

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 28, 2020
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 401 of the Nebraska Administrative Code (NAC) – *Youth Rehabilitation and Treatment Centers*. The proposed changes condense the title from ten chapters into two chapters, for clarity and to eliminate unnecessary and redundant language from the regulations. The proposed changes establish rights and privileges of juveniles committed to the Youth Rehabilitation and Treatment Centers; determine when such rights and privileges may be reduced or revoked; restructure the title; remove internal guidance from the regulations; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 401	Prepared by: Nicole Berggren
Chapter: 1 & 2	Date prepared: 6/5/2019
Subject: Youth Rehabilitation and Treatment Centers	Telephone: 308-440-6498

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: \$0.00

Political Subdivision: \$0.00

Regulated Public: \$0.00

If indeterminable, explain why:

TITLE 401 YOUTH REHABILITATION AND TREATMENT CENTERS

CHAPTER 1 GENERAL PROVISIONS

001. SCOPE AND AUTHORITY. These regulations implement the Department of Health and Human Services' administrative powers over the Youth Rehabilitation and Treatment Centers pursuant to Neb. Rev. Stat. § 43-404. The provisions in these regulations apply to all youth committed to the Youth Rehabilitation and Treatment Centers.

002. ACCESS TO SERVICES. All youth committed to a Youth Rehabilitation and Treatment Center have access to academic education, vocational education, health maintenance services, mental health services and substance abuse programming.

003. RELIGIOUS PRACTICES. Youth committed to a Youth Rehabilitation and Treatment Center may practice the religion of his or her choice as long as the safety, security or good order of the facility is not threatened.

004. DISAPPROVED CONTACTS. The Youth Rehabilitation and Treatment Center may establish a list of disapproved contacts for any youth committed to a Youth Rehabilitation and Treatment Center. The list may be changed or amended by the Youth Rehabilitation and Treatment Center at any time. Youths shall not be allowed to correspond with youth or adult offenders at juvenile or adult correctional institutions or juvenile detention centers without the approval of both institutions.

005. MAIL SERVICES. Youth committed to a Youth Rehabilitation and Treatment Center will have access to mail services so long as state and federal laws and regulations governing the use of the mail are not violated, and the security, safety and good order of the facility is not threatened.

005.01 CONTACTS. A youth may write and receive mail from anyone he or she chooses so long as the name of each party on the letter does not appear on the youth's list of disapproved contacts.

005.02 MAIL PROCEDURES. All outgoing and incoming mail will be processed by an employee of the Youth Rehabilitation and Treatment Center. All mail is subject to examination for enclosures and contraband.

005.02(A) PRIVACY. Mail may be read by an employee of the Youth Rehabilitation and Treatment Center.

005.02(B) OUTGOING MAIL. No sealed envelopes will be permitted to be mailed from a youth committed to the facility unless the letter is addressed to one of the Privileged Contacts identified this chapter. All sealed envelopes not addressed to a Privileged Contact shall be returned to sender along with a written explanation for the return. Each outgoing letter shall bear the name of the writer and his or her address in the upper left-hand corner on the front of the envelope. If any outgoing mail is not allowed to leave the facility, it will be returned to the sender, along with an explanation for the reasons for the action.

005.02(C) INCOMING MAIL. All mail sent to a youth must include the name and address of the sender on the outside of the envelope.

005.02(C)(i) MONETARY FUNDS. Monetary funds received through the mail will be posted to a youth's institutional account if the sender is identified and receipt of these funds does not otherwise violate a Departmental rule or regulation. If there is no indication of the name and address of the sender, the funds will be placed in the institutional welfare fund.

005.02(C)(i)(1) A youth may not receive monetary funds from another youth in a Youth Rehabilitation and Treatment Center, a relative of another youth in a Youth Rehabilitation and Treatment Center, a youth or an adult inmate in a correctional institution, a volunteer, or a person sending money at the request of another youth in the correctional institution. Any monetary funds received from these sources will be returned to the sender.

005.02(D) PRIVILEGED MAIL EXCEPTION. Mail may not be subject to the other provisions of this section if the requirements of this subsection are met.

005.02(D)(i) OUTGOING MAIL. A youth may send sealed letters if the letters are clearly addressed to any federal or state official, including the Ombudsman and Inspector General of Child Welfare, or to any attorney of record for the youth.

005.02(D)(ii) INCOMING MAIL. If a youth receives mail and the sender is identified in commercial printing on the envelope as a federal or state official or an attorney of record for the youth, the mail may be opened only in the presence of the youth. An employee of the Youth Rehabilitation and Treatment Center may examine the mail for contraband, but shall not read the mail unless there is clear and convincing evidence that such mail constitutes a threat to the safety, security or good order of the facility.

005.02(E) CONTRABAND. No outgoing or incoming mail may include contraband. The Youth Rehabilitation and Treatment Centers will established a list of designated items that are considered contraband.

005.02(E)(i) CONTRABAND IN OUTGOING MAIL. If contraband is found to be contained in any outgoing mail, such contraband shall be seized and a receipt given to the youth. In the event that seizure of the letter containing contraband is necessary for disciplinary purposes, the youth shall be notified in writing. At the conclusion of any disciplinary action, seized contraband shall be destroyed, retained, or referred to a law

enforcement agency, as appropriate. If a youth desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure set forth in this Title.

005.02(E)(ii) CONTRABAND IN INCOMING MAIL. If any contraband is found to be contained in any incoming mail, such contraband will normally be returned to the sender, along with a copy of the written statement indicating the reason for the return which shall be delivered to the addressee. A written statement will then be delivered to the addressee with a description of the items removed and an explanation of the reasons for the removal. In the event that the mailing of such contraband violates state or federal law, the contraband and the letter, if necessary, shall be referred to proper law enforcement authorities for appropriate action. If a youth desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure set forth in this Title. If a sender desires to challenge a seizure of contraband, he or she may do so by contacting the Youth Rehabilitation and Treatment Center in writing.

006. TELEPHONE PRIVILEGES. Youth placed at a Youth Rehabilitation and Treatment Center will have reasonable and equitable telephone privileges and shall retain such privileges for the duration of his or her stay so long as the facility's policies governing such activities are not violated.

006.01 RECORDING CALLS. Any telephone calls made by the youth may be recorded, unless the telephone call is between the youth and his or her attorney of record. If a youth wishes to contact his or her attorney of record, the youth may request to do so, and arrangements will be made for the youth to make a telephone call that will not be recorded.

006.02 CALL LOG. The Youth Rehabilitation and Treatment Center may maintain a record or written log of any incoming received by or outgoing call made by each youth.

007. VISITATION. Youth placed at a Youth Rehabilitation and Treatment Center will be allowed to receive visitors and will retain that privilege for the duration of his or her stay so long as the facility's policies governing visitation activities are not violated.

008. FURLOUGH. A youth may be allowed to leave the Youth Rehabilitation and Treatment Center in accordance with the facilities established furlough policy.

CHAPTER 1
ADMINISTRATION, ORGANIZATION AND MANAGEMENT

~~1-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~1-002 Legal Authority:~~ Section 83-925.05 NRS Reissue 1994 provides that the Youth Rehabilitation and Treatment Centers be administered by the Department of Health and Human Services Office of Juvenile Services. The Youth Rehabilitation and Treatment Centers have been established to provide for public safety through the care, custody, rehabilitation and treatment of youth committed to the Department.

~~1-003 Chain of Command:~~ Each institution shall have a Chief Executive Officer designated who shall be responsible for all institutional operations and management. The Chief Executive Officer shall report to, and receive supervision from, the Protection and Safety Division Administration within the Department.

~~1-004 Mission Statement:~~ Each institution shall have written vision, mission, and affirmation statements that describe its philosophy and goals, who it will serve, for what purposes, and what programs and services will be offered. Such statements shall comply with mission, values, philosophy and outcome statements of HHS as well as those deemed appropriate from other juvenile justice associations.

~~1-005 Policies and Procedures :~~The Chief Executive Officer of each institution shall develop and maintain a set of written policies and procedures describing all aspects of institutional administration and operation.

~~1-006 Emergency Suspension:~~ The Chief Executive Officer, with the concurrence of the Protection and Safety Division Administration, shall have the power and authority to suspend any of these Rules in the event of an emergency that threatens the security, order, operation, or safety of the institution, resident youth, employees, or public. Written documentation of all temporary emergency suspensions shall be maintained by the Chief Executive Officer.

~~1-007 Variances:~~ At any time the Chief Executive Officer believes the application of a provision of these Rules in a particular situation is contrary to the best interests of a youth or to the safety of the institution or community, the Chief Executive Officer may request permission from the Protection and Safety Administration to deviate from the specific provision at issue. The deviation should provide at least equivalent conditions as would be afforded by explicit compliance with the corresponding Rule. The variance, if granted, shall apply only to the particular situation for which the request is made.

~~1-008 Accreditation:~~ Each institution shall participate in the accreditation program of the American Correctional Association and shall make all reasonable efforts to achieve and maintain accredited status with the standards related to its operation.

~~1-009 Definitions:~~ The following definitions shall apply to these rules and regulations:

~~"Chief Executive Officer" shall mean the HHS employee designated by administrative action with the responsibility and authority for the operation and administration of a Youth Rehabilitation and Treatment Center or other juvenile correctional facility operated by the Department.~~

~~"Classification" shall mean a process for determining the risk and needs of those youth committed to the HHS Office of Juvenile Services and for assigning them to the appropriate housing, program, and/or custody level according to their risk and need profile.~~

~~"Code of Offenses" shall mean those acts which are prohibited within the institution and which, if violated, may be cause for disciplinary action.~~

~~"Community Resources" shall mean those social agencies, service clubs, citizen interest groups, self-help groups, educational institutions, and citizen volunteers who have the potential to assist juveniles in such areas as material and financial assistance, guidance, mentoring, and supportive services.~~

~~"Contraband" shall mean any item possessed by juveniles or found within the institution that is illegal or that is expressly prohibited by the institution.~~

~~"Corporal Punishment" shall mean any act of inflicting physical punishment directly on the body, causing pain or injury.~~

~~"Delinquent" shall mean a juvenile who has been adjudicated in juvenile court for a law violation and found to be as described in Section 43-247(1), (2), or (4) of the Nebraska Revised Statutes.~~

~~"Department" shall mean the Department of Health and Human Services.~~

~~"Disciplinary Hearing" shall mean a nonjudicial administrative procedure to determine if substantial evidence exists to find a juvenile guilty of a rule violation.~~

~~"Disciplinary Report" shall mean a written report prepared by an institutional staff person with appropriate authority, describing an alleged violation of the institution's rules or regulations.~~

~~"Disciplinary Segregation" shall mean the confinement of a juvenile to an individual room that is separated from the general population as a sanction for a serious rule violation.~~

~~"Emergency" shall mean a significant disruption of normal institutional activity or routine caused by riot, escape, fire, natural disaster, or other serious incidents.~~

~~"Force, Use of" shall mean physical force used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. Physical force is used only as a last resort and to the degree necessary to take control of the situation.~~

~~"Furlough" shall mean a period of time during which a juvenile is allowed to leave the program or institution in response to a personal or family emergency to participate in off-site employment-volunteer community service-recreation activity, a special earned privilege or recognition of accomplishment, an earned family outing, or to facilitate release planning and transition back to the community.~~

~~"Grievance" shall mean a description of a circumstance or action a juvenile believes to be unjust and grounds for a complaint related to their basic rights.~~

~~"Hearing" shall mean a proceeding to determine a course of action, such as the placement of a juvenile, or to determine the guilt or innocence in a disciplinary matter. Statements of witnesses, the accused, and other evidence are reviewed by a judicial officer or administrative body in making the determination.~~

~~"Incident Report" shall mean a written document reporting an unusual occurrence or event such as the discovery of contraband, a fire, use of force, fight, property damage, etc.~~

~~"Institutional Discharge" shall mean the discharge of a juvenile from state custody directly from the institution without subsequent parole supervision.~~

~~"Major Rule Violation" shall mean a rule infraction that represents a significant threat to safety and security and requiring imposition of due process procedures. Generally, major infractions include violations that may result in disciplinary segregation, violations for which punishment may extend the juveniles length of stay at the institution, or violations that may be referred for criminal prosecution.~~

~~"Minor Rule Violation" shall mean a violation of the institution's code of conduct that is not a threat to safety, security or order which does not require due process and may be resolved without the imposition of serious penalties.~~

~~"Parole" shall mean the conditional release of a juvenile from the institution to community supervision. Juveniles released on "parole" must abide by a stated release program or be subject to return to the institution through a revocation process.~~

~~"Policy" shall mean a definite, stated course of action that guides decisions and activities within the institution. It describes what action the institution will take with regard to a specific issue.~~

~~"Procedure" shall mean the detailed and sequential actions necessary to ensure that a policy is fully implemented. It describes the who, what, when, where, and how of implementing policy.~~

~~"Room Restriction" shall mean the temporary placement of a juvenile within his or her sleeping room for brief "cool down" period or as an informal sanction for a rule violation.~~

~~"Rulebook" shall mean a collection of the institution's resident rules of conduct, possible sanctions for rule violations, a description of the disciplinary process and a description of programs/services offered, listing of juvenile rights.~~

~~"Temporary Release" (see Furlough).~~

~~"Staff Development and Training" shall mean a process by which employees, student interns, volunteers, contract personnel are provided education about juvenile justice program, services, policies, or procedure so that they may carry out their duties/responsibilities.~~

~~"Vision, Mission, Affirmation, Philosophy, Goals, Outcomes". See 1-004.~~

~~"Work Programs" shall mean activities on site or off site where juveniles participates in work assignments to earn money.~~

~~1-010 Personnel Policies: Each institution shall adhere to the Department's written personnel policy and procedures.~~

~~1-011 Staff Development and Training: Each institution shall adhere to the Department's policies and procedures that specify pre-service and in-service training and staff development requirements for all personnel.~~

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TITLE 401 YOUTH REHABILITATION AND TREATMENT CENTERS

CHAPTER 2 DISCIPLINARY AND GRIEVANCE PROCEDURES

001. DISCIPLINARY PROCEDURES. Each Youth Rehabilitation and Treatment Center will maintain a clearly defined disciplinary procedure which incorporates the provisions of this chapter. Youth will receive a copy of the disciplinary procedure upon arrival at the facility.

002. OFFENSES. A youth may be subject to the disciplinary procedures in this chapter if the youth commits any act which constitutes an offense established in the policies of the Youth Rehabilitation and Treatment Center. A youth will be provided with a list of offenses upon arrival at the Youth Rehabilitation and Treatment Center.

002.01 REPORT TO LAW ENFORCEMENT. If a youth commits an offense which also constitutes criminal activity, the Youth Rehabilitation and Treatment Center may make a report to the appropriate law enforcement agency.

003. NOTICE. A youth will be served with a written notice that an offense has been committed within 24 hours from the time the offense is discovered by facility staff.

004. HEARING PROCEDURES. A youth charged with committing an offense is scheduled for a hearing no later than seven days, excluding weekends and holidays, after the alleged offense was discovered.

004.01 NOTICE OF HEARING. A youth charged with committing an offense will be notified of the time and place of the hearing on the allegations at least 24 hours prior to the hearing, unless waived by the youth.

004.02 ATTENDANCE AT HEARING. A youth charged with committing an offense will be allowed to be present at the hearing on the allegations, unless the youth waives his or her attendance or the disciplinary committee determines the youth's behavior during the hearing justifies exclusion.

004.03 DISCIPLINARY COMMITTEE. Hearings on the allegations will be conducted by a disciplinary committee comprised of an impartial person or impartial panel of persons. The disciplinary committee will be created as required by facility policy.

004.04 STANDARD OF PROOF. In order for a youth who is charged with committing an offense to be guilty, the Disciplinary Committee must determine by a preponderance of the evidence that the youth voluntarily, intentionally, recklessly or negligently engaged in conduct

which constitutes the offense charged. The Disciplinary Committee must also determine that the youth had notice that the conduct was prohibited by facility policy or state statute.

004.05 PRESUMPTION. If contraband is found in a living unit shared by more than one youth, there shall be a presumption that each of those youth has knowledge of the presence of the contraband. Each youth charged as a result of the discovery of such contraband shall have the burden of coming forward with evidence to rebut the presumption.

004.06 AIDING AND ABETTING. A youth may be charged with committing an offense if it is determined by a preponderance of the evidence that the youth knowingly commanded, induced, procured, or aided another person in the commission of the offense. The fact that the other person has been found free of guilt, has been determined guilty of a different offense, has been discharged from employment, or has been otherwise restricted from access to the facility is not a defense.

004.07 ATTEMPT. A youth may be found guilty of attempting to commit an offense if: acting with the kind of culpability required for commission of such offense, the youth engages in conduct which constitutes all of the acts necessary for the commission of the offense except its completion; or the youth willfully provides substantial and knowing assistance to a person attempting to commit an offense; or the youth agrees with one or more persons to engage in or cause the performance of such conduct. A youth found guilty of an attempt shall be subject to the same penalties which correspond to the offense attempted.

004.08 EVIDENCE. A youth charged with committing an offense will have the opportunity during the disciplinary hearing to make a statement and present evidence, including calling witnesses who may have relevant information.

004.09 ASSISTANCE AT THE HEARING. A youth may request the services of any Youth Rehabilitation and Treatment Center staff member to assist them at the disciplinary hearing. The staff member may question relevant witnesses on behalf of the youth.

004.09(A) APPOINTMENT OF ASSISTANCE. A Youth Rehabilitation and Treatment Center staff representative shall be appointed to assist the youth with the disciplinary hearing when the disciplinary committee determines the youth is not capable of effectively presenting evidence on his or her own behalf.

005. CONSEQUENCES. When the disciplinary committee finds a youth has committed an offense, the disciplinary committee will determine the appropriate consequences for the offense. The consequences must comply with the provisions of this section.

005.01 GENERAL RULE. Consequences shall not be capricious, retaliatory or revengeful.

005.02 SUSPENSION OF PRIVILEGES. Consequences may include suspension of privileges. Privilege suspension shall not include loss of regular meals, clothing, sleep, health care services, exercise, correspondence privileges, and contact with relatives or legal assistance.

005.03 CORPORAL PUNISHMENT. Consequences may not include corporal punishment, humiliation, mental abuse or punitive interference with the daily functions, such as eating or sleeping, is strictly prohibited. "Corporal Punishment" as used in this section shall mean any act of inflicting physical punishment directly on the body, causing pain or injury.

005.04 RESTITUTION. Consequences may include payment of restitution by the youth. The amount of restitution will be determined pursuant to facility policy. The facility may use any funds that would be paid by the Youth Rehabilitation and Treatment Center to the youth's account to offset restitution. Offsets will be calculated and applied in accordance with the facility's established restitution policy.

005.04(A) RESTITUTION TO ANOTHER YOUTH. In the event restitution is to be paid to another youth committed to a Youth Rehabilitation and Treatment Center, no funds will be transferred from one youth to another unless a written request for the transaction is submitted by the youth. Any transfers of funds from one youth to another must be approved by the Facility Administrator.

006. APPEALS. A youth may appeal a decision of the disciplinary committee, including the determined consequences, to the facility administrator or his designee. Appeals are subject to the provisions of this section.

006.01 TIME FRAME. A youth has the right to appeal decisions of the disciplinary committee within 15 days of receiving notice of the decision.

006.02 APPEAL PROCEDURE. A Youth Rehabilitation and Treatment Center will have written procedures governing the appeal process. All appeals must be submitted in accordance with the facility's procedures.

006.03 APPEAL DETERMINATION. Appeal decisions will be made by the facility administrator or designee. The factors that may be considered during the appeal process are as follows:

- (A) Whether there was substantial compliance with the facility's policy and procedures in determining the consequences for the youth;
- (B) Whether the decision of the committee was based on substantial evidence, including the introduction of new evidence; and
- (C) Whether, under the circumstances, the consequence imposed was proportionate to the offense.

007. GRIEVANCES. Youth committed to a Youth Rehabilitation and Treatment Center will be permitted to report a grievance.

007.01 GRIEVANCE TOPICS. Any topic may be the subject of a grievance, if a youth believes the circumstances are unjust and grounds for a complaint related to his or her basic rights.

- 007.01(A) EXCEPTIONS. The following topics may not be the subject of a grievance:
- (i) Matters over which the Youth Rehabilitation and Treatment Center has no control;
- and

(ii) Youth disciplinary actions.

007.02 GRIEVANCE PROCEDURES. Each Youth Rehabilitation and Treatment Center will have written grievance procedures that will be provided to each youth upon arrival at the facility. Any grievance submitted by a youth must be in compliance with the established procedures.

007.03 GRIEVANCE TIME FRAME. Grievances must be submitted within 20 calendar days of the incident giving rise to the complaint.

007.04 PROMPT RESPONSE. Each grievance will be reviewed and may be investigated by facility staff. A written response will be provided to the grievant.

007.05 APPEAL OF GRIEVANCE DECISIONS. A grievant who is dissatisfied with the written response to his or her grievance, may appeal the response to the Office of Juvenile Services Administrator within ten calendar days from the receipt of the response.

007.06 NO ADVERSE ACTION. No youth who utilizes the grievance procedure will be subject to any type of disciplinary sanction or other adverse action for exercising the right to report a grievance.

007.07 CONFIDENTIALITY. Youth grievances shall be treated in a confidential manner. Only those individuals whose involvement is needed to complete the investigation of the grievance or the judge and legal parties in the committing court case shall be made aware of its existence. Individuals contacted during an investigation shall only be made aware of the information needed to allow them to contribute meaningfully to the investigation.

CHAPTER 2

GRIEVANCE PROCEDURES

~~2-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~2-002 Departmental Policy:~~ It is the policy of the Department to provide a youth with a procedure for the administrative settlement of a legitimate grievance. Most valid grievances can be resolved quickly through informal direct contact with the staff of the institution who have responsibility for the particular area in which the problem arose. Youth must use such a method prior to initiating a formal grievance. A grievance shall not be considered a formal grievance until the youth has initiated the grievance procedure by submitting a Step One Grievance Form to his/her Chief Executive Officer's designee. Any topic may be the subject of a grievance, except matters over which the Department has no control and youth disciplinary actions. Disciplinary actions are appealable under the procedure described in Chapter 7.

~~2-003 Grievance Principles:~~ The following guidelines shall be applied to the grievance procedure.

~~2-003.01 Persons Filing:~~ Each youth in the custody of the Department shall be permitted to report a grievance.

~~2-003.02 Informal Resolution:~~ Youths shall communicate their concern to the unit staff member who can most adequately respond. If dissatisfied with the informal response the youth may file a grievance for formal resolution.

~~2-003.03 Method of Processing Step One Formal Grievance:~~ If the response on the youth concern is unacceptable, the youth may file a complaint with the Chief Executive Officer on a Step One Grievance Form. Such grievances shall be transmitted without alteration, interference or delay to the appropriate staff members who are authorized to receive and investigate grievances.

~~2-003.04 Adverse Action:~~ No youth who utilizes the informal or formal grievance procedure shall be subject to any type of disciplinary sanction or other adverse action for exercising the right to report grievances. However, language used in grievances is subject to Chapters 6 and 7 of these Rules.

~~2-003.05 Prompt Written Response:~~ Each grievance shall be reviewed and, if necessary, investigated further. The grievant shall receive a prompt written response insofar as possible. Extenuating circumstances such as illness, injury, or unavailability of a witness may lengthen the response time. The response shall indicate the suggested disposition of the grievance.

~~2-003.06 Confidentiality:~~ Youth grievances shall be treated in a confidential manner. Only those individuals whose involvement is needed to complete the investigation of the grievance shall be made aware of its existence. Individuals contacted during an investigation shall only be made aware of the information needed to allow them to contribute meaningfully to the investigation. Consistent with ensuring confidentiality, staff who participate in the disposition of a grievance shall have access to records essential to the resolution of the grievance. If the youth is of the opinion that a grievance is of a sensitive nature, a grievance may be filed directly with the Protection and Safety Division Administration and mailed as privileged mail. The youth must clearly explain the nature of the complaint and the reasons for not following the regular grievance procedure. If the Protection and Safety Division Administration determines that the grievance is not of a confidential nature, the grievance shall be returned to the youth. After consideration of the grievance and determination that it is of a confidential nature, the Protection and Safety Division Administration shall conduct any necessary investigation. If the investigation indicates that action should be taken, the Protection and Safety Division Administration shall cause the appropriate steps to be taken to resolve the grievance.

~~2-004 Grievance Procedure:~~ The following procedure shall apply to youth grievances.

~~2-004.01~~ When an youth communicates a concern for informal resolution, unit staff will log the informal grievance and investigate the complaint. Unit staff will investigate the complaint and communicate a response to the youth.

~~2-004.02~~ If a youth wishes to pursue a formal grievance it is the youth's responsibility to secure the required Step One Grievance Form. The Grievance Form may be obtained from the youth's unit staff. If more room is required, the youth may attach additional information. Such grievances must be filed within 15 calendar days of the receipt of the informal response, or if no response was received, within 20 calendar days of the incident giving rise to the complaint. The youth may address only one issue on a formal grievance or it will be returned to him/her. If the youth did not receive a response to his/her concern, he/she must attach a copy of the original submission so indicating. The formal grievance process shall begin when the youth has completed the youth portion of the Step One Grievance Form and submitted it to the Chief Executive Officer's designee. Upon receipt of the Grievance Form from the youth, the Chief Executive Officer's designee shall sign and date the Grievance Form, which invokes the time limit provided in subsection 004.03, below.

~~2-004.03~~ The Chief Executive Officer's designee shall review and, if necessary, further investigate the grievance. The results shall be communicated to the Chief Executive Officer and include a proposed resolution of the grievance. The Chief Executive Officer will review the suggested relief, and will forward a written response to the youth within ten working days after receipt of the grievance. The response shall include a brief statement of the reason or reasons for the decision reached.

~~2-004.04 If the youth wishes to appeal the relief suggested, he/she shall then obtain a Step Two Grievance Form from unit staff for appeal to the Protection and Safety Administration.~~

~~2-004.05~~ If the youth decides to appeal to the Protection and Safety Administration, the youth shall submit the Step Two Grievance Form to the Director or designee by inter-office mail within 10 calendar days after receipt of the Chief Executive Officer's response. If the grievance is in an envelope it shall be clearly marked to indicate that it contains a Grievance Form. It may be mailed in compliance with the Department's rules governing privileged mail. The youth may include additional information on the Grievance Form, which information shall also be submitted to the Chief Executive Officer.

~~2-004.06~~ The Protection and Safety Division Administration shall acknowledge receipt of the Step Two Grievance Form immediately, complete the appropriate portion of the form, and then return the form to the youth with a copy to the Chief Executive Officer within fifteen working days of its receipt. The Protection and Safety Division Administration may rely upon the information compiled by the Chief Executive Officer's investigation or conduct additional investigation. The Protection and Safety Division Administration is not bound by a previous decision to deny the relief suggested by the Chief Executive Officer.

~~2-004.07~~ A youth shall be limited to two formal Step One grievances per week, except for valid emergency grievances. Emergency grievances are those matters which must be resolved quickly because if the standard grievance time limits were used the youth would be subjected to a substantial risk of personal injury or other serious and irreparable harm.

~~2-005 Other Remedies Not Precluded:~~ Youths shall be allowed to communicate grievances to persons outside the Department and nothing herein shall preclude an youth from communicating a grievance to the Office of the State Ombudsman, legislators, attorneys, courts, or other appropriate individuals or groups at any time.

~~2-005.01~~ Claims against the Department involving miscellaneous or tort claims for money damages may be filed pursuant to the State Tort Claims Act. Each institution will provide youth with information about this process upon request.

~~2-005.02~~ Each facility shall ensure that youths confined there have reasonable access to courts.

~~2-005.03~~ Youths will be permitted to circulate petitions for signatures as long as the petitions do not violate or propose a violation of the Department's rules or state or federal law, or interfere with the security or good order of the facility.

The petition shall be considered by the Chief Executive Officer or the Protection and Safety Division Administration when responding to the grievance which the petition concerns as long as the petition is attached to the grievance or grievance appeal or is submitted to the Chief Executive Officer or Protection and Safety Administration before the grievance or grievance appeal has been answered. A copy of the petition will be kept by the Chief Executive Officer, Protection and Safety Administration, along with the record of the

~~grievance which the petition concerns. The petition shall also be included in the youths' permanent file.~~

CHAPTER 2

GRIEVANCE PROCEDURES

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~~2-003.04 Adverse Action:~~ No youth who utilizes the informal or formal grievance procedure shall be subject to any type of disciplinary sanction or other adverse action for exercising the right to report grievances. However, language used in grievances is subject to Chapters 6 and 7 of these Rules.

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~~2-004.02~~ If a youth wishes to pursue a formal grievance it is the youth's responsibility to secure the required Step One Grievance Form. The Grievance Form may be obtained from the youth's unit staff. If more room is required, the youth may attach additional information. Such grievances must be filed within 15 calendar days of the receipt of the informal response, or if no response was received, within 20 calendar days of the incident giving rise to the complaint. The youth may address only one issue on a formal grievance or it will be returned to him/her. If the youth did not receive a response to his/her concern, he/she must attach a copy of the original submission so indicating. The formal grievance process shall begin when the youth has completed the youth portion of the Step One Grievance Form and submitted it to the Chief Executive Officer's designee. Upon receipt of the Grievance Form from the youth, the Chief Executive Officer's designee shall sign and date the Grievance Form, which invokes the time limit provided in subsection 004.03, below.

~~2-004.03~~ The Chief Executive Officer's designee shall review and, if necessary, further investigate the grievance. The results shall be communicated to the Chief Executive Officer and include a proposed resolution of the grievance. The Chief Executive Officer will review the suggested relief, and will forward a written response to the youth within ten working days after receipt of the grievance. The response shall include a brief statement of the reason or reasons for the decision reached.

~~2-004.04 If the youth wishes to appeal the relief suggested, he/she shall then obtain a Step Two Grievance Form from unit staff for appeal to the Protection and Safety Administration.~~

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~~2-004.06~~ The Protection and Safety Division Administration shall acknowledge receipt of the Step Two Grievance Form immediately, complete the appropriate portion of the form, and then return the form to the youth with a copy to the Chief Executive Officer within fifteen working days of its receipt. The Protection and Safety Division Administration may rely upon the information compiled by the Chief Executive Officer's investigation or conduct additional investigation. The Protection and Safety Division Administration is not bound by a previous decision to deny the relief suggested by the Chief Executive Officer.

~~2-004.07~~ A youth shall be limited to two formal Step One grievances per week, except for valid emergency grievances. Emergency grievances are those matters which must be resolved quickly because if the standard grievance time limits were used the youth would be subjected to a substantial risk of personal injury or other serious and irreparable harm.

~~2-005 Other Remedies Not Precluded:~~ Youths shall be allowed to communicate grievances to persons outside the Department and nothing herein shall preclude an youth from communicating a grievance to the Office of the State Ombudsman, legislators, attorneys, courts, or other appropriate individuals or groups at any time.

~~2-005.01~~ Claims against the Department involving miscellaneous or tort claims for money damages may be filed pursuant to the State Tort Claims Act. Each institution will provide youth with information about this process upon request.

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The petition shall be considered by the Chief Executive Officer or the Protection and Safety Division Administration when responding to the grievance which the petition concerns as long as the petition is attached to the grievance or grievance appeal or is submitted to the Chief Executive Officer or Protection and Safety Administration before the grievance or grievance appeal has been answered. A copy of the petition will be kept by the Chief Executive Officer, Protection and Safety Administration, along with the record of the

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CHAPTER 2

GRIEVANCE PROCEDURES

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~~2-002 Departmental Policy:~~ It is the policy of the Department to provide a youth with a procedure for the administrative settlement of a legitimate grievance. **Retained as modified Chapter 2, Section 007 and Section 007.02.** Most valid grievances can be resolved quickly through informal direct contact with the staff of the institution who have responsibility for the particular area in which the problem arose. Youth must use such a method prior to initiating a formal grievance. A grievance shall not be considered a formal grievance until the youth has initiated the grievance procedure by submitting a Step One Grievance Form to his/her Chief Executive Officer's designee. **Any topic may be the subject of a grievance Retained as modified Chapter 2, Section 007.01, except matters over which the Department has no control and youth disciplinary actions. Retained as modified Chapter 2 Section 007.01(A).** Disciplinary actions are appealable under the procedure described in Chapter 7.

~~2-003 Grievance Principles:~~ The following guidelines shall be applied to the grievance procedure.

~~2-003.01 Persons Filing:~~ Each youth in the custody of the Department shall be permitted to report a grievance.

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~~2-003.03 Method of Processing Step One Formal Grievance:~~ If the response on the youth concern is unacceptable, the youth may file a complaint with the Chief Executive Officer on a Step One Grievance Form. Such grievances shall be transmitted without alteration, interference or delay to the appropriate staff members who are authorized to receive and investigate grievances.

~~2-003.04 Adverse Action:~~ **No youth who utilizes the informal or formal grievance procedure shall be subject to any type of disciplinary sanction or other adverse action for exercising the right to report grievances. Retained as modified Chapter 2, Section 007.06.** However, language used in grievances is subject to Chapters 6 and 7 of these Rules.

~~2-003.05 Prompt Written Response:~~ Each grievance shall be reviewed and, if necessary, investigated further. The grievant shall receive a prompt written response insofar as possible. Extenuating circumstances such as illness, injury, or unavailability of a witness may lengthen the response time. The response shall indicate the suggested disposition of the grievance.

~~2-003.06 Confidentiality: Youth grievances shall be treated in a confidential manner. Only those individuals whose involvement is needed to complete the investigation of the grievance shall be made aware of its existence. Individuals contacted during an investigation shall only be made aware of the information needed to allow them to contribute meaningfully to the investigation. Retained Chapter 2, Section 007.07.~~ Consistent with ensuring confidentiality, staff who participate in the disposition of a grievance shall have access to records essential to the resolution of the grievance. If the youth is of the opinion that a grievance is of a sensitive nature, a grievance may be filed directly with the Protection and Safety Division Administration and mailed as privileged mail. The youth must clearly explain the nature of the complaint and the reasons for not following the regular grievance procedure. If the Protection and Safety Division Administration determines that the grievance is not of a confidential nature, the grievance shall be returned to the youth. After consideration of the grievance and determination that it is of a confidential nature, the Protection and Safety Division Administration shall conduct any necessary investigation. If the investigation indicates that action should be taken, the Protection and Safety Division Administration shall cause the appropriate steps to be taken to resolve the grievance.

~~2-004 Grievance Procedure: The following procedure shall apply to youth grievances.~~

~~2-004.01 When an youth communicates a concern for informal resolution, unit staff will log the informal grievance and investigate the complaint. Unit staff will investigate the complaint and communicate a response to the youth.~~

~~2-004.02 If a youth wishes to pursue a formal grievance it is the youth's responsibility to secure the required Step One Grievance Form. The Grievance Form may be obtained from the youth's unit staff. If more room is required, the youth may attach additional information. Such grievances must be filed within 15 calendar days of the receipt of the informal response, or if no response was received, within 20 calendar days of the incident giving rise to the complaint. Retained as modified Chapter 2, Section 007.03~~ The youth may address only one issue on a formal grievance or it will be returned to him/her. If the youth did not receive a response to his/her concern, he/she must attach a copy of the original submission so indicating. The formal grievance process shall begin when the youth has completed the youth portion of the Step One Grievance Form and submitted it to the Chief Executive Officer's designee. Upon receipt of the Grievance Form from the youth, the Chief Executive Officer's designee shall sign and date the Grievance Form, which invokes the time limit provided in subsection 004.03, below.

~~2-004.03 The Chief Executive Officer's designee shall review and, if necessary, further investigate the grievance. The results shall be communicated to the Chief Executive Officer and include a proposed resolution of the grievance. The Chief Executive Officer will review the suggested relief, and will forward a written response to the youth within ten working days after receipt of the grievance. The response shall include a brief statement of the reason or reasons for the decision reached. Retained as modified Chapter 2, Section 007.04~~

~~2-004.04 If the youth wishes to appeal the relief suggested, he/she shall then obtain a Step Two Grievance Form from unit staff for appeal to the Protection and Safety Administration.~~

~~2-004.05~~ If the youth decides to appeal to the Protection and Safety Administration, the youth shall submit the Step Two Grievance Form to the Director or designee by inter-office mail within 10 calendar days after receipt of the Chief Executive Officer's response. **Retained as modified Chapter 2, Section 007.05.** If the grievance is in an envelope it shall be clearly marked to indicate that it contains a Grievance Form. It may be mailed in compliance with the Department's rules governing privileged mail. The youth may include additional information on the Grievance Form, which information shall also be submitted to the Chief Executive Officer.

~~2-004.06~~ The Protection and Safety Division Administration shall acknowledge receipt of the Step Two Grievance Form immediately, complete the appropriate portion of the form, and then return the form to the youth with a copy to the Chief Executive Officer within fifteen working days of its receipt. The Protection and Safety Division Administration may rely upon the information compiled by the Chief Executive Officer's investigation or conduct additional investigation. The Protection and Safety Division Administration is not bound by a previous decision to deny the relief suggested by the Chief Executive Officer.

~~2-004.07~~ A youth shall be limited to two formal Step One grievances per week, except for valid emergency grievances. Emergency grievances are those matters which must be resolved quickly because if the standard grievance time limits were used the youth would be subjected to a substantial risk of personal injury or other serious and irreparable harm.

~~2-005 Other Remedies Not Precluded:~~ Youths shall be allowed to communicate grievances to persons outside the Department and nothing herein shall preclude an youth from communicating a grievance to the Office of the State Ombudsman, legislators, attorneys, courts, or other appropriate individuals or groups at any time.

~~2-005.01~~ Claims against the Department involving miscellaneous or tort claims for money damages may be filed pursuant to the State Tort Claims Act. Each institution will provide youth with information about this process upon request.

~~2-005.02~~ Each facility shall ensure that youths confined there have reasonable access to courts.

~~2-005.03~~ Youths will be permitted to circulate petitions for signatures as long as the petitions do not violate or propose a violation of the Department's rules or state or federal law, or interfere with the security or good order of the facility.

The petition shall be considered by the Chief Executive Officer or the Protection and Safety Division Administration when responding to the grievance which the petition concerns as long as the petition is attached to the grievance or grievance appeal or is submitted to the Chief Executive Officer or Protection and Safety Administration before the grievance or grievance appeal has been answered. A copy of the petition will be kept by the Chief Executive Officer, Protection and Safety Administration, along with the record of the

~~grievance which the petition concerns. The petition shall also be included in the youths' permanent file.~~

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 3 - (Repealed)

CHAPTER 3

MAIL PRIVILEGES

~~3-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~3-002 Departmental Policy:~~ It is the policy of the Department that youths committed to its custody be allowed access to mail services so long as state and federal laws and regulations governing the use of the mail are not violated, and the security, safety and good order of the facility is not threatened.

~~3-003 Contraband in the Mail:~~ For the purpose of this rule, the following materials shall be considered contraband and may be confiscated under the provisions of this section. The term contraband, however, shall not be limited to the designated items, but shall include any others that constitute a threat to the safety, security and good order of the facility. **Retained as modified Chapter 1, Section 005.02(E)(i).**

~~3-003.01~~ The following objects are considered contraband.

~~3-003.01A~~ Narcotic, hallucinogenic or other illegally or invalidly possessed drugs.

~~3-003.01B~~ Plans for escape routes or the manufacture of weapons, incendiary devices, drugs, or alcohol.

~~3-003.01C~~ Alcoholic beverages.

~~3-003.01D~~ Weapons of any type.

~~3-003.01E~~ Perishable goods, unless approved by the Chief Executive Officer of the facility.

~~3-003.01F~~ Maps of any type related to the institution, its grounds or the geographic area where the institution is located, unless approved by the Chief Executive Officer of the institution.

~~3-003.01G~~ Any gang-related materials;

~~3-003.01H~~ Any items which would cause a violation of the Code of Offenses if possessed by an youth.

~~3-003.02~~ The following publications or recordings are considered contraband.

~~3-003.02A~~ Materials which advocate or are likely to incite violent or illegal activity, including materials which advocate or depict violent or illegal sexual activity.

~~3-003.02B~~ Any printed, published, recorded or photographed materials which are deemed by the Chief Executive Officer to constitute a threat to the safety, security, and good order of the institution.

~~3-004~~ Approved Mailing Lists: A youth may write and receive mail from anyone he or she chooses so long as the name of each party on the letter does not appear on the youth's list of disapproved correspondents. Such list and each name thereon will be subject to the approval of the Chief Executive Officer of the institution. The list may be changed or amended at any time through appropriate guidelines established by the Director or designee. Such guidelines shall assure that youth have access to the mails so long as the youths are protected from undue influences that would be harmful to the rehabilitation process.

3-005 Outgoing Mail Procedure:

~~3-005.01~~ There shall be no restrictions on the number of letters that may be written by a youth, except in the case of verified violation of the rules and regulations of the Department relating to mail. Youths shall not be allowed to establish credit with sellers of merchandise, or establish business enterprises, without the approval of the Chief Executive Officer of the institution. Youths also shall not be allowed to correspond with youths or adult offenders of other juvenile or adult correctional institutions (or the same correctional institution) without the approval of the Chief Executive Officers of both institutions.

~~3-005.02~~ All outgoing mail will be processed by personnel designated by the Chief Executive Officer of the institution. Such mail shall be examined for enclosures and contraband. **Retained as modified Chapter 1, Section 005.02, Section 005.02(A).** Outgoing mail may be read only when there is clear and convincing evidence that such mail could constitute a threat to the safety, security, or good order of the institution. **No sealed envelopes shall be mailed unless the mail is "privileged" as provided below.** All sealed envelopes shall be returned to sender along with a written explanation for the return. Each outgoing letter shall bear the name of the writer and his/her institutional address in the upper left hand corner on the front of the envelope. **Retained as modified Chapter 1, Section 005.02(B).**

~~3-005.03~~ If any outgoing mail is not allowed to leave the facility, it will be returned to the sender, along with a written explanation of the reasons for the action. If contraband is found to be contained in any outgoing mail, such contraband shall be seized and a receipt given to the youth. In the event that seizure of the letter containing contraband is necessary for disciplinary purposes, the youth shall be notified in writing. At the conclusion of any disciplinary action, seized contraband shall be destroyed, retained, or referred to a law enforcement agency, as appropriate. If a youth desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure.

3-006 Incoming Mail Procedures:

~~3-006.01~~ Youths may receive mail from any person or organization they choose except as prohibited in this Rule. There shall be no restrictions on the number of letters that may be received, the length of any letter, or the language in which a letter received may be written, except in the case of any verified violation of the rules and regulations of the Department or state and federal laws and regulations relating to mail. Commercial items received through the mail must be prepaid by the youth. Commercial items not prepaid will be returned to the sender and written notification of such action sent to the youth.

~~3-006.02~~ Mail from youths or adult offenders in other correctional institutions will not be permitted unless the Chief Executive Officers of both facilities approve the correspondence. Such mail is presumed to cause a threat to the safety, security, or good order of the institutions, and is presumed to jeopardize the rehabilitative process of the receiver. Appropriate correctional staff at the institution of the sender and the receiver may read mail from one youth to another youth or adult offender.

~~3-006.03~~ Personnel designated by the Chief Executive Officer of the institution will process all non-privileged incoming mail. Such mail shall be opened and examined for enclosures and contraband. **Retained as modified Chapter 1, Section 005.02, Section 005.02(A).** Incoming mail may be read and confiscated only when there is clear and convincing evidence that such mail constitutes a threat to the security, safety, or good order of the facility.

~~3-006.04~~ If any contraband is found to be contained in any incoming mail, such contraband will normally be returned to the sender, along with a copy of the written statement indicating the reason for the return which shall be delivered to the addressee. (Incoming publications are governed by 006.08, below.) A written statement will then be delivered to the addressee with a description of the items removed and an explanation of the reasons for the removal. In the event that the mailing of such contraband violates state or federal law, the contraband and the letter, if necessary, shall be referred to proper law enforcement authorities for appropriate action. In the event that seizure of the letter containing contraband is necessary for prosecution purposes, the sender and the youth shall be so notified in writing. If a youth desires to challenge a seizure of contraband, he or she may do so by employing the grievance procedure. If a sender desires to challenge a seizure of contraband, he or she may do so by contacting the Chief Executive Officer of the institution in writing.

~~3-006.05~~ All such mail shall generally be delivered to the addressee no later than twenty-four hours after its receipt at the institution, with the exception of weekends and holidays, or when mail contains suspected contraband. Packages will generally be delivered within forty-eight hours.

~~3-006.06~~ All mail sent to a youth must include the name and address of the sender. **Retained as modified Chapter 1, Section 005.02 (C).** If cash, checks, or money orders are found in incoming mail and there is no indication of the name and address of the sender, the funds will be placed in the institutional welfare fund. Non-wage funds received through the mail will be posted to a youth's institutional account if receipt of these non-wage funds does not otherwise violate a Departmental rule or regulation. Youths may not receive funds from another youth in the institution, a relative of another youth in the institution, a youth or an adult inmate in another correctional institution, a volunteer, or a person sending money at the request of another youth in the correctional institution. Non-wage funds placed in an institutional account may be spent only for those purposes for which state law allows youth wages to be spent. All funds in a youth's institutional account will be handled in a manner consistent with statutes governing youth wages. **Retained as modified Chapter 1, 005.02 (C)(i), and Section 005.02(C)(i)(1).**

~~3-006.07~~ When a youth has been transferred to another correctional institution, his or her First Class mail shall be forwarded to that institution for up to one year after the youth's transfer. First Class mail will be forwarded after release, providing a forwarding address is available. If no forwarding address is available, such mail shall be returned to the sender.

~~3-006.08~~ If a publication considered to be contraband (as defined in Paragraph 003.02 of this Rule) is found in a youth's incoming mail, the youth will be given written notice that the publication has been removed and why it is considered to be contraband. The publication will be held by the institution's Chief Executive Officer designee for sixty days in order to enable the youth to exhaust the grievance procedure before the publication is destroyed or returned to the sender at the youth's expense. If the youth asks that the publication be returned to the sender immediately, it will be returned to the sender, at the youth's expense.

3-007 Privileged Mail:

~~3-007.01~~ It is the policy of the Department that youths be allowed to send sealed letters to all federal and state officials, the Director, Protection and Safety Division Administrators and the Chief Executive of any juvenile correctional institution of the Department of Health and Human Services; the State Ombudsman or his deputies; judges; the youths designated Juvenile and Family Services Worker (parole officer); and members of local, state, and national bar association. The Chief Executive Officer of the institution from which such mail originates may choose to attach to any such outgoing mail, a letter disclaiming any administrative responsibility for the nature or contents of such mail. **Retained as modified Chapter 1, Section 005.02(B), Section 005.02(D), Section 005.02(D)(i).**

~~3-007.02~~ Any communication from a member of the bar, or from one of the persons referred to above may be opened only in the presence of the youth addressee. At the time of opening, such mail shall be examined for contraband, but shall not be read unless there is clear and convincing evidence that such mail constitutes a threat to the safety, security, or good order of the facility. In any case, the name or firm affiliation of any sender must appear in commercial printing on the envelope before such mail shall be accorded privileged status. **Retained as modified Chapter 1, Section 005.02(D)(ii).** Any sender using envelopes which do not contain commercially printed names or firm affiliation must acquire the prior written approval of the Chief Executive Officer of the institution. Without such approval, such mail marked privileged will be handled as standard, incoming mail.

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 4 - (Repealed)

CHAPTER 4

VISITING

~~4-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~4-002 Departmental Policy:~~ It is the policy of the Department that youths within each institution shall have visiting privileges and shall retain such privileges for the duration of their stay so long as rules and regulations governing such activities are not violated. **Retained as modified Chapter 1, Section 007.**

~~4-003 Posting Visiting Regulations:~~ The Chief Executive Officer shall ensure that copies of this rule and other regulations of the institution concerning visiting are provided to each youth upon admission and posted at and about the entrance of the institution and at and about the visiting areas within the institution. Further, the Chief Executive Officer shall provide copies to any persons upon request.

~~4-004 Visiting Records:~~ The Chief Executive Officer shall ensure that a record of each visitor that enters the facility be kept, which shall include: a sufficient identification of the visitor, the dates and times of arrival and departure, and the names of youths visited by such person.

~~4-005 Visiting Lists:~~ A youth may receive visits from anyone he or she chooses, subject to the approval of the Chief Executive Officer of the institution. In making his determination, the Chief Executive officer shall consider the effect that the presence of such visitors shall have on the institution, its staff, and/or the youths housed within the institution, and the probable effect such presence shall have upon the rehabilitative progress of the youth to be visited. Visitors may also be refused admission to the institution for failing to abide by the rules and regulations. Such a failure by the visitor may also result in the visitor being removed from the visiting list. Such action by the institution or Department shall be set forth in a written statement to the visitor or visitors and the youth to be visited. Such statement shall also indicate the reasons for the action. Youths aggrieved by such action may appeal through the grievance procedure.

~~4-006 Visiting Procedure:~~ Each visitor, upon admission to the institution, may be required to verify his identity and provide other vital information requested by the Chief Executive Officer. In addition, the Chief Executive Officer may require visitors entering the institution to submit to a search of person and belongings prior to entrance.

~~4-007 Visitor Dress Code:~~ The Chief Executive Officer of the institution may establish a dress code for visitors.

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 5 - (Repealed)

CHAPTER 5

TELEPHONE PRIVILEGES

~~5-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~5-002 Departmental Policy:~~ It is the policy of the Department that youth within each institution shall have reasonable and equitable telephone privileges and shall retain such privileges for the duration of their stay so long as rules and regulations governing such activities are not violated. **Retained as modified Chapter 1, Section 006**

~~5-003 Posting Telephone Regulations:~~ The Chief Executive Officer shall ensure that copies of the rules and regulations concerning telephone usage are provided to each youth upon admission and are posted at or about the entrance to the institution as well as in those areas which are equipped with telephones available to youth. The chief Executive Officer shall also provide copies to parents or other persons upon request. Such rules and regulations shall specify the hours of telephone availability, maximum length of calls, and any limitations on telephone use. Telephone facilities shall provide for a reasonable amount of privacy.

~~5-004 Telephone Records:~~ The Chief Executive Officer shall ensure a record of each youth's incoming and outgoing telephone calls at the institution is maintained. **Retained as modified Chapter 1, Section 006.02**

~~5-005 Telephone List:~~ A youth may receive or place telephone calls to those individuals approved by the Chief Executive Officer.

~~5-006 Limitations on Telephone Access:~~ Youth in the reception or orientation unit and those in disciplinary segregation may have access to telephones limited per written rules and regulations.

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 6 - (Repealed)

CHAPTER 6

CODE OF OFFENSES

~~6-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~6-002 Departmental Policy:~~ All youths who are housed within a juvenile correctional institution under the Department's supervision, or who under any circumstances are in the custody of or under the supervision of the Department as a disposition for an adjudication of delinquency shall be subject to the provisions of the Code of Offenses. Any breach of the Code of Offenses may result in appropriate disciplinary action. **Retained as modified Chapter 2, Section 001.** ~~No conduct of a youth constitutes an offense unless it is defined as such in the Code of Offenses.~~

~~6-003 Notice of Offense:~~ It shall be the duty of the Chief Executive Officer of the facility to familiarize each youth with the Code of Offenses either through the orientation process or by the distribution of printed manuals or rule books among the population. Youth and staff shall be kept informed of any changes in the Code by prominent posting of such changes. Newly admitted youths will be informed of the Code of Offenses during orientation. **Retained as modified Chapter 2, Section 002.**

~~6-004 Standard of Proof Required:~~ A youth commits an offense only when he or she engages in conduct which fulfills all the necessary elements of the offense. The conduct must be voluntary and be intentional or reckless or grossly negligent. The accused must have had notice that the conduct was proscribed by the Code of Offenses or applicable statutes. **Retained as modified Chapter 2, Section 004.04.**

~~6-004.01~~ A youth may be charged as a principal and be subject to appropriate disciplinary sanctions if it is clearly determined that he or she knowingly commanded, induced, procured or aided another person in the commission of the offense. No youth is liable under this section for the conduct of another person if prior to the commission of the offense, the youth withdrew from participation in the offense and made a reasonable effort to prevent its commission. In any disciplinary hearing where the liability of the accused youth is based upon the conduct of another person, it will be no defense that the other person has been found free of guilt, has been determined guilty of a different offense, has been discharged from employment, or has been otherwise restricted from access to the facility. **Retained as modified Chapter 2, Section 004.06**

~~6-004.02~~ A youth may be found guilty of attempting to commit an offense if: acting with the kind of culpability required for commission of such offense, the youth engages in conduct which in fact constitutes all of the acts necessary for the commission of the offense except its completion; or, the youth willfully provides substantial and knowing assistance to a person attempting to commit an offense under the Code of Offenses, the youth agrees with one or more persons to engage in or cause the performance of such conduct. A youth found guilty of an attempt shall be subject to the same penalties which correspond to the offense attempted. **Retained as modified Chapter 2, Section 004.07**

~~6-004.03~~ If contraband is found in a living unit shared by more than one youth, there shall be a presumption that each of those youths has knowledge of the presence of the contraband. Each youth charged as a result of the discovery of such contraband shall have the burden of coming forward with evidence to rebut the presumption. **Retained as modified Chapter 2, Section 004.05**

~~6-005 Offenses:~~ For the purpose of the Code of Offenses, the following is a list of violations which shall be classified as offenses. **Several of the offenses listed may also be considered criminal offenses and consequently shall be subject to state or federal jurisdiction, in addition to the appropriate penalties levied under Rule 6. In this event the matter may be referred to appropriate law enforcement officials for consideration for prosecution. Retained as modified Chapter 2, Section 002.01.** An offender may be found guilty of committing an offense, attempting to commit an offense, or aiding and abetting in the commission of an offense.

- ~~1. Murder/Manslaughter. The killing of another person.~~
- ~~2. Mutinous Actions. Mutiny, inciting to riot, insurrection, taking of hostages, and/or arson in any part of the institution, or any work assignment, or within the extended limits of the facility.~~
- ~~3. Aggravated Assault/Assault/Fighting. Assault on another person which causes pain or bodily injury, threatened assault, fighting with another person resulting in serious bodily injury, or sexual assault.~~
- ~~4. Possession or Manufacture of Weapons. Possession or manufacture of any weapon or article to be used as a weapon.~~
- ~~5. Escape. Escape, or attempted escape from any part of the facility, from any work assignment, or any extended limits of the facility. Failure to remain within the extended limits of confinement or to return within the time prescribed to a facility.~~
- ~~6. Work Stoppage/Work Strike Encouraging other youths to refuse to work or participate in designated programs, or preventing other youths from working, or participating in designated programs.~~
- ~~7. Refusal to Submit to a Search. Refusal to submit to a search of person, clothing, property, or living quarters when ordered by authorized personnel; flight to avoid search; or interference with such a search.~~
- ~~8. Drug or Intoxicant Abuse. Use, possession, manufacture, or sale of drugs, narcotics, or medication not prescribed by facility personnel, or of intoxicants; being under the influence of any intoxicant, or refusal to submit to a breath, blood, or urine test upon instruction from authorized personnel.
Tampering with test procedures, contaminating the evidence, or intentionally invalidating the urinalysis in any manner.~~
- ~~9. Escape Paraphernalia. Possession, manufacture, or use of escape paraphernalia.~~
- ~~10. Destruction of Property Over \$500. Destruction, alteration, unauthorized use, or wasting of property which belongs to the State or another person valued over \$500; or unauthorized contact or interference with such property.~~
- ~~11. Demanding Payment for Protection. Demanding or receiving anything from another person in exchange for protecting another person from the youth population; demanding, or receiving anything in exchange for not informing on another person, or threatening to inform on another person.~~
- ~~12. Bribery. Offering to sell, give, or loan any item or to perform any service for the benefit of any person in exchange for that person's deviation from assigned authorized duties or institutional rules.~~

- ~~13. Drug Paraphernalia. Possession, or manufacture of needles, syringes, or any other drug or narcotic paraphernalia.~~
- ~~14. Sexual Activities. Engaging in or pressuring others to engage in sexual activities.~~
- ~~15. Destruction of Property Valued Between \$100 and \$500. Destruction, alteration, unauthorized use, or wasting of property which belongs to the State or another person valued between \$100 and \$500; or unauthorized contact or interference with such property.~~
- ~~16. Disobeying a Direct Order. Disobeying any direct verbal or written order from any employee, or refusing immediately to comply with such a direct order.~~
- ~~17. Forgery. Forging, or altering official papers or documents. Signing another youth's name or number.~~
- ~~18. Theft. Taking of property from another person or from the State with the intent to deprive the owner of the property's use; or the unauthorized possession of stolen property.~~
- ~~19. Use of Threatening Language or Gestures/Fighting. Use of language or gestures thereby threatening physical harm to another person; or fighting which results in more than physical contact but less than serious bodily injury.~~
- ~~20. Gambling or Promoting Gambling. Promoting gambling; or possessing gambling devices or records; or betting on the outcome of a future event such as a game of skill or chance.~~
- ~~21. Unauthorized Areas. Being in or reporting to any area without proper authorization, loitering, or failure to report to a work assignment, program assignment, or other designated area without permission.~~
- ~~22. Improper Handling of Funds. Failure to turn over all incoming monies to the Department's accountant or designee for processing; the cashing of payroll checks; the diversion of incoming monies; or the making of unauthorized deductions from payroll checks.~~
- ~~23. Improper Use of Transportation. Operation of a motor vehicle without authorization from the Department authorities; the operation of a company-owned, job-related vehicle for any purpose other than work; or transportation in any vehicle without prior authority from Department administrators.~~
- ~~24. Law Violations. Violation of any law, statute, or ordinance of any city, county, state, or federal government; or failure to promptly notify Department authorities of any contact with law enforcement officials.~~
- ~~25. Failure to Work. Failure to work as directed by an institutional staff member or agent of the State.~~
- ~~26. Medication Abuse. Use or possession of authorized medication contrary to prescription or unauthorized possession of non-prescription medication.~~
- ~~27. Flare of Tempers/Minor Physical Contact. Flare of tempers between youths resulting in minor physical contact, or which appears likely to result in a confrontation; or such conduct on the part of an youth directed toward any person(s).~~
- ~~28. Destruction of Property Under \$100. Destruction, alteration, unauthorized use, or wasting of property which belongs to the State or another person valued under \$100; or unauthorized contact or interference with such property.~~
- ~~29. Possessing or Receiving Unauthorized Articles. Possessing or receiving unauthorized articles from another person without the approval of the Chief Executive Officer. Any item which has not been issued to an youth, purchased by him/her through proper institutional channels, or otherwise specifically approved for his/her possession by the facility administration is an unauthorized article.~~

- ~~30. Swearing, Cursing, or Use of Abusive Language or Gestures. Swearing, cursing, or use of abusive gestures or language directed to another person.~~
- ~~31. Mutilation of Self or Others. Intentionally piercing, branding, marking, tattooing, or cutting any portion of one's body or another's body or causing injury to one's self.~~
- ~~32. Selling, Lending, or Giving Items to Others. Selling, giving, or loaning anything or accepting anything from another person without the prior approval of the Chief Executive Officer.~~
- ~~33. Violation of Sanctions. Violation of restrictions or sanctions as imposed by a Disciplinary Committee of the institution or Department.~~
- ~~34. Violation of Any Signed Program Agreement. Violation of any term or condition of any signed program agreement.~~
- ~~35. Possession of Official Government Money Without Authorization. Possession of official government money without authorization, or in excess of the amount authorized by the Chief Executive Officer.~~
- ~~36. Tattoo Activities. Performing tattoo services, maintaining tattoo paraphernalia, or receiving a tattoo.~~
- ~~37. Disruption of Authorized Duties. Hindering any employee or youth in the performance of his/her duties by creating a disturbance, causing a delay, giving false information to authorized State Personnel, delaying count, turning in a false alarm, wearing a disguise or mask, tampering with locks, malingering, littering, or by creating or maintaining a health, safety or fire hazard.~~
- ~~38. Conduct with a Visitor in Violation of Regulations. Conduct with a visitor in violation of visiting regulations which have been posted or otherwise published to the youth population; contact with persons in or near areas where the public's access is restricted.~~
- ~~39. Violation of Mail or Telephone Regulations. Violation of procedures set out in Rule 3, or any institutional regulations governing use of the mails and telephone which have been posted or otherwise published to the youth population.~~
- ~~40. Violation of Regulations. Failure to adhere to any written or posted order or regulation of the institution or a program of the Department.~~
- ~~41. Gang-related Behavior. Use of gestures, language, or other conduct which promotes or indicates gang affiliation.~~

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 7 - (Repealed)

CHAPTER 7

RULES, DISCIPLINARY PROCEDURES, AND DISCIPLINE

~~7-001 Applicability:~~ The provisions of this Rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~7-002 Departmental Policy:~~ All youth who are housed within a facility under the Department's supervision, or who under any circumstances are in the custody of or under the supervision of the Department shall be subject to the provisions set forth in this document. Any breach of the rules, acts prohibited, and/or chargeable offenses may result in appropriate disciplinary actions, penalties, and/or sanctions. Disciplinary procedures, as outlined within this document, shall be followed.

In some instances, minor youth misbehavior may be handled informally. Written guidelines shall be written for informally resolving minor youth misbehavior.

It shall be the policy of the Department that the Chief Executive Officer of each facility maintain a clearly defined disciplinary procedure which complies with the provisions of this rule and is consistent with guidelines issued by the Director. **Retained as modified Chapter 2, Section 001.**

~~7-003 Notice of Rules and Discipline:~~ It shall be the duty of the Chief Executive Officer of the facility to ensure that written procedures are in place to make available to each youth and staff a written set of rules, discipline, and disciplinary procedures. Such information will be given out either at the time of admission to the facility or during the reception and orientation period. **Retained as modified Chapter 2, Section 002.** A staff member or translator shall assist any youth prevented from understanding the rules because of literacy or language problems.

~~7-004 Staff Training:~~ Facilities shall have written procedures which require that personnel who work with juveniles receive in-service training in the rules of juvenile conduct, the sanctions available, and the rationale for the rules. Training should prevent discrepancies among staff members in interpretations, and should stress the following:

~~7-004.01~~ Disciplinary training is to be of such a nature as to regulate a committed youth's behavior within acceptable limits, and shall be taken at such times and in such degrees as is necessary to accomplish this objective.

~~7-004.02~~ The behavior of youth committed to the custody of the Department for delinquent offenses shall be controlled in a completely impartial and consistent manner.

~~7-004.03~~ Disciplinary action shall not be capricious, retaliatory or revengeful.

~~7-004.04~~ Corporal punishment, humiliation, mental abuse or punitive interference with the daily functions, such as eating or sleeping, is strictly prohibited.

~~7-005 Offenses/Acts Prohibited: Offenses and/or acts prohibited, as defined for youth, are listed in Rule 6. Any youth who commits an offense may be subject to appropriate disciplinary action. The Chief Executive Officer of each juvenile correctional institution shall classify listed offenses as either reportable minor offenses or major offenses. Reportable minor offenses shall include infractions of the rules where informal resolution appears unwarranted and for which the maximum penalty is extra work duty, room restriction, suspension of privileges, severe reprimand, counseling, or a combination thereof. Major offenses shall include infractions of the rules where possible sanctions include any of the sanctions listed above or placement in disciplinary segregation. Several of the offenses listed in Rule 5 may also be considered criminal offenses and consequently shall be subject to state or federal jurisdiction, in addition to the appropriate penalties within this document. In this event, the matter may be referred to appropriate law enforcement officials for consideration for prosecution. A youth may be found guilty of committing an offense, attempting to commit an offense, or aiding and abetting in the commission of an offense.~~

~~7-006 Disciplinary Procedures All juvenile correctional facilities shall have a disciplinary committee. The Chief Executive Officer shall establish and appoint as many members as deemed necessary. The Chief Executive Officer shall also have the authority to appoint substitutes for members of the standing committee, or to appoint a second committee in the event of a serious disturbance or other emergency, or if an offense is committed in the presence of the committee or any of its members. In the interests of impartiality, no member shall maintain a position on the disciplinary committee during a hearing if that member has firsthand knowledge of the charges brought against the accused juvenile offender. Retained as modified Chapter 2, Section 004.03. However, a staff member who is witness to an incident may sit as a member of the disciplinary committee when the incident is so widely witnessed that virtually every staff member has witnessed it in whole or in part.~~

~~7-006.01 Procedures for handling reportable minor violations shall include:~~

~~7-006.01A The youth shall be informed of the specific rule he or she is alleged to have violated:~~

~~7-006.01B The youth shall be given reasonable opportunity to deny the allegations or explain the reasons for the violation;~~

~~7-006.01C The juvenile shall be advised of any actions taken and reasons for taking such action;~~

~~7-006.01D The youth shall have the right to appeal any disciplinary decision on a reportable minor violation; and~~

~~7-006.01E Staff responding to reportable minor violations will prepare an incident report describing the rule infraction and the action taken. Such reports shall be submitted by the reporting staff to his or her supervisor before leaving work that day.~~

~~7-006.02 The following disciplinary procedures shall be established and/or implemented to respond to instances when a major violation, or a reportable minor violation, of the rules has been charged:~~

~~7-006.02A~~ Written procedures which require that employees prepare an incident report when they have a reasonable belief that a youth has committed a major violation(s) or a reportable minor violation(s) of the rules. Each employee involved or who witnessed the incident shall prepare a separate factual and objective report without consultation of other employees. This report shall be forwarded to the disciplinary committee and to the administration of the facility before the employees leave work that day.

~~The incident report should include all pertinent information, as specific and comprehensive as possible. The report minimally shall include date, time, and location of the incident; specific rule violated; a clear statement of violation; any unusual youth behavior; disposition of any physical evidence; any immediate action taken; the date and time the report is made; listing of any staff or youth witnesses, and the name of the person submitting the report.~~

~~7-006.02B~~ Written procedure specifies that an investigation of any alleged major rule violation will begin within 24 hours of the time the violation is reported. The investigation will be completed without unreasonable delay except where there are extraordinary circumstances. The investigating person should be a supervisory staff member and should not be the staff person who reported the incident.

~~7-006.02C~~ To ensure fairness, youth charged with rule violations should receive speedy hearings unless prevented by exceptional circumstances. Written procedures shall provide that youth charged with rule violations are scheduled for a hearing no later than seven (7) days, excluding weekends and holidays, after the alleged violation. Youth shall be notified of the time and place of the hearing at least 24 hours in advance of the hearing, unless waived in writing by the youth. Reasons for delays in this process shall be documented. **Retained as modified Chapter 2, Section 004 and Section 004.01.**

~~7-006.02D~~ Written procedures shall provide that youth charged with rule violations are present at disciplinary hearings, except when their behavior during the hearing justifies exclusion, or when they waive their right. Reasons for the exclusion shall be documented. **Retain as modified Chapter 2, Section 004.02**

~~7-006.02E~~ Written procedures shall provide that disciplinary hearings of cases of rule violations are conducted by an impartial person or panel of persons. **Retained as modified Chapter 2, Section 004.03.** These individuals shall not have been directly involved in the incident.

~~7-006.02F~~ Written procedures shall be established which allow youth to request the services of any staff member to represent them at disciplinary hearings and to question relevant witnesses. Staff representatives shall be appointed when it is apparent that youth are not capable of effectively collecting and presenting evidence on their own behalf. **Retained as modified Chapter 2, Section 004.09, Section 004.09(A).**

~~7-006.02G~~ Written procedures shall be established which provide that the youth is given an opportunity to make a statement and present documentary evidence and to have in attendance at a disciplinary hearing, any person who has relevant information. **Retained as modified Chapter 2, Section 004.08**

~~7-006.02H~~ A written procedure requiring that a youth charged with a major violation of the rules is given a written copy of the alleged rule violation(s) within 24 hours of the infraction. **Retained as modified Chapter 2, Section 003.**

~~7-006.02I~~ Written procedure shall specify that a written record is made of the findings of the disciplinary hearing and the supporting reasons. This statement should include the decision, the disposition and the reason for the action, unless doing so jeopardizes institutional security. A copy of this written record shall be given to the youth. The record of the hearing and supporting documents shall be kept in the youth's file and in the disciplinary committee's records.

~~7-006.02J~~ Written procedures shall be designed to provide for review of all disciplinary hearings and dispositions by the Chief Executive Officer or designee to assure conformity with policy and regulations.

~~7-006.02K~~ A written procedure which provides that the disciplinary report is removed from the master files of youths found not guilty of an alleged rule violation.

~~7-006.02L~~ A written procedure which grants juveniles the right to appeal decisions of the disciplinary committee to the Chief Executive Officer or designee within 15 days of receipt of the decision. **Retained as modified Chapter 2, Section 006, Section 006.01.** The appeal shall be decided within 30 days, and the youth shall be promptly notified in writing of the results of the appeal.

~~The appeal process shall consider three factors: Whether there was substantial compliance with Department policy and institutional procedures in applying youth discipline; whether the decision of the committee was based on substantial evidence, including the introduction of new evidence; and, whether, under the circumstances, the sanction imposed was proportionate to the rule violation.~~ **Retained as modified Chapter 2, Section 006.02, Section 006.03**

7-007 Disciplinary Actions, Penalties, and/or Sanctions:

~~7-007.01~~ Disciplinary action shall not be capricious, retaliatory or revengeful. **Retained as modified Chapter 2, Section 005, Section 005.01** The following penalties may be imposed by the Chief Executive Officer or designee:

~~7-007.01A~~ Extra work duty.

~~7-007.01B~~ Suspension of privileges.

~~7-007.01C~~ Severe reprimand.

~~7-007.01D~~ Counseling.

~~7-007.01E~~ Room restriction.

~~7-007.01F~~ Disciplinary segregation.

~~7-007.02~~ Room restriction regulations shall include the following:

~~7-007.02A~~ Written procedures which specify that room restrictions for minor misbehavior are for a short period of time for "cooling off" -- fifteen (15) to sixty (60) minutes -- specified at the time of assignment.

~~7-007.02B~~ Written procedures which require that prior to room restriction, the youth has the reasons for the restriction explained and has the opportunity to explain the behavior leading to the restriction.

~~7-007.02C~~ During the period of room restriction, contact shall be made with the youth in an effort to solve any problems, and to determine release. Contact shall be made with the youth at least every 15 minutes depending on the youth's emotional state.

~~7-007.03~~ When confinement or segregation of the youth is necessary for safety and security reasons or as disciplinary detention, the following shall apply:

~~7-007.03A~~ A youth may be confined for a period of up to 24 hours when charged with a major rule violation requiring confinement for the safety of the youth, or to ensure the security of the facility. Confinement for periods of over 24 hours shall be reviewed by the administrator or designee who was not involved in the incident.

~~7-007.03B~~ Written procedures shall specify that youth placed in confinement are afforded living conditions and privileges approximating those available to the general population. Exception shall be justified by clear and substantial evidence.

~~7-007.03C~~ Youths placed in confinement shall be visually observed by staff at least every 15 minutes. Furthermore, they shall be visited at least once every day by personnel from administrative, clinical, counseling, religious or medical units. A log shall be kept stating: date and time confinement began; who authorized confinement; all persons visiting the youth; the person authorizing release from confinement; and the date and time of release. Written documentation shall also be maintained to include the youth behavior and activity while in restriction, date and time of each visual check, and initials of person conducting the check.

~~7-007.03D~~ There shall be a sanctioning schedule which sets a maximum of 5 days of confinement in a security room for any offense. The time a youth spends in disciplinary segregation shall be proportionate to the offense committed.

~~7-007.03E~~ Written procedures shall require that a permanent log be maintained of all youths assigned to room confinement or segregation.

~~7-007.04~~ Written procedures shall provide that prior to privilege suspension, the youth has the reasons for the restriction explained and has an opportunity to explain the behavior leading to the suspension. Privilege suspension shall not include loss of regular meals, clothing, sleep, health care services, exercise, correspondence privileges, and contact with parents or legal assistance. **Retained as modified Chapter 2, Section 005.02**

~~7-007.05~~ Written procedures shall provide for a system of rewarding the positive behavior of individual youth.

~~7-008 Acts Covered by Criminal Law:~~ Written procedure shall provide that when a youth allegedly commits an act covered by criminal law, the case is referred to appropriate court or law enforcement officials for consideration for prosecution. Where authorities accept jurisdiction, determination of guilt, and imposition of punishment becomes their responsibility. If the proper law enforcement authorities do not accept responsibility, the facility shall treat the matter as an alleged major rule violation.

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 8 - (Repealed)

~~CHAPTER 8~~

~~RELEASE, PAROLE AND DISCHARGE OF YOUTH~~

~~8-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and all other juvenile correctional institutions operated by the Department of Health and Human Services.

~~8-002 Departmental Policy:~~ It is the policy of the Department that the Chief Executive Officer shall maintain clearly established procedures for the release, parole, and discharge of youth from a juvenile correctional institution which complies with the provisions of this Rule and is consistent with related provisions of 390 NAC.

~~8-003 Parole or Institutional Discharge of Committed Youth:~~ A team comprised of institutional treatment staff, the assigned Juvenile and Family Services Worker, and other designated persons involved with the case shall periodically review the youths' progress and submit recommendations for release to parole or institutional discharge to the Chief Executive Officer. The Chief Executive Officer shall review the team's recommendation and, if he or she concurs, authorize the release of the youth to parole supervision or effect an institutional discharge of a youth from the state's custody. If there is disagreement between the Chief Executive Officer and the team concerning a release recommendation, the Chief Executive Officer and team will discuss concerns and attempt to reach agreement. If the two parties cannot reach consensus, the matter shall be referred to the Protection and Safety Administration for resolution.

~~8-004 Criteria for Juvenile Parole:~~ A youth may be paroled, when in the opinion of the team involved in the case, the youth presents no significant threat to the safety of the community, there is reasonable probability that any further violation of Nebraska law will not occur; that the youth will act in a socially acceptable manner; the youth has been thoroughly advised of the conditions of parole and has signed a parole agreement, accepting those conditions; and parole is in the best interest of the youth. A recommendation for release from the institution to parole supervision is made when:

~~8-004.01~~ A youth has successfully completed the goals of the Individual Treatment Plan developed specific to their placement at the institution or the youth has received maximum benefit from the placement and would benefit from or require continued services from the Department under community supervision,

~~8-004.02~~ A youth has the ability to function in the community,

~~8-004.03~~ A youth has the stability and supportiveness of his or her family or a suitable alternative placement,

~~8-004.04~~ Community resources are accessible and an aftercare plan addressing placement, supervision, employment or academic educational opportunities and the special needs of the prospective parolee is in place, and

~~8-004.05~~ A youth appropriately classified for institutional placement has completed at least six months at the institution. Youth committed to an institution that are appropriately classified for community supervision shall be released to community supervision as expeditiously as possible.

~~8-005~~ Criteria for Institutional Discharge: A youth may be granted an institutional discharge when:

~~8-005.01~~ A youth has reached the age of majority,

~~8-005.02~~ Another institution or agency has been given legal responsibility for the youth,

~~8-005.03~~ A youth is transferred to another state or locality other than from where the commitment originated, and the team involved with the case determines that community supervision will not be required or that community supervision is not in the best interest of the youth and his or her family, or

~~8-005.04~~ The team involved with the case, with the concurrence of the Chief Executive Officer and the Protection and Safety Administration, determine the youth to be no longer amenable to continued institutional or community supervision.

~~8-006~~ Temporary Release/Furlough: A youth may be granted a temporary release, or furlough, from the institution when:

~~8-006.01~~ A youth or his or her family is experiencing a crisis or emergency where the youth's presence is requested or necessary, or

~~8-006.02~~ In the opinion of the team involved with the case and with the concurrence of the Chief Executive Officer, a furlough would facilitate completion of release planning or support transition of the youth to the community. **Retained as modified Chapter 1, Section 008.**

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 9 - (Repealed)

CHAPTER 9

REHABILITATION OPPORTUNITIES

~~9-001 Applicability:~~ The provisions of this rule shall apply to the Youth Rehabilitation and Treatment Centers and any other juvenile correctional institutions operated by the Department of Health and Human Services.

~~9-002 Departmental Policy:~~ It is the Department's policy to provide psychological treatment, sociological development programs, rehabilitation opportunities, and educational or employment programs to those youths who are in need of such treatment or programs. **Retained as modified Chapter 1, Section 002.** The specific treatment and programming available to a youth will depend upon where the youth resides and the youth's custody classification.

~~9-003 Scope of Services:~~ Youth committed to the Department who are assigned to a Youth Rehabilitation and Treatment Center at Geneva or Kearney shall have access to programs necessary to aid the youth in meeting goals set forth in an Institutional Treatment Plan and which support the youth's physical, emotional, and social development. Programming at the Youth Rehabilitation and Treatment Center shall emphasize academic education, vocational education, recreation and treatment. Counseling services shall also be made available to youth in need of such services. Because institutionalization has the potential of creating an unintended negative impact on some youth, it is imperative that programming have the variety and depth of services required to meet the needs of a wide range of youth problems. Such programming and services should also build upon the strengths of youth to enhance treatment and successful return home.

~~9-003.01 Academic Education, Vocational Education, and Mental Health Services.~~ It is the Department's policy that opportunities for academic education, vocational education, mental health services, and substance abuse programming shall be made available to all youths in committed to the Youth Rehabilitation and Treatment Centers.

~~9-003.02 Work Programs.~~ It is the Department's policy that work opportunities on and off-campus be made available to all youth committed to the Youth Rehabilitation and treatment Centers. The Department may require such youth to participate in work programs, upon penalty of disciplinary actions.

~~9-003.03 Recreation and Leisure Time.~~ It is the Department's policy that opportunity for productive leisure-time activities and physical exercise be made available to all youth in the Department's juvenile correctional institutions.

~~9-003.04 Religious Practices.~~ It is the Department's policy that all youth in its institutions have an opportunity to practice the religion of their choice. However, participation in congregational religious services may be limited to those youths who are not in disciplinary segregation. **Retained as modified Chapter 1, Section 003.**

~~9-003.05 Expression and Association. It is the Department's policy that youth shall retain their freedoms of expression and association except to the extent that the practice of such freedoms may interfere with safety, security, and good order of the institution or the goals of rehabilitation. Other rights of youths with respect to expression and association are outlined in the Department's rules regarding mail and visitation.~~

~~9-003.06 Health Maintenance. It is the Department's policy that all youths shall have the opportunity to receive health maintenance services and that no youth's physical condition shall be allowed to deteriorate due to inaction or indifference on the part of Department employees.~~

~~9-003.07 Youth Privacy. Youths are considered to be responsible for preserving their own privacy by wearing appropriate attire in individual rooms, dormitories, day areas, and other areas of the institutions.~~

TITLE 401 - YOUTH REHABILITATION AND TREATMENT CENTERS
CHAPTER 10 - (Repealed)

CHAPTER 10

CHANGES IN RULES AND REGULATIONS

~~10-001 Department Changes of Rules: Promulgation, amendment, or repeal of any Department rules shall be in accordance with Nebraska Statutes sections 84-901 et seq., regarding changes in rules for administrative agencies.~~

~~10-002 Proposed Changes in Department Rules by Petition:~~

~~10-002.01 Interested persons may petition the Director or his or her designee requesting the promulgation, amendment, or repeal of any Department rules. Any such petition must state the nature of the proposed rule, amendment or repeal of a rule in detail; must designate one individual as the circulator of the petition and must state the circulator's full name and mailing address; and contain the legible signatures, mailing addresses, and dates of signatures of all others purporting to support the petition. Those signing the petition(s) must be residents of the State of Nebraska over the age 18, but need not be registered voters or eligible to vote.~~

~~10-002.02 Any such petition as described in paragraph 10-002.01, above, should be submitted to the Director of the Department of Health and Human Services or his or her designee by certified mail. The Director or the Director's designee will then respond in writing to the circulator of the petition within ten work days after receipt of the petition, informing the circulator of the Department's position with respect to the proposal set out in t petition. A copy of the petition and the Department's response shall be maintained in the Department's files.~~

~~10-003 Administrative Regulations and Operational Memoranda: The Department's Rules promulgated under the Nebraska Statutes sections 84-901 et seq., create rights on behalf of youths of the Department and on behalf of others who may be affected directly by the Rules. From time to time, the Department may also promulgate regulations and operational memoranda pursuant to the exception set out in section 84-901 (2) of the Nebraska Statues for matters concerning the internal management of the Department and not concerning private rights, private interests or procedures available to the public.~~

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