

IC 11-11-5

Chapter 5. Conduct and Discipline

IC 11-11-5-1

Application of chapter

Sec. 1. (a) This chapter applies to persons:

- (1) placed in a community corrections program; or
- (2) assigned to a community transition program.

(b) This chapter does not apply to persons released on parole.

As added by Acts 1979, P.L.120, SEC.4. Amended by P.L.105-2010, SEC.1.

IC 11-11-5-2

Rules; adoption

Sec. 2. The department shall adopt rules for the maintenance of order and discipline among committed persons. These rules must describe the conduct for which disciplinary action may be imposed, the type of disciplinary action that may be taken, and the disciplinary procedure to be followed. These rules shall be made available to all committed persons. The disciplinary action imposed must be proportionate to the seriousness of the violation. For purposes of IC 4-22-2, the term "rule" as used in this section relates solely to internal policy and procedure not having the force of law.

As added by Acts 1979, P.L.120, SEC.4.

IC 11-11-5-3

Disciplinary actions; permissible

Sec. 3. The department may impose any of the following as disciplinary action:

- (1) A report, which may be made part of the person's record.
- (2) Extra work.
- (3) Loss or limitation of privileges.
- (4) Change in work assignment.
- (5) Restitution.
- (6) Change in security classification.
- (7) Transfer to another facility or program.
- (8) Segregation from the general population of the facility or program for a fixed period of time.
- (9) Reassignment to a lower credit time class under IC 35-50-6-4.
- (10) Deprivation of earned credit time under IC 35-50-6-5.

As added by Acts 1979, P.L.120, SEC.4.

IC 11-11-5-4

Disciplinary actions; not permissible

Sec. 4. The department may not impose the following as disciplinary action:

- (1) Corporal punishment.
- (2) Confinement without an opportunity for at least one (1) hour of exercise five (5) days each week outside of immediate living

quarters, unless the department finds and documents that this opportunity will jeopardize the physical safety of the offender, or others, or the security of the facility or program.

(3) A substantial change in heating, lighting, or ventilation.

(4) Restrictions on clothing, bedding, mail, visitation, reading and writing materials, or the use of hygienic facilities, except for abuse of these.

(5) Restrictions on:

(A) medical and dental care;

(B) access to courts, unless a committed person has brought a claim in a state or an administrative court, that the court determines to be frivolous, unreasonable, or groundless;

(C) access to legal counsel, government officials, or grievance proceedings; and

(D) access to personal legal papers and legal research materials.

(6) A deviation from the diet provided to other committed persons in that facility or program.

(7) Extra work exceeding a total of twenty (20) hours for one (1) rule violation, or exceeding four (4) hours in any twenty-four (24) hour period.

As added by Acts 1979, P.L.120, SEC.4. Amended by P.L.146-1995, SEC.1; P.L.43-2002, SEC.2.

IC 11-11-5-5

Disciplinary actions; hearing; advice and representation; timeliness of charge; witnesses; evidence; use of statements in criminal proceedings

Sec. 5. (a) Before imposing any disciplinary action, the department shall afford the person charged with misconduct a hearing to determine his guilt or innocence and, if guilty, the appropriate action. The charged person may waive his right to a hearing. Also, before a charge is made, that person and a departmental employee may agree to the types of disciplinary action enumerated in sections 3(2) and 3(3) of this chapter if no record of the conduct or disciplinary action is placed in the person's file. In connection with the hearing, the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct, and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in his own behalf;

(5) call witnesses and present evidence unless the person conducting the hearing finds that to do so would subject a witness to a substantial risk of harm, or would result in the admission of irrelevant or repetitive testimony;

(6) confront and cross-examine witnesses, unless the person conducting the hearing finds:

- (A) that to do so would subject a witness to a substantial risk of harm;
 - (B) that to do so would result in the admission of irrelevant or repetitive testimony; or
 - (C) based upon good cause stated on the record, that a witness is unavailable to attend the hearing;
- (7) have advice and representation by a lay advocate of his choice, if that lay advocate is available in the institution at the time of the hearing, in those hearings based upon a charge of institutional misconduct when the department determines he lacks the competency to understand the issues involved or to participate in the hearing, or when the punishment may be that specified in:
- (A) section 3(5) of this chapter if the restitution is more than two hundred dollars (\$200);
 - (B) section 3(8) of this chapter if the segregation is for more than fifteen (15) days; or
 - (C) section 3(6), 3(9), or 3(10) of this chapter;
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if his testimony is used in any criminal proceeding;
- (10) have his record expunged of any reference to the charge if he is found not guilty or if a finding of guilt is later overturned; and
- (11) be reimbursed for state wages lost due to action taken pending the hearing if he is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(b) The department may not charge a committed person with a disciplinary rule violation unless it does so within ten (10) days of the date it becomes aware of that person's alleged involvement in misconduct.

(c) Consistent with the objective of adequate and effective representation and the integrity of the hearing system the department may adopt regulations which may limit the pool of persons eligible to advise and represent accused persons to inmates in the general population. In any event, facility or program employees and inmates may not directly or indirectly charge for advice or representation.

(d) Any statement made by an accused person to departmental employees during the course of an investigation or hearing is not admissible against him in any criminal proceeding arising out of the same incident unless the accused:

- (1) was informed:
 - (i) of his right to remain silent;
 - (ii) that anything he says can and will be used against him in court;
 - (iii) of his right to have an attorney present during any questioning;

- (iv) his right to have an attorney appointed for him if he is unable to afford an attorney; and
 - (v) that if he decides to answer any questions, he may stop answering at any time during the interrogation; and
- (2) voluntarily, knowingly, and intelligently waived his rights under subdivision (1) to remain silent or to have an attorney present, or both.

As added by Acts 1979, P.L.120, SEC.4. Amended by Acts 1980, P.L.87, SEC.7; P.L.99-1986, SEC.3; P.L.135-1993, SEC.4.

IC 11-11-5-6

Segregation; review of status

Sec. 6. Disciplinary action may not be taken against a person before a determination of guilt. However, a person charged with misconduct may be confined or separated from the general population of the facility or program for a reasonable period of time if his continued presence in the general population poses a serious threat to himself, others, property, or the security of the facility or program. The department must review the status of that person at least once every five (5) days to determine if the reason for segregation still exists. Any time spent confined or separated from the general population before a determination of guilt must be credited toward any period of disciplinary segregation imposed.

As added by Acts 1979, P.L.120, SEC.4.

IC 11-11-5-7

Need for and appropriateness of continued segregation; review

Sec. 7. (a) The need for and appropriateness of continued segregation of a person committed to the department under the laws of Indiana or another jurisdiction concerning custody of adults, and segregated from the general population upon a finding of misconduct, shall be reviewed by the department at least once every thirty (30) days.

(b) The need for and appropriateness of continued segregation of a person committed to the department under the laws of Indiana or another jurisdiction concerning custody of juveniles, and segregated from the general population upon a finding of misconduct, shall be reviewed by the department at least once every three (3) days.

As added by Acts 1979, P.L.120, SEC.4.

IC 11-11-5-8

Suspension of rights or procedures during emergency

Sec. 8. Any of the rights or procedures enumerated in this chapter may be suspended upon declaration by the official in charge of the facility or program that there exists an emergency situation threatening the general security of the facility or program. The rights or procedures again apply upon declaration by the official in charge of the facility or program that the emergency has been resolved.

As added by Acts 1979, P.L.120, SEC.4.