>X _____ Staff Signature/Print Name Date</p> <p>Original: Send the entire form to Central Records if the inmate waives his/her rights. Send the top section ONLY to the Disciplinary Hearing Officer if the inmate does not waive his/her rights.</p> <p>Copy: To the Inmate</p> <hr/> <p>I admit to committing the Prohibited Act(s) and accept the sanction(s) listed below and waive my rights to appeal the Prohibited Acts and the imposed sanction(s)</p> <p>X _____ Inmate Signature/ Print Name Date</p> <p>X _____ Staff Signature/ Print Name Date</p>
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## Attachment 6: Disciplinary – Request for Witness

The **Disciplinary - Request for Witness** sample form is located on the state's WAN and the actual copy for use is in carbon format.

A copy may be printed using **Microsoft Word 97** as follows:

1. Click [here](#) to access the **Disciplinary – Request for Witness** by:
  - a. Placing mouse on the word “here” above
  - b. Press and hold the “Ctrl” key on the keyboard
  - c. Click the left button of mouse.
2. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select **Disciplinary – Request for Witness**.

The gray areas indicate the information that is to be entered.

South Dakota Department of Corrections Policy Distribution: Public		Attachment: Disciplinary – Request for Witness Please refer to DOC policy 1.0.3.2 Inmate Discipline System	
<b>DISCIPLINARY - REQUEST FOR WITNESS</b>			
Inmate:	<input type="text"/>	<input type="text"/>	<input type="text"/>
	(Last Name)	(First Name)	(Number)
Having been advised of your rights, you are hereby informed that you will be scheduled for an Institutional Disciplinary Hearing a minimum of twenty-four (24) hours after the conclusion of the Unit Disciplinary Hearing.			
Hearing Date:	<input type="text"/>		
I request that the following inmate witness(es) be called to testify at the Institutional Disciplinary Hearing:			
Name of Inmate Witness:	<input type="text"/>	Number:	<input type="text"/>
This inmate witness will testify to the following: <input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
<input type="text"/>			
Use additional paper if necessary.			
I (do) (do not) wish to have a staff representative. If so, the representative's name is: <input type="text"/>			
<input type="text"/>		<input type="text"/>	
(Inmate Signature)		Date	
Instructions to the Inmate: Fill this form out at the conclusion of the UDC and give it to your Unit Staff immediately. Even if no witnesses are requested at the hearing before the Disciplinary Hearing Officer, fill this form out and note that "No witnesses requested" or some similar phrase in the applicable blank. If you don't return this form then you forfeit your right to witnesses.			
Original: The UDC will forward to the Disciplinary Officer (To Central Records at the conclusion of the disciplinary process).			
Copy 1: To the Inmate			
Revised: 6/25/2009		Page 1 of 1	

## Attachment 7: Disciplinary - Duties of Staff Representative

The *Disciplinary – Duties of Staff Representative* is available within COMS.

South Dakota Department of Corrections Policy Distribution: Public	Attachment: Disciplinary – Duties of Staff Representative. Please refer to DOC policy 1.3.C.2 Inmate Discipline System
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**DISCIPLINARY DUTIES OF STAFF REPRESENTATIVE**

1. You are to assist the inmate with matters the inmate cannot do himself/herself, i.e. communicating with inmate-witnesses when the inmate-witness is in a different housing facility, reading/explaining written documents to an illiterate inmate, etc.
2. If the inmate cannot speak to inmate-witnesses himself/herself prior to the Disciplinary Hearing, you are to speak to those inmate-witnesses who might furnish evidence on behalf of the inmate. You may arrange for the inmate-witness to attend the hearing, question approved inmate-witnesses who have been called before the Disciplinary Hearing Officer, or obtain a written statement from those witnesses who are unavailable to attend the hearing. You may be present during the testimony of any inmate-witness who has requested to testify outside of the presence of the inmate.
3. You should become familiar with all reports relative to the charge(s) against the inmate. Confidential or sensitive security information must be protected and may not be shared with anyone (including inmates, staff, visitors, attorneys, etc.). Any request for confidential information should be directed to the Disciplinary Hearing Officer.
4. You can present information which may assist the inmate and/or which may obtain a lesser sanction for the inmate. If you believe you need additional time to pursue any of the functions, you may request a delay in the hearing from the Disciplinary Hearing Officer, but ordinarily only after you have the concurrence of the inmate to do this.
5. You are to help the inmate understand the charges and the potential consequences.
6. You must be present at the Institutional Disciplinary Hearing, unless you have been excused or an alternate means has been approved for your participation at the hearing; i.e. appear by teleconference. Your absence or an alternate means of appearance must be agreed to by both the Disciplinary Hearing Officer and the inmate.
7. You should be familiar with rules and Prohibited Acts listed in the *Inmate Living Guide*, disciplinary procedures and due process requirements and explain these to the inmate in advance and, if necessary during the hearing to assist the inmate in understanding procedural points.
8. You should not be present during deliberations by the Disciplinary Officer. An exception can be made if you have read confidential information and wish to discuss this with the Disciplinary Officer, outside of the inmate's presence. In this case, you will explain to the inmate, in general terms, what you are doing and you should leave the room as soon as that function is over.
9. You should assist the inmate in filing an appeal if asked to do so and you believe the inmate is not capable of completing and filing the appeal himself/herself, i.e. an illiterate inmate, special needs inmate, an inmate who does not speak English very well, etc.
10. If it appears an inmate may have a mental illness or developmental disability or should not be responsible for their conduct due to a severe mental deficiency (lack of I.Q., mental deterioration, defect, illness or psychosis) you should contact the DHO.

I have read the DUTIES OF STAFF REPRESENTATIVES and  Agree  Do Not Agree  
to serve as staff representative for the below listed inmate; in the inmate's appearance before the  
Disciplinary Officer.

Inmate: \_\_\_\_\_ DOC #: \_\_\_\_\_

Staff Signature: **X** \_\_\_\_\_ Date: \_\_\_\_\_

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## **Attachment 8: Disciplinary Hearing Findings**

The *Disciplinary Hearing Findings* is available within COMS.

## Attachment 9: Disciplinary – Loss of Good Time

The **Disciplinary – Loss of Good Time** sample form is located on the state's WAN and the actual copy for use is in carbon format.

A sample may be printed using **Microsoft Word 97** as follows:

1. Click [here](#) to access the **Disciplinary – Loss of Good Time** by:
  - a. Placing mouse on the word "here" above
  - b. Press and hold the "Ctrl" key on the keyboard
  - c. Click the left button of mouse.
2. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select **Disciplinary – Loss of Good Time**.

The gray areas indicate the information that is to be entered.

South Dakota Department of Corrections Policy Distribution: Public	Attachment: Disciplinary-Loss of Good Time Please refer to DOC policy 1.3.C.2 Inmate Discipline System
<b>DISCIPLINARY – LOSS OF GOOD TIME</b>	
Warden's Authorization For Loss of Good Time	
To Inmate: [ ]	
Inmate Number: [ ]	
You have been found to have committed Major Prohibited Acts: [ ]	
In connection with the events occurring on or about [ ] . I hereby authorize the Disciplinary Hearing	
Officer to withhold [ ] days of good time pursuant to SDCL § 24-5-1.	
Warden	Date
Disciplinary Hearing Officer: [ ]	
Original: To Central Records	
Copy 1: To the Institutional File	
Copy 2: To the Inmate	
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