

PRESENTATION ON PRISONERS' RIGHTS,
GRIEVANCE, AND DISCIPLINARY PROCEDURES
AND RELATED POLICIES
AS PRACTICED AT
STILLWATER STATE PRISON

Presented by

THE OMBUDSMAN FOR CORRECTIONS

April 5, 1973

Presented to:

| | |
|-----------------------------|------------|
| Commissioner of Corrections | K. Schoen |
| Deputy Commissioner | J. Cannon |
| Warden | B. McManus |

HV
8343
.582
1973

LEGISLATIVE REFERENCE LIBRARY
STATE OF MINNESOTA

PRESENTATION ON PRISONERS' RIGHTS, GRIEVANCE,
AND DISCIPLINARY PROCEDURES AND RELATED POLICIES

STILLWATER STATE PRISON

THE OMBUDSMAN FOR CORRECTIONS

April 5, 1973

Introduction

One of the Ombudsman's primary functions is to hear complaints from inmates of institutions who feel that a "right" or "privilege" has been abused or taken away. We can only function adequately if these privileges and the policy and procedure associated with administering the inmates' environment - the prison setting - are clearly defined for all involved -- staff, inmates and the interested public. The Ombudsman can only judge if an action is fair or unfair if the criterion of "fairness" is spelled out in advance and well understood. Because of this fact, in order to meet our objectives, as cited in Figure 1,* we have begun to review the specific policies and procedures at each of the institutions in the Department of Corrections. We have concentrated first on Stillwater because of our heavy caseload at this institution. In Figure 1, note that Objectives 1, 3 and 4 are emphasized as the ones that we are following in this presentation. They include the design of administrative action, improvement and clarification of administrative procedures and regulations, and the reorganization and revitalization of internal prison review procedures.

Our presentation today is meant to encourage discussion. It is not the Ombudsman's intention to present a thoroughly developed

*All figures are included as attachments in a section following this narrative.

LIBRARY
LEGISLATIVE DEPARTMENT
STATE OF MINNESOTA

244.8
11979

system of rules. This is not our role. We simply want to point out that a need does exist to clarify and fill in the gaps in the disciplinary and grievance procedures for inmates.

We hope that this meeting will lead to further working sessions on this subject. It is believed that this kind of effort will simplify and improve the relationship between the Ombudsman and the correctional institution staff. Furthermore, it will hopefully contribute to an improvement in the inmates' appreciation of "rights" and "due process" and hence help lead to the Department of Corrections' goals of rehabilitation, several of which are presented in Figure 2.

Prisoners' Rights and Responsibilities

We first want to establish a frame of reference for the areas in which inmate grievances occur, i.e., the things to which they are normally entitled and also the responsibilities inmates have for responsible behavior -- The lack of which brings about certain kinds of punishment. Figure 3 is presented to show a central underlying principle which is cited in several of the documents discussing the rights of prisoners. The important statement is that inmates shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken by law.

In Figure 4, we have listed the areas in which the rights of prisoners have become generally recognized in the legal decisions handed down by the Supreme Court. We have also indicated those privileges which are discussed in the Stillwater Inmate Handbook

This does not mean that they are not in other documents at Stillwater. It does indicate that the first document that prisoners receive during orientation does not discuss all of the rights that prisoners are normally recognized as having. In future sessions we would like to suggest that these privileges be discussed and clarified. This would range from the legality or fairness of practices -- such as any censorship of mail -- to better specification of "outside group" visits. We would particularly want to discuss medical services and such questions as -- Who determines the need for treatment, the custody or medical staff? Why not improve services through use of University of Minnesota staff and Ramsey County facilities? We can bring our experiences in numerous cases to bear in these discussions.

We would particularly like to discuss privileges in areas not covered by the Inmate handbook, such as -- safety for person and property; environment and facilities; access to the media; the grievance procedure and disciplinary procedure. Again, it is emphasized that clearer communication of privileges and responsibilities will not only make the Ombudsman's job easier, it will also create more effective staff treatment of inmates, thus improving the rehabilitation process.

Personal Responsibilities - Inmate Handbook

Personal Responsibilities of inmates are also spelled out in the Inmate Handbook. In Figure 5 are listed some of these. Discussion of these areas is also suggested with the objective of expanding their descriptions and insuring they are communicated thoroughly to staff and inmates. For instance, all of the actions

which can bring about disciplinary proceedings are listed in another document along with the kind of punishment accorded. Still another document describes the punishment in detail. Some of this subject is also covered in the Prison Employees' Handbook, with additional detail on handling inmates, use of firearms, etc. These should all be contained in one document and updated as needed. This is also true of the disciplinary procedure which is found in at least five other documents.

Grievance Procedure

A grievance procedure in a formal published form does not exist in writing to our knowledge. Figure 6 indicates the way that grievances are handled today where they can be sent to a variety of places for action.

Figure 7 presents one alternative to this which is a possible grievance procedure that might be implemented. Again, this is just a suggestion of an idea which would have to be worked out in detail by the staff. In Step 1 the grievance would be taken directly to the staff member with whom the aggrieved has had problems. This is a very informal step. It does not have to be in writing and it might be taken to a third-party staff member, such as a lieutenant or a captain if another officer is involved. It is meant to try to handle problems with the system early and at as low a level as possible. If this does not work then the second stage is implemented where a written grievance is sent to the Associate Warden with a copy to the Ombudsman. This grievance is investigated and a report is sent back to the inmate and the Ombudsman within ten days. Still unsettled? Then the third step of the grievance procedure is another written grievance

is sent to the Staff-Inmate Advisory Council. Here the Ombudsman and a representative of Legal Assistance to Minnesota Prisoners (LAMP) program sit on the grievance committee of this council. A hearing, if necessary, is held within ten days and a response is in five days. We want to indicate that the time here is not anything we necessarily recommended but what we just picked for the sake of having something for this presentation. However, it must be remembered that in establishing the time limits for response to grievances, one must be concerned with the number of grievances it might be necessary to handle at one time and the other responsibilities that the staff and the inmates have. It may seem that five days is a short time for investigating but if there are fifteen or twenty to be investigated at one time and they are complex, it may not work very well. Therefore, in discussions of the grievance procedure we would like to see if some way of determining what would be realistic is possible.

If the third stage of the grievance procedure does not work then an appeal would be made to the Warden and at this point the Ombudsman might very well become directly involved with the appeal. Finally, the fifth step of the grievance procedure is to the Commissioner of Corrections and, again, the Ombudsman might be involved.

Throughout this whole procedure it is still the inmate's right to appeal to other people outside of this system -- such as the governor, the legislature, the press, or the Public Defender, etc. However, the inmates should be encouraged to stay within the system and if it operates properly and has successful outcomes, after a period of time the inmates will learn to use it and trust it.

Note in Figure 7 that the Ombudsman is outside the system and does not become directly involved until Step 3, and then only as

part of another group. The concept here is to try to make the administrative system within the institution work so that the Ombudsman does not have to be involved in every case that comes along.

Disciplinary Procedure

We have begun a preliminary analysis of Stillwater's disciplinary procedure as recorded in written documents and as we have observed it. Figure 8 shows the beginning of a rules violation which is the charge and investigation phase. Note that Figure 8 is divided into the staff and the inmate actions. It starts with an alleged offense committed. The staff observes the offense or receives third party evidence and charges the inmate verbally. If it is a serious enough offense the inmate is locked up in Cell Hall C. The charge is written up and delivered to the Associate Warden of Custody who delivers it to the inmate. A lieutenant is assigned as a board officer. The custody officer investigates the complaint. The report is received by the Associate Warden of Custody who then sets a hearing within four to ten days after the report is completed and notifies the inmate of the hearing date who then prepares his defense.

Some of the questions that we would like to pursue in discussions of the disciplinary procedures, should they take place, include the following -- the inmate doesn't always receive a verbal charge -- a time limit within which a formal written charge must be made and this is not required at the present time. We recommend 24 hours. This is important particularly if the inmate is locked up. The entire prison community is affected by the arrest of one individual. The clearer the process, the fewer the problems -- the written charge should be dictated by the man who made it -- the charge should include minimum information such as place, occurrence, witnesses, signature of the accuser -- there should be

serious discussion around how the inmate prepares his defense if he is in lockup.

In Figure 9 the next phase of the disciplinary procedure is followed which is the conduct of the hearing. In the hearing, as noted in Figure 9, a charge is read, the investigation is read, the witnesses testify, the inmate testifies, the board deliberates, the verdict is stated and it goes to disposition. The questions we'd like to discuss in this phase of the disciplinary procedure include -- the hearing process is not well defined -- accused's witnesses are limited by the board -- accused cannot question the accuser or witnesses -- can the accused have an advocate and if so, what are his limits? -- why not have inmates on the board?

The next phase of the disciplinary procedure is the disposition of the case and in Figure 10 we have the disposition when the inmate is found not guilty. If he has not been locked up he can go back to the general population. If he is in Cell Hall C then the paperwork has to be processed. He has to be checked out for a job and treatment opportunity -- reviews held by the associate warden -- and if he agrees the man is released from lockup. If not, then a new investigation may be ordered. An appeal can be made to the Warden within five days of the hearing.

In Figure 11 we find the various alternatives that the board has if the man is found guilty. The charge can be reduced. He can be referred to classification committees. He can be sent to the appropriate treatment personnel. A custody change can take place which may be a move from Cell Hall B to more stringent privileges in Cell Hall A. He can lose privileges up to five days -- move into segregated housing in Cell Hall C or move into isolation not to exceed ten days.

The following are typical questions we have regarding the disposition process: If not guilty, release process from lockup should be clearly specified -- if guilty, the time spent in lockup should apply towards the sentence -- the appeal process should be more clearly defined; i.e. the time limits should be specified; no increase in punishment to be exercised by appellate structure; and the Associate Warden should be required to defer to an associate if the Associate Warden is the accuser -- amount of "good time" is not consistent.

Punishment

Offenses

Offenses are identified for the various kinds of activities that an inmate can get involved in which are considered to be unproductive or threatening prison safety. In Figures 12, 13 and 14 are listed the various offenses for which one can lose privileges, be put into segregated facilities, or placed into isolation. It is recommended that in discussions regarding this entire disciplinary system the various offenses and penalties related to them be reviewed carefully to make sure that they do seem to be equitable. For instance, in Figure 12, it would appear that obstructing a cell door for which one gets seven days loss of privileges may be more of a problem than loitering, for which one would receive ten day of punishment.

Confinement

If an offense is serious enough a man may be removed from the general prison population and confined in certain areas where he is isolated from other inmates. The first and least serious level of confinement is termed detention. We have not been able to find any definition of what "detention" is although we recognize that that status is exercised in a set of cells on the east side at the entrance of Cell Hall C. However, this has not been satisfactorily carried out in recent months. There have been cases where men who are on detention status have been found in isolation. One recent case, a man was in an isolation cell on detention status for well over the ten-day limit stated in the rules and regulations of the prison.

Figure 15 shows the privileges that are accorded in segregation. There are two sections in segregation -- the admission side, which is more stringent than the honor side.

Figure 16 describes the privileges and condition of isolation, which is the most serious of confinement situation.

Finally, we want to discuss the recently-established Cell Hall D Maximum Custody Living Unit. The similarity between Cell Hall D and segregation is very striking. Although the prison administration has contended that this is not punishment, it is considered punishment in the minds of the general inmate population, according to what we have been told. Also, if you compare the conditions in Cell Hall D in Figure 17 with segregation in Figure 15, you will see that they are very similar. Recently the men in Cell Hall D have been locked in for twenty-four hours a day and apparently are going to be that way for two weeks

because of their refusal at times to go back into their cells. We feel that discussions concerning Cell Hall D should be carried out as soon as possible because the Ombudsman is receiving many complaints about the facility. Instead of reducing the tensions at the prison it may increase them. The men in Cell Hall D seem to be more and more prone to violence because they have been locked up for a long period of time without being told why they are there. No due process has been carried out. More importantly, we must recognize that most of these inmates, along with all the others in the general population, will be out of that prison within a very short period of time. In their present condition, they receive no rehabilitation at all so that the Department of Corrections cannot carry out the objectives that it has cited so strongly in its recent budget presentation. Therefore, Cell Hall D can be viewed as an eventual threat to public safety because inmates who have experienced Cell Hall D, when released will be as much of a threat to the public safety and possibly more so than when they went in because of the way that they have been treated. The concept of fairness has not been followed. Prisoners feel inconsistently treated and the whole situation is viewed as counter-productive.

Organization and Administration

A review of our relationships with individual staff members at Stillwater indicates that authority and responsibilities are

- not always clear in a given situation
- not consistent with the individual's level in the organization
- not always consistent with title
- in some cases appear to be assigned but are not exercised.

The need for more formalized work plans, accountability, use of staff meetings, etc. may be in order. Again, it is not the Ombudsman's role to recommend necessarily what actions are to be taken. However, when from time to time we feel that a situation is occurring which when remedied would contribute to a more stable situation in the prison, we feel that it is our responsibility to bring it to the attention of the proper individuals.

Summary

The purpose of this presentation has been to present the current disciplinary and grievance procedures which are used to control the system of prisoners' rights and responsibilities at Stillwater. The objectives of our review are described in Figure 18. We again would like to indicate that the necessity for establishing and communicating carefully and widely, policies and procedures of the system is very important. In the management cycle it is first important to set objectives and then the associated policies and procedures very clearly. This enables management to communicate what is needed to be done to lower levels of management and to follow up and control the activities to see that it is carried out. If objectives, policies and procedures are not clearly stated, then the rest of the management process cannot take place effectively. We feel that in order to be able to judge the fairness of actions in situations where grievances are filed or where discipline is enacted, it is necessary to have clearly defined rules. Therefore, we recommend and suggest that further discussions regarding this system be held as soon as possible and including members of the Ombudsman's staff.

FIGURE 1

The Minnesota Corrections Ombudsman has the following objectives:

1. Improving the relationship between staff and inmate by providing the inmates with information on the actions, motives, and design of administrative action.
2. Alleviation of tension within the prison by means of more open communications, i.e., a "release valve".
3. The improvement and clarification of administrative procedures and regulations.
4. Reorganization and revitalization of internal prison review procedures.
5. Increased access to judicial review by cooperation and coordination with the various legal aid services.
6. Encouragement of more active involvement of private and governmental agencies and interest groups in alleviating the grievances.
7. Coordination of overlapping governmental agencies by means of increased flow of information from the agencies to inmates and staff regarding functions, programs and procedures.
8. Strengthening and correcting legislation by providing the Legislature with information and recommendations regarding correctional institutions.

FIGURE 2

FOUR GOALS OF THE MINNESOTA DEPARTMENT OF CORRECTIONS

AS CITED IN THE 1973 - 75 BIENNIAL BUDGET REQUEST

- Develop correctional programs within the context of humane care and constitutional standards of practice. The elements of humane care include not only the physical needs of offenders, but respect for the individual's dignity and autonomy. Due process shall become the basis for the constitutional standards of practices in all correctional programs.
- Maintain high professional standards of practice while encouraging the development and use of new human resource inputs in the treatment of offenders. Those personnel in direct continuing contact with offenders are the agents of change in the rehabilitation process.
- Encourage and involve the wide spectrum of public interest in all aspects of the correctional process in order to develop community understanding, participation and support for effective correctional programming.
- Improve the Department's managerial capability.

FIGURE 3

The Central principle underlying all rules, regulations, procedures, and practices relating to persons imprisoned in accordance with law shall be -

that such persons shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken by law.

FIGURE 4

GENERALLY RECOGNIZED PRIVILEGES

OF PRISONERS

| | Privileges Cited in the Stillwater Inmate Handbook |
|--|---|
| Access to the Courts and Counsel | X |
| Exercise of Religion | X |
| Correspondence and Visitation | X |
| Access to the Media - periodicals, publications, broadcasts, etc. | X |
| Grooming and Attire | X |
| Personal Property | X |
| Medical Treatment | X |
| Rehabilitation | X |
| Exercise and Recreation | X |
| Environment and Facilities | |
| Food | X |
| Canteen | X |
| Light | |
| Heat | |
| Adequate Living Space | |
| Sanitation | |
| Safety for Their Person and Property | |
| Grievance Procedure | |
| Disciplinary Procedure | |

FIGURE 5

PERSONAL RESPONSIBILITIES

OF INMATES

INMATE HAND BOOK - STILLWATER

Personal Responsibilities of inmate are also spelled out in the Inmate Handbook. Subjects covered include:

- Clothing Authorized
- Personal Grooming
- Personal Conduct
 - State Laws
 - Follow Orders
 - Loitering
 - Work
 - Accidents
 - Morality
 - Contraband
 - Gambling
 - Respect Property
 - Count
 - Smoking
 - Escapes and Assaults
 - Riots
 - Dining Room Rules
 - Disciplinary Board

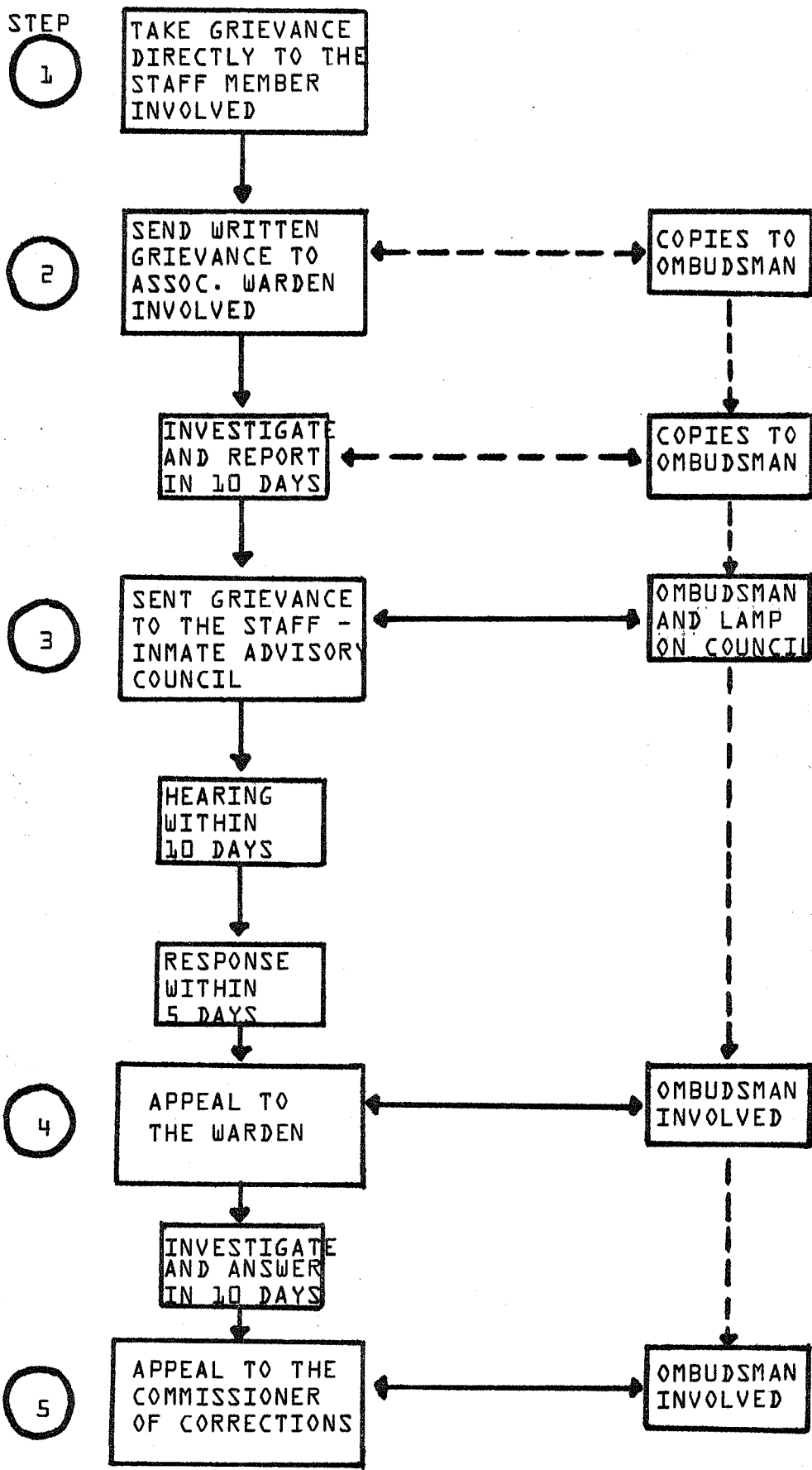
FIGURE 6

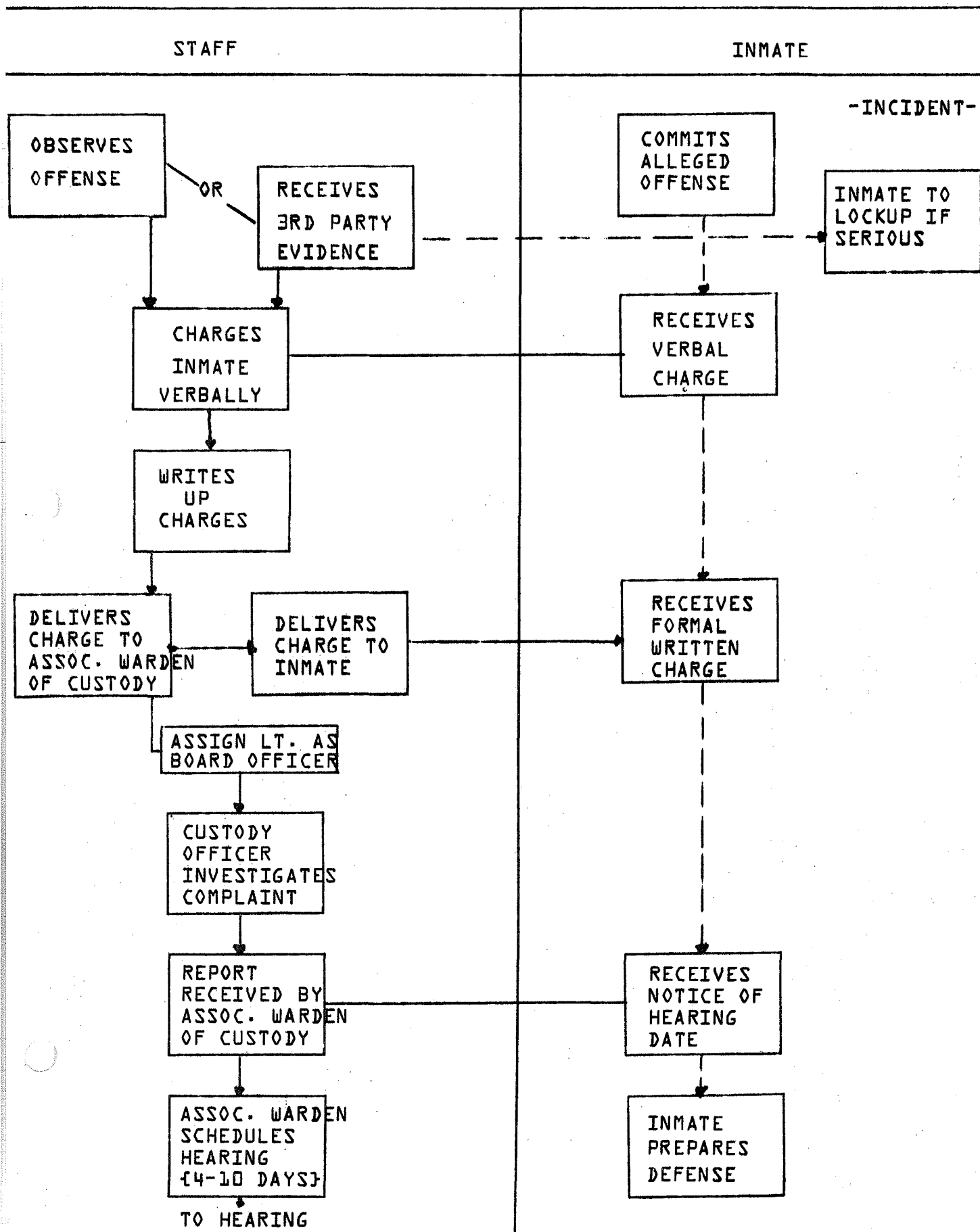
INMATE GRIEVANCE PROCEDURE

- NONE PRESENTLY FORMALIZED
- PRESENT PRACTICE IS THAT COMPLAINTS ARE SENT TO A VARIETY OF INDIVIDUALS:
 - WARDEN
 - COMMISSIONER OF CORRECTIONS
 - GOVERNOR
 - LEGISLATURE
 - PRESS
 - OMBUDSMAN
 - LAMP
 - PUBLIC DEFENDER
 - COURTS
 - RELATIVES
 - INMATE COUNCIL

ONE MODEL OF A POSSIBLE
INMATE GRIEVANCE PROCEDURE

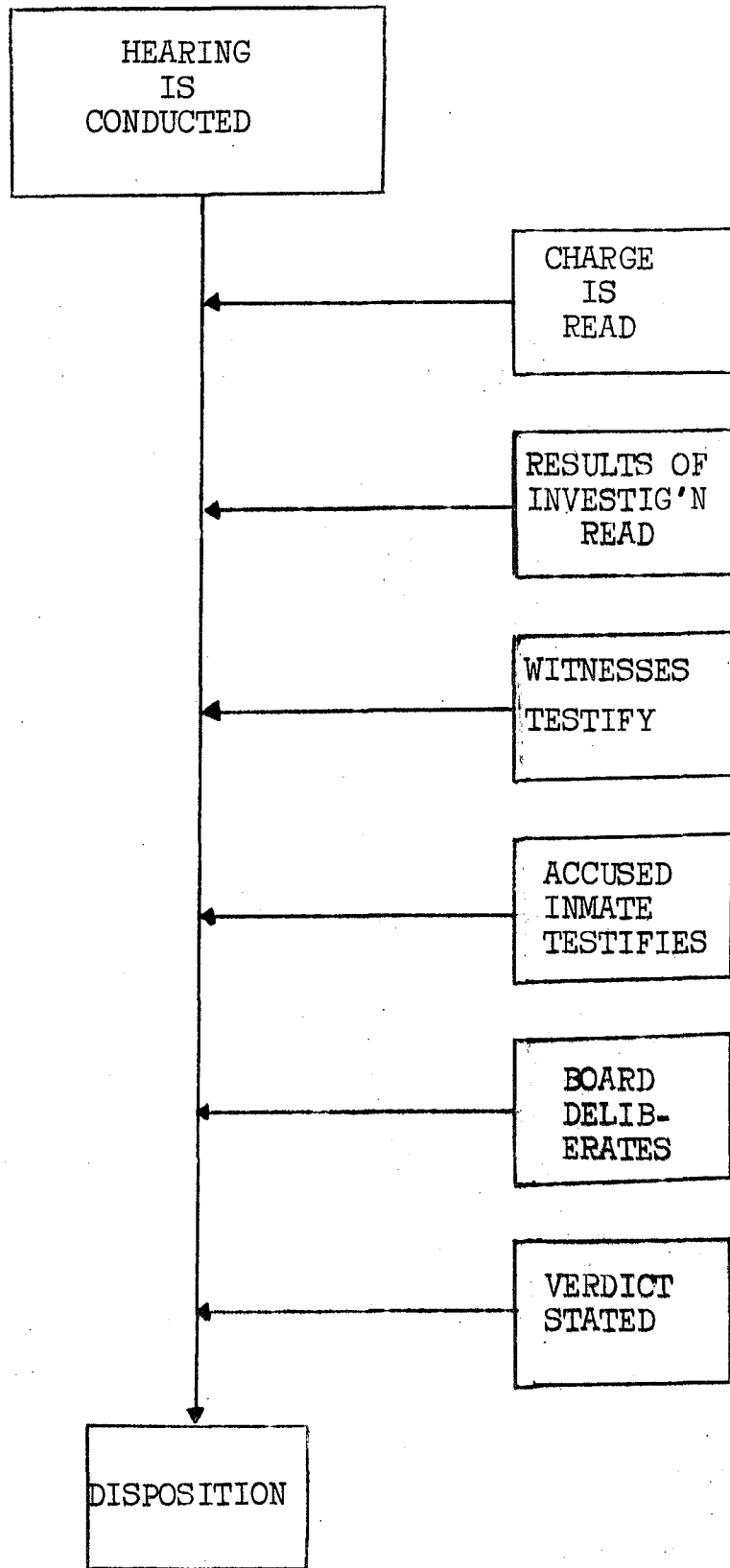
FIGURE 7





RULES VIOLATION

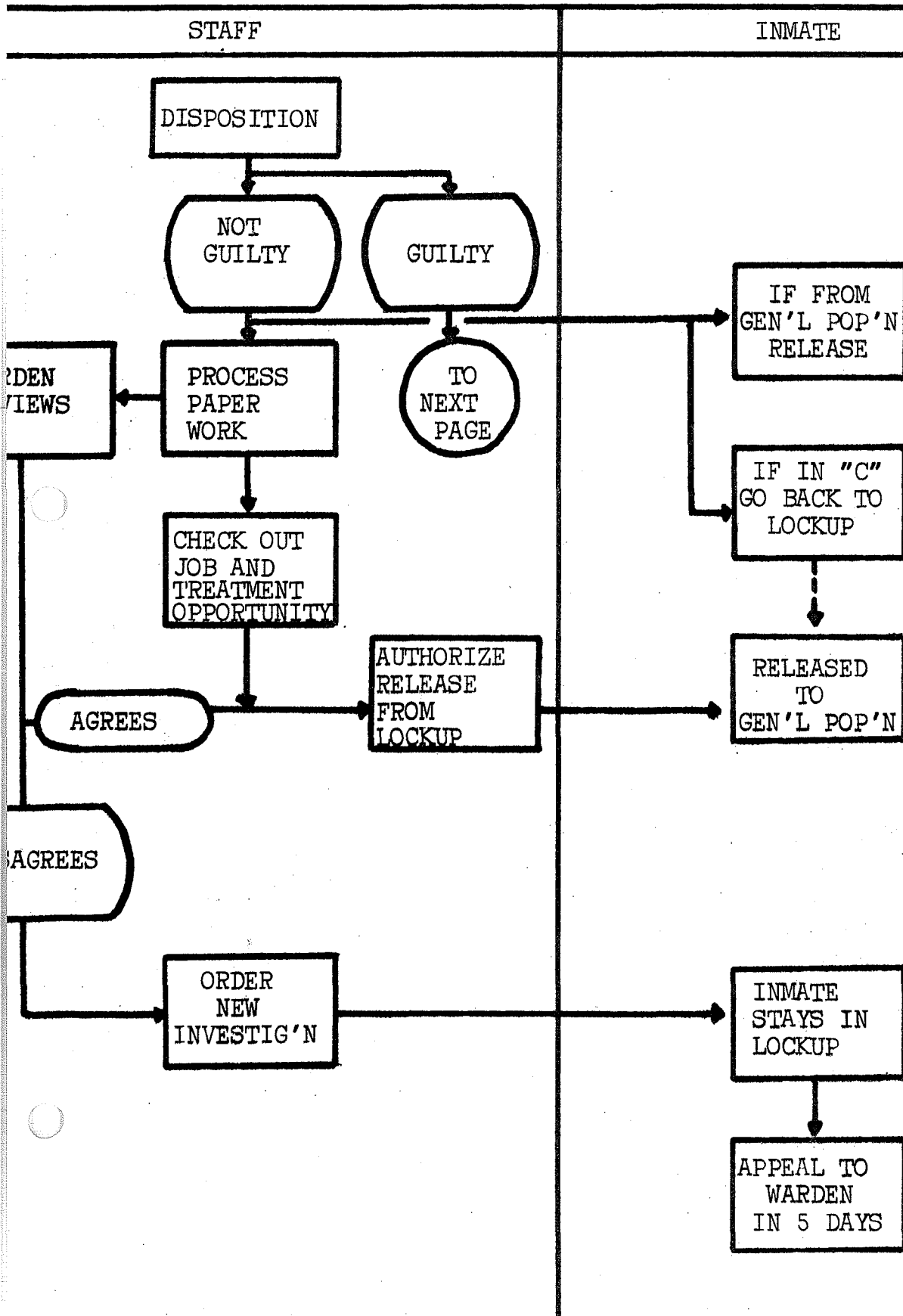
HEARING



RULES VIOLATION

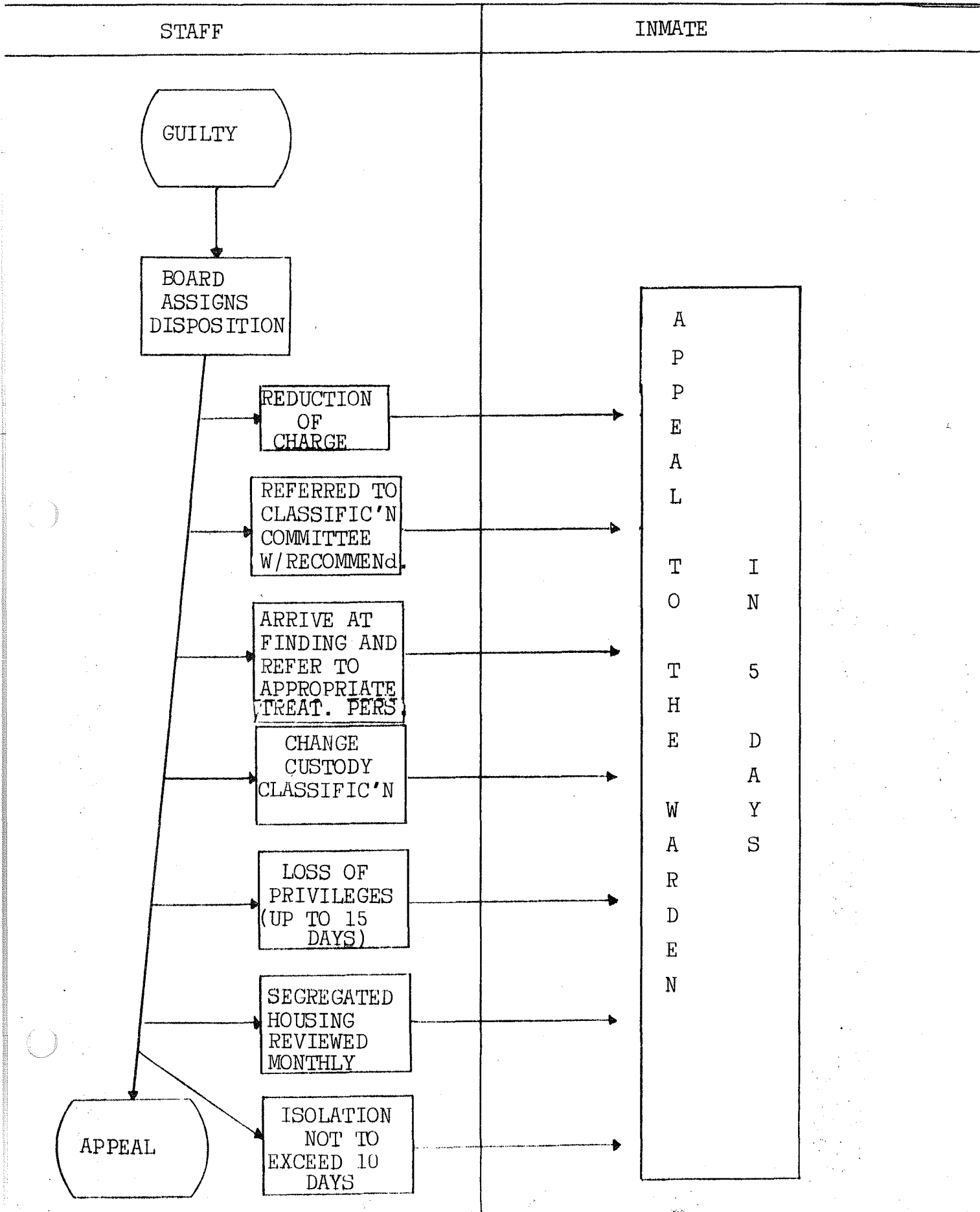
FIGURE 10

DISPOSITION AFTER HEARING



DISPOSITION AFTER HEARING

FIGURE 11



LOSS OF PRIVILEGES

FIGURE 12

| <u>OFFENSES</u> | <u>PENALTIES</u> |
|------------------------------|-----------------------------|
| Wasting Food | 3 days |
| Improper Dress | 5 days |
| Unauthorized Tasks | 5 days |
| Sanitation | 7 days |
| Obstruct Cell Doors | 7 days |
| Disturbing Others | 7 days (MB) |
| Failure Report to Duty | 10 days |
| Loitering | 10 days |
| Unauthorized Area | 10 days |
| Smoking Unauthorized Area | 7 days |
| Gambling | 14 days |
| Unauthorized Use of Property | 14 days |
| Theft | 14 days (or S - 30-90 (SB)) |

SEGREGATION

FIGURE 13

OFFENSES

PENALTIES

| | |
|--------------------------|----------------------------|
| False Report | 30 days (MB) |
| Altering Records | 30 days (MB) |
| Copulation | 30 days (MB) |
| Sodomy | 30 days (MB) |
| Bribery | 30-90 days (SB) |
| Theft | 30-90 days (SB) or LP - 14 |
| Smuggling | 30-180 days (SB) |
| Assault | 30-180 days (SB) |
| Arson | 30-180 days (SB) |
| Threatening Staff | 30-180 days (SB) |
| Attempted Escape | 30-180 days (SB) |
| Interfering with Officer | 90 days (SB) |
| Refuse Shakedown | 90 days (SB) |
| Extortion | 90 days (SB) |
| Inciting to Riot | 90 days (SB) |
| Escape | Indeterminate (SB) |
| Holding Hostage | Indeterminate (SB) |
| Homicide | Indeterminate (SB) |

ISOLATION

FIGURE 14

OFFENSES

PENALTIES

Verbal Abuse

3 days

Malingering

5 days

Sniffing

7 days (SB)

Under Influence

7 days (SB)

Missing Count

7 days (MB)

Disorderly Conduct

7 days (MB)

Disobey Order

7 days (MB)

Refuse Work

7 days (SB)

Operating Brake

7 days (SB)

Failure to Carry ID Card

10 days (SB)

Destruction State Property

10 days and/or restitution (MB)

SEGREGATION PRIVILEGES

ADMISSION SIDE

HONOR SIDE

FIGURE 15

EXERCISE

2 hours per day

4 hours per day

SHOWERS

2 per week

3 per week

VISITS

1 hour per week

15 hours per month

LIBRARY BOOKS

twice a week

twice a week

TELEPHONE CALLS

2 per month

2 per month

CANTEEN PRIVILEGES

limited

less limited

TREATMENT PROGRAMS

available

more available

RADIO

not allowed

allowed

LEGISLATIVE REFERENCE LIBRARY
STATE OF MINNESOTA

FIGURE 16

ISOLATION

Behind the Custody Office on the east side of the old Cell Hall C -- 10 one-man cells -- used primarily for isolating inmates who are physically or emotionally out of control and/or short term penalties for rule violations.

Inmates shall not be confined for more than 10 consecutive days on any one rule infraction.

Inmates assigned to isolation will receive:

- One set of blue dungarees per week
- One pair of socks issued and exchanged every 3 days
- A paper cup
- Personal hygiene articles - toothbrush, tooth paste, bar of hand soap, one towel, mattress, and bedding
- No exercise
- Showers 1:00 - 2:30 p.m.
Monday and Thursday
- No visitors
- No library privileges
- No telephone calls (only emergencies)
- Canteen privileges, only personal hygiene articles

CELL HALL "D"

FIGURE 17

MAXIMUM CUSTODY LIVING UNIT (MCLU)

- INMATES IN CELL HALL D ARE LOCKED IN THEIR CELLS 22 HOURS PER DAY
- THEY CANNOT WORK
- THEY CAN RECEIVE TREATMENT ONLY IF ADMINISTERED IN THEIR CELLS
- RECREATION AND SHOWERS FOR TWO HOURS DAILY
- NO MOVIE, YARD OR GROUP ACTIVITIES
- DAILY LOG IS KEPT TO RECORD RULE VIOLATIONS AND GOOD CONDUCT
- ALL MEALS ARE EATEN IN CELLS
- INMATES ARE PLACED IN MCLU WITHOUT A HEARING. A PLACEMENT COMMITTEE MADE UP OF CELL HALL LIEUTENANTS AND SERGEANTS DETERMINE WHO LIVES IN CELL HALL D.

OBJECTIVES OF THE REVIEW OF STILLWATER

FIGURE 18

INMATE JUSTICE SYSTEM

1. To suggest a clarification of and development of more detailed, measurable objectives re. inmates.
2. To suggest the development of a clear set of policies and procedures regarding prisoners rights, the disciplinary procedure and the grievance procedure.
3. To suggest the development of a process for changing number 2 above.
4. To suggest a clarification of the duties, responsibilities, and authority of staff members in carrying out the above.
5. To suggest the promulgation to staff and inmates of the above.
6. Review the Ombudsman's role in all of this.