

APPENDIX

Note: DOC 303.01. All the disciplinary rules for inmates are found under this chapter or authority is delegated for the making of additional specified policies and procedures in specified areas in these chapters. See DOC 303.08 and 303.63. Differences among institutions make some differences in specific policies and procedures relating to conduct necessary. Delegating authority to permit these differences, limited though they are, is provided for under this chapter. Chapter DOC 303 sets forth the procedure for inmate discipline. It structures the exercise of discretion at various decision making stages in the disciplinary process, including the decision to issue a conduct report, the decision to classify an alleged violation as major or minor, and sentencing. Codifying the rules of discipline in a clear, specific way serves important objectives by itself.

An important element of fairness is that people must know the rules which they are expected to follow. Rules which are unnecessarily ambiguous or overly broad are unfair, and so are rules which are unwritten and not known by all inmates. If inmates are aware of the rules and what they mean, they are more likely to obey than if they are uncertain about them. When rules are vague, overbroad, or unwritten, the interpretation and enforcement of them may vary greatly from officer to officer. Thus, having specific rules increases fairness and equality of treatment.

Clarity also saves time and money. When there is unnecessary ambiguity, there is also unnecessary disagreement which takes staff time and, ultimately, the time of lawyers and courts. Clarity in the rules can prevent the expenditure of time and money in settling such disagreements.

The English language is not so precise that ambiguity can be done away with entirely. Nor is that necessarily desirable, since flexibility is an important tool in the effective administration of the correctional system. Without flexibility, there is undue reliance on formalism and rules are enforced in a mechanical way.

Discretion is thus very important in corrections. Formal discipline is not always the best way to induce future compliance with rules; special circumstances may dictate harshness or leniency; different individuals respond differently to the same types of discipline or other treatment. The disciplinary rules are not intended to eliminate discretion in handling disciplinary problems, nor to disparage the quality of decision-making under the past system of broader discretion. In fact, the rules take advantage of what has been learned by experience and use this experience to provide guidelines for the future exercise of discretion.

Professor Kenneth Culp Davis says that there are 3 ways a rule regulates discretion. These rules of discipline regulate discretion in all 3 ways. (1) A rule can *limit* discretion by providing an outer limit on acceptable decision-making. For example, this section states that discipline cannot be imposed except for a violation under this chapter. Limits can be very broad or very narrow. This particular example still leaves a large area for discretion: whether or not to report an offense and how serious a punishment to impose are left open by this section. (2) A rule can structure discretion by providing guidelines, goals, or factors to be considered, without dictating a result. Commonly, structured discretion would be combined with a broad limit on discretion, instead of with a narrow limit or no limit. An example of a rule which structures discretion is DOC 303.65 (1). Offenses which do not require a conduct report. That section lists factors to be considered in determining whether a violation should be reported without creating a formula which must be strictly followed. (3) A rule can *check* discretion by providing for review of a decision by a higher-ranking officer. Two examples are review of the conduct report by the security office to determine if it is appropriate, and appeal of an adjustment committee's decision to the superintendent. See DOC 303.67 and 303.78.

Having specific, written rules which deal with prison discipline thus has the advantages of stating clearly what conduct is prohibited, of eliminating unnecessary discretion, increasing equality of treatment, increasing fairness, and raising the probability that inmates will follow the rules. In addition, there are advantages to the formal rulemaking process: (1) Rules are made by top officers and administrators in consultation with line staff and others, rather than *ad hoc* by correctional officers. Thus, greater experience can be brought to bear on the decision-making. (2) Rules are consciously made and the advantages and disadvantages of various alternatives are consciously weighed. This is superior to following unquestioned tradition. (3) The rulemaking process results in public input. The "sunshine" effect results in the elimination of abuses and can also provide new perspectives on more subtle questions. Also, corrections officers are public servants and rulemaking, by exposing their decision-making process to the public, is more democratic than a system of following unwritten or at least unpublished traditional policies.