



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

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Inmate Discipline

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Inmate Discipline

Reference Number: CTAS-1402

Pursuant to Tennessee Code Annotated § 41-2-111, facilities shall maintain written policies and procedures governing disciplinary actions, administrative actions, and criminal offenses. Each County is required to have a disciplinary review board. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (4).

Facilities shall maintain policies and procedures to insure that written or electronic facility rules along with the corresponding range of sanctions for rule violations and disciplinary procedures to be followed shall be provided to each inmate during the booking process prior to being placed into general population. A record shall be maintained of this transaction. Socially, mentally, or physically impaired inmates shall be assisted by facility employees in understanding the rules. The rules and regulations shall be available for viewing during confinement and shall be translated into those languages spoken by a significant number of inmates. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (2).

Disciplinary reports shall be prepared by facility employees and must include, but are not limited to, the following information:

- (a) Names of persons involved;
- (b) Description of the incident;
- (c) Specific rule(s) violated;
- (d) Employee or inmate witnesses;
- (e) Any immediate action taken, including use of force; and,
- (f) Reporting staff member's signature, date and time report is made.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (3).

The written policy must provide prisoners with a hearing prior to segregation, except in cases where the security of the facility is threatened as determined by the jail administrator or his or her designee. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (6).

Facilities shall maintain written policies and procedures to provide for disciplinary hearings, which shall be presided over by a disciplinary board or impartial disciplinary officer, to be held in cases of alleged violations of inmate conduct rules. Hearings shall include the following administrative due process guarantees:

- (a) Inmates shall receive written notice of charges and time of hearing;
- (b) The inmate shall be allowed time, not less than twenty-four (24) hours, to prepare for appearance before an impartial officer or board;
- (c) The inmate shall have the right to call and cross examine witnesses and present evidence in his own defense, when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals;
- (d) An inmate may be excluded during testimony. An inmate's absence or exclusion shall be documented;
- (e) The reasons for any limitations placed on testimony or witnesses shall be stated in writing by the hearing officer;
- (f) There must be a written statement by the fact finders to include, at a minimum, evidence relied on and the reasons for the disciplinary action; and,
- (g) Appeals process is available.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (5).

For segregated prisoners, a disciplinary hearing must be held within 72 hours of placement in segregation, excluding holidays, weekends and emergencies, and for other prisoners a disciplinary hearing must be held within seven days of the write-up. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (7).

The prisoner must receive a copy of the disciplinary decision and a copy must be kept in the prisoner's record. The written policy and procedure must provide that disciplinary reports are removed from all files on prisoners found not guilty of an alleged violation. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (8) and Rule 1400-1-.08 (9).

"The courts accord wide-ranging deference to correction officials in adopting and administering policies that, in the officials' judgment, are needed to preserve internal order and discipline and to maintain institutional security." *Utley v. Tennessee Dept. of Correction*, 118 S.W.3d 705, 713 (Tenn. Ct. App. 2003) (citations omitted).

The United States Supreme Court has held that state prisoners do not have a liberty interest in the

procedural rights created by internal prison disciplinary regulations unless the punishment they receive "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-484, 115 S.Ct. 2293, 2300, 132 L.Ed.2d 418 (1995). In other words, *Sandin v. Conner* holds that due process is not necessary as long as the prisoner's punishment is not disproportionate to the rigors of prison life.

An inmate has no liberty interest in remaining free of disciplinary or administrative segregation, as such segregation does not impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Gore v. Tennessee Dept. of Correction*, 132 S.W.3d 369, 371-372 (Tenn. Ct. App. 2003), citing *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 2301, 132 L.Ed.2d 418 (1995) (holding that a punishment of 30 days segregation was not an atypical, significant deprivation). See also *Willis v. TDOC*, 2002 WL 1189730 (Tenn. Ct. App. 2002) (finding that punitive segregation was not an atypical, significant deprivation).

Denial of due process claims are analyzed using a two-part inquiry. "The first question is whether the [inmate] has identified a 'liberty' or 'property' interest that is entitled to protection by the Due Process Clause. An affirmative answer to this question requires the consideration of a second question – what process is due under the particular circumstances? The answer to the second question is situational because due process is a flexible concept that calls for only those procedural protections that the particular situation demands." *Jeffries v. Tennessee Dept. of Correction*, 108 S.W.3d 862, 870 (Tenn. Ct. App. 2002). "Accordingly, the fate of the due process claims of a prisoner seeking judicial review of internal disciplinary proceedings depends upon the punishment the prisoner received." *Id.* at 871.

Tennessee cases addressing petitions filed by prisoners seeking judicial review of prison disciplinary proceedings typically hold that placement in maximum security, the loss of good time credits, the loss of a prison job, and small fines, either separately or in combination, do not trigger due process concerns because the punishments do not impose an atypical and significant hardship on the prisoner in relation to the ordinary incidents of prison life. *Id.*, citing cases.

Corporal Punishment and Use of Force

Reference Number: CTAS-1403

Pursuant to state regulations, corporal punishment is not to be permitted under any circumstances. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (10). However, the use of force may be used to:

1. Overcome resistance;
2. Repel aggression;
3. Protect life; or
4. Retake prisoner or property.

The use of physical force must be thoroughly documented with a detailed account of who was involved, the force that was used and justification for its use. This report must be submitted to the jail administrator. Rules of the Tennessee Corrections Institute, Rule 1400-1-.08 (11).

"It is not constitutionally permissible for officers to administer a beating as punishment for a prisoner's past misconduct," nor may government officials use gratuitous force against a prisoner who has been already subdued or incapacitated. *Skrtich v. Thornton*, 280 F.3d 1295, 1300-1303 (11th Cir. 2002).

Under the Eighth Amendment, force is deemed legitimate in a custodial setting as long as it is applied "in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically to cause harm." To determine if an application of force was applied maliciously and sadistically to cause harm, a variety of factors are considered including: "the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response." From consideration of such factors, "inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." Moreover, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable for his nonfeasance.

Id. See also *Hope v. Pelzer*, 240 F.3d 975, 980-981 (2001) (holding that "the policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment"), *affirmed*, 536 U.S. 730, 737, 122 S.Ct. 2508, 2514, 153 L.Ed.2d 666 (2002).

The maintenance of prison security and discipline may require that inmates be subjected to physical

contact actionable as assault under common law; however, a violation of the Eighth Amendment will nevertheless occur if the offending conduct reflects an unnecessary and wanton infliction of pain. Factors to consider in determining whether the use of force was wanton and unnecessary include the extent of injury suffered by an inmate, the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.

Billingsley v. Shelby County Dept. of Correction, 2005 WL 2659105, *2 (W.D. Tenn. 2005), citing *Combs v. Wilkinson*, 315 F.3d 548, 556-557 (6th Cir. 2002).

Under the Eighth Amendment, prison "officials confronted with a prison disturbance must balance the threat unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force." *Combs v. Wilkinson*, 315 F.3d 548, 557 (6th Cir. 2002) (citation omitted). Because prison officials "must make their decisions in haste, under pressure, and frequently without the luxury of a second chance," courts analyzing a claim of excessive force in violation of the Eighth Amendment must grant them "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.*, (citations omitted).

The *Combs* Court found that a corrections officer's use of mace against a death row inmate while quelling a disturbance in the death row unit was not malicious or sadistic as required to support the inmate's claim of excessive force in violation of the Eighth Amendment. *Id.* See also *Brikho v. Horan*, 146 Fed.Appx. 13 (6th Cir. 2005) (finding deputy sheriff's kick or nudge to back of sleeping inmate when he did not wake up was not excessive force and did not violate Eighth Amendment, absent evidence of malicious or sadistic purpose); *Jennings v. Peiffer*, 110 Fed.Appx. 643 (6th Cir. 2004) (finding correctional officers use of chemical agents on an inmate in a good-faith effort to maintain or restore discipline defeated the inmate's Eighth Amendment excessive force claim under § 1983); *Davis v. Agosto*, 89 Fed.Appx. 523 (6th Cir. 2004) (finding prison officers' use of force in attempting to bring inmate under control was not excessive and thus did not violate inmate's Eighth Amendment rights where inmate refused to comply with officers' command to submit to handcuffs, forced his way out of cell when door was opened, continued to resist after he was tackled by guard in hallway, and was struck with batons only after he tried to hit guard); *Leonard v. Hoover*, 76 Fed.Appx. 55 (6th Cir. 2003) (finding corrections officers' use of force to extract inmate from his cell was justified under the Eighth Amendment where officers had reason to believe that inmate had dangerous contraband in his cell and inmate repeatedly refused to comply with orders to submit to a search, and inmate suffered only minor injuries); *Kennedy v. Doyle*, 37 Fed.Appx. 755 (6th Cir. 2002) (holding that placing prisoner in restraints after he broke his prison cell window did not violate the prisoner's Eighth Amendment right against cruel and unusual punishment and 14th Amendment right to due process; the restraints were designed to control the prisoner's behavior, more restrictive restraints were placed on the prisoner after he continued to be involved in breaking one window while in restraints and attempting to break another window, and placement in such restraints did not impose "atypical and significant hardship"); *Davis v. Sutton*, 2005 WL 3434633 (W.D. Tenn. 2005) (finding defendants in contempt of court for violating permanent injunction prohibiting the use of chemical agents as a form of inmate discipline and awarding inmates a total of \$95,000 in compensatory damages for the inmates' pain and suffering).

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