

Corrections Management (Detainee Discipline – Laying a Charge) Operating Procedure 2022

Notifiable instrument NI2022-36

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Detainee Discipline – Laying a Charge) Operating Procedure 2022*.

2 Commencement

This instrument commences on the day after its notification day.

3 Operating Procedure

I make this operating procedure to facilitate the effective and efficient management of correctional services.

4 Revocation

This operating procedure revokes the *Corrections Management (Detainee Disciplinary) Procedure 2012* [NI2012-628].

Ray Johnson APM
Commissioner
ACT Corrective Services
28 January 2022



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

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 *Breach of Discipline* 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 laying a charge must not be the same officer as the Presiding Officer for the hearing.

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 a *D11.F1: Breach of Discipline* about the alleged disciplinary breach and provide it to the first Presiding Officer.
- 1.2. Correctional officers must complete a *D.11.F1: Breach of Discipline* form 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 a D11.F1: Breach of Discipline form 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 then 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 D11.F1: Breach of Discipline form 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 clear and separate offences.

- 1.5. Officers must:

- a) ensure that all the facts are correctly recorded in the A2.F1: Incident Report
- b) ensure the facts are accurately described on the D11.F1: Breach of Discipline
- c) ensure that where a Use of Force has occurred, the officer/s also complete the D6.F1: Use of Force Report
- d) all witnessing Officers must complete A2.F1: Incident Report
- e) submit all forms to the first Presiding Officer (Area Manager) by the end of their shift, subject to section 1.2.

2. Breach of Discipline – First Presiding Officer

- 2.1. The first Presiding Officer must review the completed D11.F1: Breach of Discipline, D6.F1: Use of Force Report and A2.F1: Incident Report forms

- 2.2. 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.

- 2.3. The first Presiding Officer must direct the Investigating Officer to:

- a) save a copy of all the relevant forms to the detainee's electronic record
- b) complete the Discipline Log.

- 2.4. Where a breach of discipline incident is referred to the police, the first Presiding Officer must raise a D11.F8: Notice of Incident Referral to advise the detainee.

- 2.5. Where the incident has not been previously referred to the police and the first Presiding Officer decides to make a referral to the police, the referral must be in writing and accompanied by a report by the first Presiding Officer.

- 2.6. 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.
- 2.7. 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 (ACT) 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.
- 2.8. 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. Investigation – Investigating Officer

- 3.1. 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) e-mail all completed D11.F1: Breach of Discipline, D6.F1: Use of Force Report and A2.F1: Incident Report forms to the Investigating Officer on AMCdiscipline@act.gov.au
 - b) provide any other relevant information they wish to be taken into account to the Investigating Officer
- 3.2. 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
 - c) provide all relevant evidence to the first Presiding Officer.
- 3.3. 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.

4. Laying a Charge – first Presiding Officer

- 4.1. Where the first Presiding Officer determines that laying a charge is necessary, the first Presiding Officer must generate and issue the D11.F2: Charge Notice and D11.F7: Detainee Statement form 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.
- 4.2. 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.

- 4.3. 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. proposed penalty
 - d. discipline charge process, including:
 - i. the option to elect to have the charge dealt with by consent in writing by admitting the disciplinary breach charged and acceptance of the proposed disciplinary action 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 with consent of the second Presiding Officer.
- 4.4. The first Presiding Officer must ensure the detainee is made aware of the support networks available to the detainee (ALO, translator, disability support worker, etc.).
- 4.5. 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.
- 4.6. If the detainee does not admit to the charge and/or does not accept the proposed penalty, the Investigating Officer must:
- a) record that the detainee is contesting the charge in the Discipline Log
 - b) proceed with scheduling a disciplinary hearing on the date indicated in the D11.F2 Charge Notice
 - c) identify a second Presiding Officer to preside at the hearing.
- 4.7. 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. 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
<i>Corrections Management Regulation 2010 (ACT)</i>	
Section	Breach
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
- D.11.F1: Breach of Discipline
- D11.F2: Charge Notice
- D11.F3: Investigating Officer's Report
- D11.F4: Hearing Report
- D11.F6: Hearing Review
- D11.F7: Detainee Statement
- D11.F8: Notice of Incident Referral
- A2.F1: Incident Report
- D6.F1: Use of Force Report
- Management of Segregation and Separate Confinement Policy
- Segregation Operating Procedure

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ACT Corrective Services
28 January 2022

Document details

Criteria	Details
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Document owner/approver:	Deputy 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 issue	S Leedham