

HEALTH AND SOCIAL SERVICES

HSS 303

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(am) At one hearing, the maximum penalty possible for a single violation when a minor penalty is imposed is 30 days loss of specific privileges for the first offense, 60 days for the second offense, and permanently for the third, 30 days building confinement, 10 days room confinement, or 10 days extra duty without pay. For more than one violation, the total sentence may not exceed the sum of the maximum penalties for the separate violations. The adjustment committee or hearing officer need not assign separate penalties where there is more than one violation.

(b) Loss of earned good time may be imposed as a punishment only where the violation is regarded as especially serious because of its nature or the inmate's prior record—generally, only in cases where program segregation is also imposed. The number of days lost on one occasion may be based on the number of prior occasions on which the inmate lost good time and shall not exceed the following:

<u>Number of prior occasions</u>	<u>Maximum number of days lost</u>
None	5
One	10
2	15
3 or more	20

(c) Restitution may be imposed in addition to any other penalty.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.85 Recordkeeping. (1) Records of disciplinary infractions may be included in an inmate's case record only in the following situations:

(a) If the inmate was found not guilty by summary disposition procedure (See HSS 303.74); or

(b) If the inmate was found guilty by a hearing officer or an adjustment committee. Records must be *removed* if an appeal is successful (See HSS 303.78).

(2) Records of alleged disciplinary infractions which have been dismissed or in which the inmate was found not guilty may be kept for statistical purposes, but they may not be considered in making program assignment, transfer, or parole release decisions, nor may they be included in any inmate's case record.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

HSS 303.86 Evidence. (1) (a) "Evidence" is any statement or object which could be presented at a disciplinary hearing or in a court of law, whether or not it is admissible.

(b) Evidence is relevant if that evidence makes it appear more likely or less likely that the inmate committed the offense of which he or she is accused, for example: 1. An inmate is accused of threatening another inmate. Testimony that the accused and the other inmate had a loud argument the day before is relevant. It indicates a possible motive for a threat and makes it appear more likely that a threat occurred. 2. An officer testifies that the accused has lied to him or her on previous occasions. This is relevant if the testimony of the accused varies from the conduct report.

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(2) (a) An adjustment committee or a hearing officer may consider any relevant evidence, whether or not it would be admissible in a court of law and whether or not any violation of this chapter occurred in the process of gathering the evidence.

(b) An adjustment committee or a hearing officer may refuse to hear or admit relevant evidence for any of the following reasons:

1. The evidence is not reliable, for example: opinions which are not supported by factual observation; hearsay (statements made outside of the hearing); reputation of the witness;

2. The evidence, even if true, would be of marginal relevance, for example: evidence of prior acts by the accused or a witness, to show that he or she is repeating a pattern; or

3. The evidence is merely cumulative of evidence already received at the hearing and is no more reliable than the already admitted evidence, for example: testimony of other inmates corroborating the accused's story, when corroboration has already occurred.

(3) If a witness is unavailable to testify, a written statement, a transcript of an oral statement, or a tape-recorded statement may be considered. Unavailability means death, transfer, release, hospitalization, or escape in the case of an inmate; death, illness, vacation, no longer being employed at that location, or being on a different shift in the case of a staff member.

(4) If a witness refuses to testify in person and if the committee finds that testifying would pose a significant risk of bodily harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity. The contents of the statement shall be revealed to the accused, though the statement may be edited to avoid revealing the identity of the witness. The committee may question the witnesses, if they are otherwise available. Two anonymous statements by different persons may be used to corroborate each other. A statement can be corroborated in either of the following ways:

(a) By other evidence which substantially corroborates the facts alleged in the statement such as, eyewitness account by a staff member or circumstantial evidence; or

(b) By evidence of a very similar violation by the same person.

(5) After disposition has been reached by the adjustment committee, and if a finding of guilt results, restricted informant material shall then be forwarded to the security office for retention in the restricted security department file with all other copies of the entire hearing results.

(6) The original conduct report and all due process documents shall be placed in the inmate's case record. However, restricted informant reports shall be placed only in the security department restricted file. Restricted records shall be retained or disposed of according to the provisions of ch. HSS 307, adult-offender-based records.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80.

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