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POLICY AND ADMINISTRATIVE PROCEDURE
Manual of Policies and Procedures

Title
THE DISCIPLINARY CODE FOR ADULT OFFENDERS

Legal References (includes but is not limited to)	Related Policies/Procedures (includes but is not limited to)	Other References (includes but is not limited to)
IC 11-8-2-5(a)(8) IC 11-11-5-1 *et seq.* IC 35-50-6-7 HEA 1006	01-04-101 02-04-102	ACA Standards

I. PURPOSE:

This policy and administrative procedure establishes the rules of conduct for adult offenders committed to the Department of Correction and the procedures to be followed by staff persons and offenders when offenders violate these rules of conduct.

II. POLICY STATEMENT:

The Department shall develop procedures to govern the behavior of adult offenders and for the imposition of sanctions when these procedures are violated. These procedures shall encourage self-discipline and self-control and shall assist in preparing the offender for Re-Entry into the community. Additionally, these procedures serve as a means for the Department to manage offenders in a just and fair manner to ensure the safety and security of the facilities, staff persons, offenders, and the public.

The disciplinary procedures shall be presented in a clear and understandable manner. Each committed offender and staff person who has routine contact with offenders shall have access to the disciplinary procedures. The Department shall ensure that copies of these disciplinary procedures are posted or maintained in prominent locations so that staff persons and offenders may have access.

The Department shall assist offenders to understand the rights and provisions of the disciplinary process. The Department shall provide any offender who may have literacy or language barriers the opportunity to have these procedures explained to him/her and copies of these disciplinary procedures may be made available to the offender in his/her native language if the offender is not able to understand English.

Disciplinary sanctions for major offenses shall only be imposed after the offender has been afforded due process and a determination of guilt is made. The sanctions imposed shall be given in such measure and degree as to regulate the offender's behavior and shall be

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consistent with established guidelines. Disciplinary action shall not be vindictive or retaliatory. Corporal punishment shall be strictly prohibited.

Training shall be provided to staff persons to ensure compliance with this policy and the following administrative procedures and consistency in their application. Offenders shall be informed of this policy and administrative procedure in a manner appropriate to ensure understanding and the opportunity for compliance.

III. DEFINITIONS:

For the purpose of this policy and administrative procedure, the following definitions are presented.

A. AIDING and ABETTING: When an offender commits any of the following acts to assist in the violation of these administrative procedures or a Department or facility rule, procedure or directive:

- Telling, hiring, commanding, inducing, counseling, prompting, or encouraging another person to commit a violation;
- Assisting another person in planning or preparing for a violation;
- Assisting another during the commission of an offense, whether or not the assistance was planned in advance; or,
- Assisting another to prevent the discovery of a violation or the identity of the person who committed the violation.

B. APPEAL: A written request by an offender to have a disposition and/or sanction imposed under the Disciplinary Code for Adult Offenders reviewed by a higher authority.

C. APPEAL REVIEW OFFICER: The Commissioner's designee charged with reviewing and rendering final administrative decisions concerning adult offender disciplinary appeals that involve a grievous loss.

D. ATTEMPT: Planning to do something that would be a violation of these administrative procedures or any Department or facility rule, procedure or directive if the act had actually been committed or when an offender commits acts which showed a plan to violate these administrative procedures or a Department or facility rule, procedure, or directive when the acts occurred.

E. AUTHORIZED: Any of the following:

- According to Department and facility rules, policies, procedures or directives;
- According to the direction or orders of a staff person;
- According to an established facility custom approved by the facility administration; or,
- With permission from an appropriate staff person.

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F. BATTERY: Knowingly or intentionally touching another person in a rude, insolent or angry manner; or in a in a rude, insolent, or angry manner placing any bodily fluid or bodily waste on another person.

G. BIOLOGICAL MATERIAL: Any material or substance emanating or originating from a living or dead organism.

H. BODILY INJURY: Any impairment of physical condition, including physical pain.

I. BODY FLUID: "Body fluid," for purposes of this document, has the meaning set forth in Indiana Code § 35-45-16-2(a), or any subsequently enacted version of the statute. The statute defines "body fluid" as (1) blood; (2) saliva; (3) sputum; (4) semen; (5) vaginal secretions; (6) human milk; (7) urine; (8) sweat; (9) tears; (10) any other liquid produced by the body; or (11) any aerosol generated form of liquids listed in this subsection.

J. BODY WASTE: Fecal waste, human finger nails, hair, skin, eye lashes, or any other biological substance emitting from a human being.

K. BUILDING CONFINEMENT: A sanction for violation of Department or facility procedures or rules which requires the offender to remain in the building in which the offender resides.

L. BUSINESS DAY: Monday through Friday, excluding weekends, State holidays, and emergency days declared in writing by the Warden.

M. CONDUCT REPORT: A summary of an alleged violation committed by an offender as documented by a staff person.

N. CONSPIRACY: Two (2) or more offenders or other persons planning or agreeing to commit acts which are prohibited by Department or facility rule, procedure or directive.

O. CONTROLLED SUBSTANCE: This policy and administrative procedure uses the definition of Controlled Substance as set forth in Indiana Code 35-48-1-9.

P. CONTROLLED SUBSTANCE ANALOG: This policy and administrative procedure uses the definition of Controlled Substance Analog as set forth in Indiana Code 35-48-19.

Q. DISCIPLINARY REVIEW OFFICER: A staff person designated by a Warden to review conduct reports and conduct screening hearings in accordance with these administrative procedures other relevant policy and the law.

R. DISCIPLINARY HEARING OFFICER: A staff person designated by a Warden to conduct disciplinary hearings in accordance with these administrative procedures other relevant policy and the law.

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S. DISPOSITION: The result of a disciplinary proceeding.

T. DRUG PARAPHENALIA:

An instrument, a device, or another object that the person uses or intends to use for:

1. Introducing into the person's body a controlled substance, a controlled substance analog, or an intoxicating substance;

2. Testing the strength, effectiveness, or purity of a controlled substance, a controlled substance analog, or an intoxicating substance; or,

3. Enhancing the effect of a controlled substance analog, or an intoxicating substance.

U. DUE PROCESS: These rights consist of:

- At least 24 hours written notice of the charged violation before a disciplinary hearing;
- The right to lay representation.
- The right to request witnesses on your behalf, subject to approval.
- The right to be present at the hearing.
- The right to speak on your own behalf.
- The opportunity to have the disciplinary case heard before an impartial decision maker (a Disciplinary Hearing Officer);
- The opportunity to call witnesses and present documentary evidence when consistent with facility safety and security; and,
- A written statement by the fact-finder (a Disciplinary Hearing Officer) of the evidence relied on and the reasons for the disciplinary action.

V. EFFECTIVE DATE: The date of the finding of guilt as a result of a violation of the Disciplinary Code.

W. FACILITY COMMUNITY SERVICE GOALS: Objectives approved by the Warden for the betterment of the facility or community. Examples include, but are not limited to: facility sanitation projects and participation in community/facility fundraisers.

X. GENDER: A person's internal, deeply felt sense of being male or female regardless of the person's sex at birth.

Y. GRIEVOUS LOSS: A sanction imposed, as the result of a disciplinary action, which results in the loss of earned credit time or a demotion to a lower credit class, disciplinary restrictive status housing in excess of 60 days and/or restitution in excess of $250.00.

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Z. HEARING: An administrative process to receive and review evidence and testimony and determine an offender's guilt or innocence and, if found guilty, the sanctions imposed.

AA. INCIDENT DATE: The date when the alleged rule infraction occurred or the date on which a staff person became aware of the violation.

BB. INCLUDED OFFENSE: An offense that:

- Is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
- Consists of an attempt to commit the offense charged or an offense otherwise included therein; or,
- Differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

CC. INTOXICATION or INTOXICATED: A person's altered or impaired physical state as a result of taking into a person's body a controlled substance, a controlled substance analog, or an intoxicating substance that alters or impairs normal mental or physical functions so that there is an impaired condition of thought and action and the loss or normal control of an individual's faculties.

DD. INTIMATE PARTS: Breasts, penis, buttocks, scrotum, or vaginal area or any other part of the body that may result in sexual arousal or gratification for either party.

EE. INTOXICATING SUBSTANCE: Anything which, if taken into the body, may alter or impair normal mental or physical functions so that there is an impaired condition of thought and action and the loss of normal control of an individual's faculties. This definition does not include tobacco. This includes any paper or other substance soaked, contaminated, infused, laced, or in any other manner incorporated with a chemical, known or unknown, for the purpose of taking the chemical into the body in any manner to alter or impair normal mental or physical function.

FF. INVESTIGATIONS AND INTELLIGENCE OFFICER: A staff person appointed on a full-time, part-time or case-by-case basis by a Warden to conduct investigations of alleged offender violations or illegal activities in accordance with Policy and Administrative Procedure 00-01-103, "The Operation of the Office of Investigations and Intelligence."

GG. LAY ADVOCATE: A staff person or qualified offender assigned or chosen to assist the charged offender in understanding the charges, ensuring the understanding of rights, and process of disciplinary hearing.

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HH. MAJOR OFFENSE: Any Class A or Class B offense listed in this policy and administrative procedure and includes disciplinary actions taken in or by a county jail if the description of the offender's conduct is the same or substantially similar to a Class A or Class B offense listed in this policy and administrative procedure.

II. MINOR OFFENSE: Any Class C or Class D offense as listed in this policy and administrative procedure.

JJ. NONCONSENSUAL SEXUAL ACT: Contact of a sexual nature by an offender against another person without his or her consent, or a person unable to consent or refuse including: contact between the penis and the vulva or the penis and the anus including penetration, however slight; contact between the mouth and the penis, vulva or anus; or, penetration of the anal or genital opening of another person by a hand, finger or other object. (Does not include kicking, punching or grabbing the genitals when the intent is to harm or debilitate rather than to sexually exploit.)

KK. OFFENDER: An adult person committed to a department of correction (federal, state, or local) and housed or supervised in a facility either operated by the department of correction or with which the department of correction has a contract, including an adult under parole supervision; under probation supervision following a commitment to a department of correction; in a minimum security assignment, including an assignment to a community transition program.

LL. POSSESSION: On one's person, in one's quarters, in one's locker or under one's physical control. For the purposes of these procedures, an offender is presumed to be responsible for any property, prohibited property or contraband that is located on their person, within their cell or within areas of their housing, work, educational or vocational assignment that are under their control. Areas under an offender's control include, but are not limited to: the door track, window ledge, ventilation unit, plumbing and the offender's desk, cabinet/locker, shelving, storage area, bed and bedding materials in his/her housing assignment and the desk, cubicle, work station and locker in his/her work, educational or vocational assignment.

MM. PRE-HEARING RESTRICTIVE STATUS HOUSING (TEMPORARY CONFINEMENT): The confinement of an offender in any cell and/or any unit until an investigation is completed or a hearing is held.

NN. RESTRICTIVE STATUS HOUSING: The physical separation of an offender from the general offender population, generally in a unit designed to provide activities and functions in a controlled fashion.

OO. ROOM/CELL (HOUSING ASSIGNMENT) CONFINEMENT: A sanction for violating Department or facility procedures or rules which requires the offender to remain in his/her living quarters unless specific permission is given otherwise.

PP. SANCTION: A penalty imposed on an offender as a result of a disciplinary action, in accordance with this policy and administrative procedure.

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QQ. SERIOUS BODILY INJURY: Any injury which would ordinarily require medical treatment (normally more extensive than mere first aid, such as bandaging a wound; but which might include stitches, setting of broken bones, treatment of concussion, etc.) and/or that creates a substantial risk of death or that causes:

1. Serious, permanent disfigurement;
2. Unconsciousness;
3. Extreme pain;
4. Permanent or protracted loss or impairment of the function of a bodily member or organ; or,
5. Loss of a fetus.

RR. SEXUAL CONTACT: Contact between persons that includes any of the following:

- Touching of the intimate parts of one person to any part of another person whether clothed or unclothed; or,

- Any touching by any part of one person or with any object or device of the intimate parts of another person or any parts of the body that may result in sexual arousal or gratification for either party.

SS. SEXUAL INTERCOURSE: Any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration in these areas by any part of the body or an object.

TT. SOCIAL MEDIA: Any internet-based or electronic device based application that allows an individual to construct a public or semi-public identity using the individual's actual name or pseudonym through which the individual, his/her associates, or others may publish an electronic message. Current popular examples are Facebook, Twitter, and blogs.

UU. STAFF PERSON: Any and all persons employed by the Department, including contractors and volunteers.

VV. STATE WAGES: Monies paid by a facility for a facility work/education assignment, not including wages paid by Indiana Correctional Industries (ICI), an ICI joint venture program or a private employer of an offender in Work Release.

WW. VIOLATION: An offense listed in these administrative procedures with which an offender has not complied.

XX. VISITOR: Any human person who is not a staff person, a contractor, or a volunteer, who is at a facility.

YY. WEAPON: A thing designed or used for inflicting bodily harm or physical damage.

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IV. GENERAL PRINCIPLES:

A. GENERAL PRINCIPLES:

The following general principles shall apply to each disciplinary action:

1. Disciplinary action shall be taken at such times and in such measures and degree as is necessary to manage an offender's behavior within acceptable limits.

2. Offender behavior shall be managed in an impartial manner.

3. Disciplinary action shall not be retaliatory, degrading in nature, or for the purpose of revenge.

4. Corporal punishment of any kind is strictly prohibited.

5. An offender shall be afforded a hearing prior to a determination of guilt or innocence or prior to the imposition of any disciplinary action, except for a Minor disciplinary action unless the offender has been assigned to pre-hearing restrictive status housing. The Disciplinary Hearing Officer shall listen to what an offender says and review the evidence presented by the offender before determining if the offender is not guilty or guilty of a conduct violation.

6. All instances of disciplinary sanctions, including room restrictions, suspension of privileges or other restrictions, shall be logged, dated, and signed by the staff person ordering the sanctions.

7. Where an offender allegedly commits an act covered by criminal law, the case shall be referred to appropriate court or law enforcement officials for consideration for prosecution.

B. OFFENDER NOTIFICATION AND STAFF TRAINING:

1. Offender Notification:

a. The Department shall develop a document, in English and Spanish that contains all chargeable offenses, range of penalties and a summary of the disciplinary procedures.

b. This document shall be given to each offender, physically or electronically, and a similar document shall be made available to each staff person who has routine or regular contact with offenders.

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(1) Intake Units shall give each offender a physical copy of the document. The offender shall be required to sign a receipt for this document and the receipt shall be filed in the offender's facility packet.

(2) Offenders housed in non-Intake Units shall receive this document, either electronically via kiosk email, from the Department's Central Office, or physical hard copy. The electronic document may be reviewed at the kiosk display and the offender may print the document. The offender shall be charged for the document in accordance with Indiana Department of Administration regulations and Policy and Administrative Procedure 04-01-104, "Inmate Trust Fund."

(3) Restrictive status housing units that do not provide kiosk services shall provide each offender housed in the unit a physical, written copy of the document. The offender shall be required to sign a receipt for this document and the receipt shall be filed in the offender's facility packet.

c. If an offender cannot read or understand English, these procedures shall be read and explained to the offender in the offender's native language, or in a language the offender can understand, by an employee or a volunteer designated by the Warden. In such cases, the staff person or volunteer who has read and explained these administrative procedures shall ensure that:

(1) The offender is provided a copy of the document indicated in IV. B. 1;

(2) A receipt indicating that this policy and administrative procedure was read and explained to the offender is signed and dated by the staff person or volunteer and the offender; and,

(3) The acknowledgement shall be filed in the offender's facility packet.

2. Signatures:

An offender shall be permitted to review and sign disciplinary documents that require the offender's signature. If an offender is housed in a mental health unit, a protective custody unit, or in restrictive housing, every effort should be made to obtain the offender's signature. If a staff person signs a disciplinary document noting an offender's failure to sign because the offender refuses to sign, the staff person should write on the form the reason why the offender did not sign the form and that the offender was

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given a copy of the form. The staff person shall sign his/her name, clearly print his/her name, and set forth the date of the action. If possible, a second staff person shall sign and date the document as a witness to the action. The witness should have physically observed the offender's refusal to sign.

3. Staff Training:

All staff persons who have regular or routine contact with offenders during the course of their assigned duties shall receive training in this policy and administrative procedure during new employee orientation and in subsequent in-service training.

Staff persons who serve as a Disciplinary Review Officer, Disciplinary Hearing Officer, or Facility Appeal Review Officer at the facility level (either the Warden or designee) shall be provided specialized training to ensure that they are aware of their responsibilities and that they understand the requirements of this policy and administrative procedure.

The Division of Staff Development and Training shall be responsible for developing and implementing a staff training program for both the general training of staff persons and for the specialized training provided to those staff persons that have a role in the Disciplinary Process.

C. APPEAL REVIEW OFFICER

The Commissioner shall designate staff persons in the Legal Services Division to serve as an Appeal Review Officer for the Disciplinary Code for Adult Offenders. The staff person designated as the Appeal Review Officer shall be thoroughly knowledgeable of the Disciplinary Code for Adult Offenders. The duties of the Appeal Review Officer shall include, but shall not be limited to:

1. Serving as the Department's resource person for matters relating to the operation of the Disciplinary Code for Adult Offenders, by answering questions and responding to inquiries;

2. Assist in the development and presentation of training in the Disciplinary Code for Adult Offenders, as requested by the Executive Director of Staff Development and Training; and,

3. Review and decide on appeals of offender disciplinary cases that include a grievous loss, disciplinary restrictive status housing in excess of sixty (60) days and/or restitution in excess of $250.00 and which have been denied at the Warden level.

V. <u>REPORTING VIOLATIONS</u>:

A. MINOR OFFENSES (CLASS C AND D)

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1. WARNING:

   a. A staff person who witnesses or is made aware that an offender has committed a Minor Offense may determine that an INFORMAL CONDUCT REPORT (State Form 39589) or a REPORT OF CONDUCT (State Form 39590) is not required. In these cases, the staff member may counsel and warn the offender.

   b. A staff person may merely inform an offender that the offender's behavior is against Department and/or facility procedures or rules and discuss the offender's behavior and give a warning if:

      (1) The alleged offense committed by the offender is a Minor Offense (Class C or D);
      (2) The offender is unfamiliar with the procedure or rule;
      (3) The offender has not violated the same or a closely related procedure or rule within the last year to the best of the staff person's knowledge (whether or not a REPORT OF CONDUCT or INFORMAL CONDUCT REPORT was written);
      (4) The offender is unlikely to repeat the offense if warned and counseled; or,
      (5) Even though the offender's actions were technically a violation of Department or facility procedures or rules, the intent of this policy and administrative procedure would not be served by writing a REPORT OF CONDUCT or INFORMAL CONDUCT REPORT in this case.

   c. A staff person shall give a warning to an offender as soon as possible after witnessing or becoming aware of the violation but no later than twenty-four (24) hours after the staff person becomes aware of the offense.

2. INFORMAL CONDUCT REPORT:

   a. A staff person who witnesses an offender commit a Minor Offense may prepare an Informal Conduct Report if the staff person believes that the offender's behavior does not meet the requirements for a Warning or a REPORT OF CONDUCT.

   b. State Form 39589, INFORMAL CONDUCT REPORT, shall be used in these cases.

   c. A staff person is encouraged to use an INFORMAL CONDUCT REPORT whenever appropriate.

   d. An INFORMAL CONDUCT REPORT shall be completed prior to the end of the staff person's shift on the day of the incident

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whenever possible and in no case more than 24 hours after the date of the alleged offense.

e. If the offender agrees to accept the INFORMAL CONDUCT REPORT, the Shift Supervisor, Department Head, Unit Team Manager or their designee shall be notified of the INFORMAL CONDUCT REPORT and shall review the INFORMAL CONDUCT REPORT to ensure that it is appropriate and that the sanctions are consistent and in accordance with this policy and administrative procedure.

f. A staff person offering the INFORMAL CONDUCT REPORT shall advise the offender:

(1) As to the nature of the alleged offense and the contemplated penalty; and,

(2) That the incident may be handled as an INFORMAL CONDUCT REPORT or through the formal disciplinary process.

g. The offender shall be advised that if the offender accepts the INFORMAL CONDUCT REPORT the following rights are waived:

(1) A hearing before an impartial Disciplinary Review Officer or Disciplinary Hearing Officer;
(2) Presentation of witnesses and other evidence;
(3) Assistance of a lay advocate;
(4) Confrontation and cross-examination of witnesses;
(5) Findings of fact; and,
(6) Appeal of the sanctions imposed.

h. The offender shall continue to maintain the ability to speak on his/her own behalf and, if the offender does not understand these disciplinary proceedings or does not understand English, to have someone assist him/her to understand the proceedings.

i. The offender shall acknowledge, in writing, understanding his/her rights by signing the INFORMAL CONDUCT REPORT.

j. The sanctions that may be imposed for an INFORMAL CONDUCT REPORT may include up to 20 hours of extra duty (up to four [4] hours of extra work per a 24-hour period) and/or up to fifteen (15) days restriction of privileges, in accordance with Procedure IX. E. 3. e.

k. If the offender agrees to the INFORMAL CONDUCT REPORT,

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the staff person shall inform the offender of the sanctions. Once the offender agrees to the INFORMAL CONDUCT REPORT, the agreement cannot be appealed.

l. If the offender does not agree to the INFORMAL CONDUCT REPORT, the staff person shall prepare a REPORT OF CONDUCT and shall indicate in this report that the offender did not agree to an informal resolution. The REPORT OF CONDUCT shall follow the procedures indicated in V. A. 3.

m. If the offender agrees to the INFORMAL CONDUCT REPORT but fails to complete the imposed sanctions in the designated time period, the offender shall be charged formally with a Class C Code 347, "Refusing an Order." State Form 39590, REPORT OF CONDUCT, shall be completed charging the offender with a Code 347. The INFORMAL CONDUCT REPORT shall be attached as evidence.

n. An INFORMAL CONDUCT REPORT shall be maintained until the sanction has been completed. Once completed, the INFORMAL CONDUCT REPORT shall be forwarded to the offender's caseworker so that the offender's behavior may be discussed in the offender's next Unit Management Team meeting. Following discussion in the offender's next Unit Management Team meeting, the INFORMAL CONDUCT REPORT shall be destroyed and no record of the INFORMAL CONDUCT REPORT shall be maintained in the offender's facility packet.

B. MAJOR OFFENSES (CLASS A AND B):

1. A staff person who witnesses or is made aware that an offender has committed a Major (Class A or B) Offense shall prepare a State Form 39590, REPORT OF CONDUCT.

2. An offender alleged to have committed a Major Offense shall not have the option of a Warning or an INFORMAL CONDUCT REPORT.

3. An offender may be charged with more than one offense originating from a single episode of misconduct if each separate offense is factually distinguishable from the others, and is not a lesser included offense as identified in Appendix I of this policy and administrative procedure.

C. REPORT OF CONDUCT:

1. A staff person who witnesses or has reason to believe that a Class C or D offense has occurred and a Warning or an INFORMAL CONDUCT REPORT is not appropriate or the offender does not agree to the

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INFORMAL CONDUCT REPORT shall prepare a State Form 39590, REPORT OF CONDUCT.

2. The REPORT OF CONDUCT shall include, at a minimum, the following information:

   a. The specific rule violated;

   b. A formal statement of the charge;

      The formal statement of the charge shall be accurate and provide sufficient detail to convey to a person that did not witness the event, the conduct, or behavior the offender engaged in which merits the report of conduct, and the evidence that shows the offender engaged in the behavior. Specifically, the REPORT OF CONDUCT is to provide details as to what conduct violation occurred, who was involved, when the conduct violation happened, and how the conduct violation happened. **It is very important that the conduct report be written in plain language and clearly states the "who, what, when, where, and how" of the factual event.**

   c. Any unusual offender behavior;

   d. Any known staff or offender witnesses;

   e. A description of any physical evidence (written or photographic) and the disposition of this evidence;

   f. Any immediate action taken, including the use of force; and,

   g. The reporting staff person's signature, staff person's printed name, and the date and time of the report.

3. A staff person listed on a REPORT OF CONDUCT as witness must prepare a written statement. The reporting staff person shall be responsible for collecting the statements of those staff persons listed as witnesses on the REPORT OF CONDUCT and attaching the statements to the REPORT OF CONDUCT.

4. Photos of the perishable items shall be taken and a written physical description of the item shall also be made. The written description should describe the item in as much detail as possible. The written description can be included within the body of the REPORT OF CONDUCT. The written description can also be written on an Office of Investigations and Intelligence evidence form or other appropriate form.

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5. All safety protocols shall be observed when handling items that may pose a threat to individual safety (i.e. sharps, chemicals, biological contamination). Items that pose a biological hazard should be photographed and a physical description of the item shall also be written. The written description should describe the item in as much detail as possible and may be included within the body of the REPORT OF CONDUCT. The written description can also be written on an Office of Investigations and Intelligence evidence form or other appropriate form. It is advisable to dispose of evidence that poses a biological hazard after the photographs and written description have been completed.

6. When a staff person determines that a REPORT OF CONDUCT is necessary, the staff person shall advise the offender of the REPORT OF CONDUCT and the offense the offender is alleged to have committed, unless doing so would jeopardize the safety and security of the facility, staff, other offenders, or the public.

7. Whenever possible, a REPORT OF CONDUCT shall be completed by the end of the reporting staff person's shift and submitted to his/her immediate supervisor within 24 hours of the incident or knowledge of the incident. However, when an offender is placed in restrictive status housing for the alleged offense, the REPORT OF CONDUCT shall be submitted prior to the reporting staff person's release from duty unless:

   a. The offender is placed in administrative restrictive status housing under investigation status;

   b. The staff person reporting the incident is incapacitated due to injury; or,

   c. The offender was in a disciplinary restrictive status housing unit at the time that the alleged incident occurred.

8. Upon receipt, the reporting staff person's immediate supervisor shall review the REPORT OF CONDUCT to ensure that the alleged offense is in accordance with the charged offense and that the report is legible and understandable.

   a. If the report has errors, is not legible or does not support the charged offense, the supervisor shall return the report to the reporting staff person with instructions to correct the report. The reporting staff person shall have 24 hours in which to correct the REPORT OF CONDUCT and return it to the immediate supervisor for further review.

   b. If the REPORT OF CONDUCT is satisfactory, the supervisor shall sign the appropriate box on the form, advise the reporting staff person, and forward the REPORT OF CONDUCT to the

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Disciplinary Review Officer. If the REPORT OF CONDUCT is not satisfactory to the Disciplinary Review Officer, the REPORT OF CONDUCT may be returned to the reporting staff person for edits and/or modification.

c. The immediate supervisor shall complete the review and forward the REPORT OF CONDUCT within 24 hours of receipt.

9. The Intelligence and Investigations Officer may complete a REPORT OF CONDUCT based on the facts discovered during an investigation as specified in Procedure VIII.B. In cases where a staff person is incapacitated due to injury, the case shall be turned over to the facility's Intelligence and Investigations staff for investigation. In such cases, the Intelligence and Investigations Officer assigned to the case shall be responsible for obtaining and attaching all non-confidential staff witness statements.

10. The Unit Team or Disciplinary Hearing Officer may submit a request to the Warden for an investigation if there is reason to believe that the offender provided false information during a hearing or evidence indicates that the REPORT OF CONDUCT or incident requires investigation or additional information prior to disposition. The Intelligence and Investigations Officer shall report the findings on State Form 39591, REPORT OF INVESTIGATION OF INCIDENT, and, if appropriate, issue a REPORT OF CONDUCT.

11. When an investigation is necessary, the investigation shall commence within 24 hours from the time the Investigations and Intelligence Officer is notified of the need for an investigation. The investigation shall be completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.

12. Use of Confidential Informants: When a confidential informant's information is used to determine that an offense occurred, investigators must state in the conduct report and following reports (if any) that a confidential informant provided information in the case resulting in the conclusion that the offender is guilty of the charged offense. The investigator must swear and affirm under the penalties for perjury that the investigator has knowledge of the confidential informant and that the investigator believes the information relayed to the investigator in the case by the confidential informant is reliable and true. The language to be used above the investigator's signature is: "I swear and affirm under the penalties for perjury that I have knowledge of the confidential informant in this case and that I believe the information provided by the confidential informant is reliable and true." Additionally, the investigator must appear at the disciplinary hearing to acknowledge that the investigator wrote the statement and that it still stands as true at the time of the hearing.

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13. Chemical Testing: If an item is confiscated that is believed to be a controlled substance, a controlled substance analog, or an intoxicating substance, a proper chain-of-custody shall be maintained. If it is determined by appropriate staff persons that a chemical test of the substance can and should be performed, a chemical test shall be performed. The form documenting the result of the chemical test and the chain-of-custody form shall be maintained. Copies of the forms shall be provided to an offender who is being charged in a disciplinary case with an offense related to the controlled substance, a controlled substance analog, or an intoxicating substance. The forms shall be provided at least twenty-four (24) hours prior to a disciplinary hearing in the matter unless the offender waive(s) the right to twenty-four (24) hour notice. In the absence of a chemical test, a staff person may state in a REPORT OF CONDUCT, if true and accurate, that based upon the staff person's training and experience the staff person recognizes and knows the substance to be a controlled substance, a control substance analog, or an intoxicating substance. The staff person shall provide a written explanation in the REPORT OF CONDUCT of the characteristics of the substance that leads the staff person to the conclusion that the substance is a controlled substance, a controlled substance analog, or an intoxicating substance. A chemical test is not required for a disciplinary case.

14. Intoxication: If an offender is believed to be intoxicated (from whatever substance), the physical signs indicating intoxication should be specifically stated in the Report of Conduct.

VI. PRE-HEARING RESTRICTIVE STATUS HOUSING:

An offender charged with a Major Offense may be temporarily confined or separated from the general population for a reasonable period of time pending disciplinary action if the offender's continued presence in the population poses a threat to self, others, property, or the security of the facility or program. The decision to place an offender in temporary confinement shall be based upon, but not limited to:

- The aggressiveness of the offender;
- The threat posed to the safety and security of the facility or any person;
- The need to restrict the offender's access to the general population to protect the offender from injury or to conduct an investigation; or,
- The seriousness of the alleged offense.

Temporary confinement shall:

- Not be retaliatory;
- Only be used when necessary to ensure the offender's or other's safety or the security of the facility;
- Be documented as to the reason for confinement; and,

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- Be for no longer than necessary to ensure the safety and security of the offender and the facility.

An offender placed in temporary confinement shall be placed in the appropriate restrictive status housing unit consistent with the order and security of the facility and the unit. The unit shall operate in accordance with Policy and Administrative Procedure 02-01-111, "Administrative Restrictive Status Housing," including admission reviews.

Pre-hearing restrictive status time shall be credited toward any disciplinary restrictive status housing time imposed by the Disciplinary Hearing Officer.

An offender who has been charged with a disciplinary violation may not be removed from a work or program assignment pending the disciplinary hearing unless it is determined that:

- The offender meets the conditions to be temporarily confined in pre-hearing restrictive status housing pending the hearing; or,
- To allow the offender to remain in the work or program assignment would present a documented threat to the safety and security of the facility, staff, other offenders or the public.

VII. DETAINING OFFENDERS WHO VIOLATE STATE LAWS OR DEPARTMENT RULES:

A. Unless an offender reaches his/her maximum release date, with the approval of the Warden or designee, an offender who satisfies one or more of the following shall be reassigned immediately to Credit Class III, or Credit Class D if the committing offense was committed on or after July 1, 2014, have all earned credit time suspended, and shall be so notified:

1. Is alleged to have committed a Class A or B offense within thirty (30) days of the offender's projected release date or turnover to a new sentence.

2. Is charged with a new crime and Department action concerning the alleged incident has not been resolved by the offender's projected release date.

3. Is apprehended for escape from the Department and disciplinary action concerning the escape has not been resolved by the offender's projected release date.

B. The effective date of the reassignment to Credit Class III, or Credit Class D if the committing offense was committed on or after July 1, 2014, and suspension of earned credit time shall be the date one (1) of the following documents is completed or the date of the earliest document when more than one (1) is completed:

1. Law enforcement agency arrest report.

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2. Formal charge filed with a court of criminal jurisdiction.

3. Parole Agent's report.

4. Department of Correction warrant.

5. State Form 39588, RESTRICTIVE STATUS HOUSING REPORT.

6. State Form 39590, REPORT OF CONDUCT.

C. Upon disposition of the allegations, the projected release date shall be recalculated in accordance with the results of the hearing. If the offender is found not guilty, the previous credit class and earned credit time shall be restored.

D. If found guilty, the offender shall:

1. Be reassigned to the appropriate credit class, if the sanction includes a change in credit class. The effective date of the sanction shall be the date of the original reassignment to Credit Class III, or Credit Class D if the committing offense was committed on or after July 1, 2014, However, if the sanction does not affect credit class, the offender shall be restored to the former credit class effective on the date of reassignment to Credit Class III, or Credit Class D if the committing offense was committed on or after July 1, 2014, and shall earn the credit time that would have been earned had the offender not been reassigned to Credit Class III or Credit Class D if the committing offense was committed on or after July 1, 2014.

2. Have earned credit time deprived in accordance with the approved sanctions or, if the sanction does not include deprivation of previously earned credit time, have any credit time deprived as a result of this action restored.

VIII. <u>CONDUCT REPORTS: REVIEW AND INVESTIGATION</u>:

A. REVIEW OF CONDUCT REPORTS:

1. Each Warden shall appoint one (1) or more staff persons to serve as Disciplinary Review Officer.

a. Any staff person designated to serve as the Disciplinary Review Officer shall complete the Department's training on the offender disciplinary process prior to commencing these duties.

b. The Warden shall submit the names of the staff persons appointed to serve as Disciplinary Review Officers to the Appeal Review Officer.

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2. The reporting staff person's immediate supervisor shall submit State Form 39590, REPORT OF CONDUCT, to the Disciplinary Review Officer as soon as practicable (preferably within 24 hours from the date of the incident or becoming aware of the incident).

   The Disciplinary Review Officer is to meet with the offender and conduct a screening hearing within seven (7) days from the date of the incident or from the date that a staff person first became aware of the alleged violation or after the completion of an investigation by the Office of Investigations and Intelligence. A staff person shall put forth an honest and good faith effort to adhere to this timeframe for screening. But, if there is a valid reason for delay, the screening hearing may occur outside this seven (7) business-day window. Delays in screening hearings should be documented on State Form: 39585 NOTICE OF DISCIPLINARY HEARING (SCREENING REPORT) and screening hearings shall not be routinely delayed. Any delay shall be as brief as possible.

   The Disciplinary Hearing shall be held within seven (7) business days (excluding weekends, holidays, and facility emergencies) of the date of the screening hearing. Any delay in conducting the Disciplinary Hearing shall be documented on State Form 49521, POSTPONEMENT OF DISCIPLINARY HEARING. Holding the Disciplinary Hearing outside this time frame is not grounds for a case to be dropped or dismissed, nor is it grounds for an appeal.

3. Upon receipt of a REPORT OF CONDUCT the Disciplinary Review Officer shall:

   a. Review the contents of each REPORT OF CONDUCT.

   b. Consult with the report writer's immediate Supervisor as needed; change offense, title, and code number (the Disciplinary Review Officer may change the offense to an equal or lesser offense; however, the offense may not be upgraded); and/or correct errors (e.g. dates, misspelled words, numbers). Corrections or changes are to be initialed by the staff person making the changes or corrections. The Disciplinary Review Officer may return the REPORT OF CONDUCT to the reporting staff person's immediate supervisor with an explanation for the return and a determination as to resubmission.

      The Disciplinary Review Officer must review the Report of Conduct to make certain it is clearly self-explanatory and that it contains all of the necessary facts so that any person reading the Report of Conduct will be able to understand exactly what occurred and how those facts result in an alleged rule or law violation.

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c. Dismiss duplicate charges when the reporting staff person files more than one (1) report on a particular incident and duplication of charges is evident.

d. Approve or disapprove the final report.

e. Assign a case number to the REPORT OF CONDUCT that consists of a facility abbreviation (ISP, WCC, ISF, IWP, etc.), year (e.g., 06, 07, 08), month (e.g., 01, 02, 03, etc.) and number of the report within the month (e.g., 001, 002, 003), (*e.g.,* ISP 06-07-0100.)

f. Determine if an Office of Investigations and Intelligence investigation is warranted and, if so, refer the REPORT OF CONDUCT to the Warden or facility supervisors, requesting an Office of Investigations and Intelligence investigation.

4. The review process shall be completed in accordance with the time frames listed above. It shall consist of the following:

a. Giving the charged offender a copy of the REPORT OF CONDUCT.

b. Determining the offender's plea and enter the plea in the appropriate box on State Form 39585, "NOTICE OF DISCIPLINARY HEARING."

c. Advising the offender of the following:

(1) The offender has at least 24 hours to prepare for the hearing. Notify the offender of the time and place of the hearing;
(2) The disciplinary hearing will be heard by an impartial decision-maker;
(3) The offender has the ability to appear and speak on his/her own behalf;
(4) The offender has the ability to call witnesses and present documentary and physical evidence unless the person conducting the hearing finds that to do so would subject a witness to a substantial risk of harm, or would result in the admission of irrelevant or repetitive testimony;
(5) The offender has the ability to confront and cross-examine witnesses, unless the person conducting the hearing finds:

(a) That to do so would subject a witness to a substantial risk of harm;

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(b) That to do so would result in the admission of irrelevant or repetitive testimony; or,

(c) Based upon good cause stated on the record, that a witness is unavailable to attend the hearing.

(6) The offender has the ability to have a lay advocate as indicated in Procedure IX. D. 1;

(7) The offender shall receive a written statement by the fact-finder of the evidence relied on and the reasons for the disciplinary action;

(8) The offender has the ability to have any reference to the disciplinary action expunged from the offender's facility packet if the offender is found not guilty or if a finding of guilt is later overturned as indicated in Procedure IX. E. 6; and,

(9) The offender has the ability to be reimbursed for state wages lost due to action taken pending the hearing if the offender is found not guilty or if a finding of guilt is later overturned as indicated in Procedures IX. E. 7.

d. Informing the offender that a guilty finding can result in demotion in credit class and/or deprivation of earned credit time, a recommendation for transfer to higher security level (if charged with a Class A or B violation), and/or an order for restitution.

e. Determining if a Lay Advocate and/or witness is requested by the offender.

(1) If a witness request is for a specific individual, the Disciplinary Review Officer shall obtain appropriate identifying information so the witness may be contacted.

(2) Such a request or the lack thereof shall be documented on State Form 39585.

(3) If the accused offender requests a specific witness, the Disciplinary Review Officer shall ask the accused offender whether the witness was present at the incident that led to the charge. The Disciplinary Review Officer shall also attempt to determine the subject matter of the expected testimony of the witness.

f. Scheduling a disciplinary hearing before a Disciplinary Hearing Officer for a Major offense or the Unit Team for a Minor offense. The hearing shall not be scheduled for a time less than 24 hours after the offender is screened and charged, unless the offender waives his right to 24-hour notice in writing.

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g. Ensure the requested witness is asked to provide testimony and the lay advocate is notified in writing of the pending conduct hearing.

h. Ensuring that requested evidence is accessible to the Disciplinary Hearing Officer or Unit Team. If requested evidence is not available, then advise the Disciplinary Hearing Officer or Unit Team that the evidence is not available for review and the reason for its unavailability. The fact that evidence is not available for review and the reason for its unavailability shall be documented on State Form 39586 REPORT OF DISCIPLINARY HEARING.

i. Reviewing the Mental Health Code. If this Code indicates that the offender has a mental illness, the Disciplinary Review Officer shall contact the Mental Health Professional of the facility. If, after consultation with the Mental Health Department, the Disciplinary Review Officer determines that the incident was a result of the offender's mental illness, the offender shall receive a written reprimand documenting the behavior. If the incident is determined to not to be a result of the offender's mental illness, the case shall proceed normally. The appropriate spaces on SF 39585 shall be completed.

5. Submitting a report of all disciplinary dispositions to all appropriate staff persons. These reports shall include the following information:

a. Case number;
b. Offender's name and number;
c. Rule violation and code number;
d. Date of hearing;
e. Type of hearing; and,
f. Sanction imposed.

B. OFFICE OF INVESTIGATIONS AND INTELLIGENCE:

If it is determined that an investigation must be conducted by the Facility's Office of Investigations and Intelligence staff, the Warden shall contact the Facility's Investigations and Intelligence staff and request that an investigation be conducted. Investigations conducted by the Investigations and Intelligence staff shall be in accordance with Policy and Administrative Procedure 00-01-103.

IX. <u>DISCIPLINARY HEARING</u>:

A. DISCIPLINARY REVIEW OFFICER HEARINGS:

The Disciplinary Review Officer (Screening Officer) may conduct disciplinary hearings (disposition hearings) in cases where an offender pleads guilty to a Major or Minor offense and where an offender waives the right to 24-hour notice of the

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hearing in writing. The Disciplinary Review Officer may impose sanctions in accordance with the sanctioning guidelines found in Procedure IX. E. 3.

B. DISCIPLINARY HEARING OFFICER:

At each facility, the Warden shall appoint one or more staff persons to serve as a Disciplinary Hearing Officer. A staff person appointed to serve as a Disciplinary Hearing Officer shall be required to successfully complete appropriate training within one year of being appointed.

A Disciplinary Hearing Officer shall be trained in this policy and administrative procedure and must have a basic understanding of the overall operation of the facility.

C. NOTICE OF HEARING AND WAIVER:

A hearing may not be scheduled sooner than 24 hours after the offender has received a copy of State Form 39585, NOTICE OF DISCIPLINARY HEARING and State Form 39590 REPORT OF CONDUCT, unless the offender waives the 24-hour notice. The Disciplinary Review Officer and the Disciplinary Hearing Officer shall ensure that no hearing is held less than 24 hours from the time that the offender receives State Form 39585, unless the offender voluntarily waives the 24-hour notice.

An offender may voluntarily waive the right to a hearing or to the 24-hour notice of the hearing. The waiver shall be documented on State Form 39585, NOTICE OF DISCIPLINARY HEARING. The waiver shall be reviewed by the Warden or designee and initialed.

If it is determined by a facility Warden that an offender waived their right to 24-hour notice only to later claim that they did not do so, the offender shall **never** again be afforded the right of waiver of the 24-hour notice. This prohibition shall be documented at the beginning of the conduct section of an offender's packet.

D. LAY ADVOCATE/WITNESS/EVIDENCE:

1. Lay Advocate:

a. A Lay Advocate shall be appointed to assist the charged offender when the Disciplinary Hearing Officer determines that an offender lacks:

(1) The competency to understand the issues involved, including not being fluent in English; or,
(2) The ability to participate in the hearing on his/her own behalf.

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b. In cases involving a Major offense violation, an offender shall have a Lay Advocate, if requested. State Form 35447, NOTICE TO WITNESS/LAY ADVOCATE, shall be used for notifying a Lay Advocate of the request. An offender charged with a Minor offense (Class C or D) violation and who is having a formal hearing may request a Lay Advocate.

c. In the event that an offender refuses to attend a hearing, a Lay Advocate shall not appear on the offender's behalf.

d. The Warden shall establish a list of available Lay Advocates. This list may consist of staff persons, offenders, or both. A charged offender may select a Lay Advocate from that list only. To appear on the list or to be a Lay Advocate, an offender must:

(1) Have a demonstrated working knowledge of this policy and administrative procedure;
(2) Be free of any pending disciplinary action;
(3) Be free of a conviction for a Major rule violation for a period of six (6) months;
(4) Be a resident of the Department for a period of sixty (60) days prior to appearing on the list; and,
(5) Not be in any type of restrictive status housing, unless the Warden determines that it would be in the best interests of the safety and security of the facility to allow an offender in the same restrictive status housing unit as the accused offender to serve as a Lay Advocate.

Successful completion of the Department's training for Law Library Clerks may be considered when selecting an offender to serve as Lay Advocates and, if sufficient numbers of offenders complete the Law Library Training Course, these offenders shall be given priority should they request to be Lay Advocates.

An Intake Unit's Warden may exempt offenders desiring to be Lay Advocates from meeting the criteria indicated in (1) and (4) above.

e. The offender may request a specific Lay Advocate from the approved list, identified by name and number at the time of screening. However, if the requested Lay Advocate is not available, the Disciplinary Hearing Officer may appoint another Lay Advocate from the approved list.

f. An offender Lay Advocate must be housed or work at the same facility or complex within a facility where the charged offender's hearing is held. In facilities that house more than one (1) security level of offenders, the Lay Advocate must be from the same

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security level as the offender, unless otherwise approved by the Warden.

g. Lay Advocates shall not request, require, receive, or accept any form of compensation from an offender for advice or assistance.

h. The requested Lay Advocate is not required to assist the charged offender in preparing a defense.

i. The duties of the Lay Advocate include ensuring that the charged offender understands the charges and disciplinary process, and explaining the charged offender's rights in regards to appealing any decision by the Disciplinary Hearing Officer. These duties do not include acting as the offender's legal representative during the hearing or speaking on behalf of the offender.

If at any point in the process a Disciplinary Review Officer or Disciplinary Hearing Officer concludes that a lay advocate is acting in violation of policy or facility rules or is otherwise acting inappropriately, the case should be continued, the lay advocate removed from the case and potentially referred for discipline, and a new lay advocate appointed.

2. Witnesses:

a. A charged offender may request that the witness testimony of a staff person or offender be presented at the disciplinary hearing.

(1) A witness who is not a staff person, a volunteer, or an offender shall not be permitted to attend the hearing in person but may testify by written statement.

(2) A witness requested by an offender may be denied only if the expected testimony of the witness is unnecessarily repetitive of other testimony or evidence, irrelevant, or beyond the personal knowledge of the witness. The reason that a requested witness is denied shall be <u>specifically</u> documented either on the Notice of Disciplinary Hearing, the Report of Disciplinary Hearing, the Notice to Lay Advocate/Witness, or other appropriate form.

An offender may request relevant written testimony from an offender-witness not housed at the facility conducting the hearing, including an offender-witness who may be assigned to parole supervision. A staff person shall make documented efforts to obtain a written statement from the offender not at the facility. An offender-witness not at the

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facility conducting the hearing shall testify only in writing. A staff person may deny a request such as this if it is deemed that the testimony is not relevant or is repetitive. The request may be denied if the staff person has received no statement from the listed witness, seven (7) to ten (10) business days after the request was made.

(3) If a witness is not permitted to present in-person testimony, it shall be documented. Also, the reason for not having the witness appear in person shall be recorded on State Form 35447 NOTICE TO LAY ADVOCATE/WITNESS.

There shall be a preference for in-person testimony. In-person testimony allows the Disciplinary Hearing Officer to judge the credibility of the witness.

(4) If a legitimate reason exists for not requiring a witness to appear in person, the witness may provide a written statement in lieu of in-person testimony.

(5) If an offender requests a witness statement from a person not at the offender's facility, such as a former staff person or a staff person working elsewhere or a private citizen, the Disciplinary Review Officer or the Disciplinary Hearing Officer must make efforts to obtain a <u>written</u> witness statement from that outside person including sending a letter or an email to the person or calling the person. All efforts to obtain a statement or testimony shall be documented in writing and shall become part of the record of the case. The Disciplinary Review Officer or the Disciplinary Hearing Officer may share a copy of the Report of Conduct and the offender's request for witness testimony with the witness if that is necessary for the witness to determine what is being asked. It is preferred that all witness testimony be set forth on a witness statement form. However, any manner of written witness statement is acceptable including an email response. The request may be denied only, if after reasonable efforts, the Disciplinary Hearing Officer has received no state, after waiting seven (7) to ten (10) business days.

b. If additional witness testimony is determined to be appropriate, the Disciplinary Hearing Officer or other designated staff person may interview any additional witness and report the written results of the interview at the hearing.

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c. An offender may request a witness at the time of the screening by advising the Disciplinary Review Officer of the request for a witness or a witness statement. The Disciplinary Review Officer shall document a requested witness on the screening report.

d. An offender may contact the Disciplinary Review Officer or other designated staff person any time prior to one (1) business day (excluding weekends and holidays) before the scheduled disciplinary hearing and request a witness or a witness statement. Belated requests may cause the hearing to be delayed.

e. If the offender requests a witness, the Disciplinary Review Officer shall require the offender to summarize expected testimony of each witness and shall document the offender's response on the State Form 39585, NOTICE OF DISCIPLINARY HEARING. Additional pages may be added, if necessary.

f. If a witness is requested, State Form 35447, NOTICE TO WITNESS/LAY ADVOCATE, shall be used to notify the witness.

g. A witness notified by State Form 35447 shall be required to provide testimony to the Disciplinary Hearing Officer either in person or by written statement.

h. If a witness appears and testifies or provides a written statement, the witness is required to tell the truth or be subject to disciplinary action.

i. Unless the safety and security of the facility or a person will be threatened, when possible, an offender should be permitted live testimony from a witness who can present relevant and non-repetitive testimony at the hearing. Any other requested witness shall be offered the opportunity to present a written statement based upon questions presented by the offender at the time the offender is screened. Live testimony of a witness at a disciplinary hearing shall be documented on State Form 35447 NOTICE TO LAY ADVOCATE/WITNESS by the Disciplinary Hearing Officer with written statement.

j. Live testimony from a witness at a disciplinary hearing may be denied if the Disciplinary Hearing Officer determines and documents:

(1) The presence of the witness would subject the witness to a substantial risk of harm;
(2) Allowing the live testimony may risk jeopardizing the safety and security of a person or a facility;

(3) The testimony of the witness would result in the admission of irrelevant or repetitive testimony; or,
(4) Based upon good cause and stated on the record, the witness is unavailable to attend the hearing or a written statement can be prepared which can adequately represent the expected testimony of the witness at the hearing.

k. According to Indiana law, an offender shall be allowed to confront and cross-examine a witness, unless the person conducting the hearing finds: (A) that to do so would subject a witness to substantial risk of harm; (B) that to do so would result in the admission of irrelevant or repetitive testimony; or (C) based upon good cause stated on the record, that a witness is unavailable to attend the hearing.

l. If the Disciplinary Hearing Officer determines that the witness should not appear, whether or not the witness received a NOTICE TO WITNESS/LAY ADVOCATE, the Disciplinary Hearing Officer may:

(1) Meet with the witness or contact the witness by telephone or other means;
(2) Obtain a transcript of an oral statement;
(3) Obtain a tape-recorded statement;
(4) Obtain a written summary of a witness' testimony if:

(a) The witness' testimony will be accepted as credible; and,
(b) The testimony involves verification of alleged facts, including, but not limited to a witness who will testify to the authenticity of contents of a record or document, cell location, work assignment, staff work schedule or identification.

m. Witness statements shall be written or summarized in the appropriate section of State Form 35447, NOTICE TO WITNESS/LAY ADVOCATE and signed by the person making the statement.

(1) Unless the witness statement is adverse to the offender and might cause a breach in the security of the facility or the statement was given under a request for confidentiality, the offender shall be given a copy of any witness statements presented at the hearing.
(2) The Disciplinary Hearing Officer shall cause the filing of State Form 35447, NOTICE TO WITNESS/LAY ADVOCATE, in the appropriate section of the offender's facility packet. In cases where adverse testimony is

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provided or the statement was given under a request for confidentiality, the statement shall be filed in the confidential section of the offender's facility packet.

n. During the hearing, a witness shall be kept in an area outside of the hearing room until the witness is needed to testify. A witness shall not talk to another witness regarding the testimony or the facts of the case either before or after testifying.

A witness appearing live at a hearing should submit a signed and dated summary of their testimony prepared by the witness or the Disciplinary Hearing Officer. The Disciplinary Hearing Officer should review the signed summary and determine if it accurately reflects the live testimony and if so, include the document in the record of the case.

If an offender requests a witness on the day of the hearing or during the hearing, the Disciplinary Hearing Officer shall determine whether the requested testimony is relevant and not repetitive of other testimony. If it is determined that a witness is necessary, the Disciplinary Hearing Officer shall make efforts to secure the requested witness testimony. If a continuance of the hearing is necessary, that is allowable in this circumstance.

3. Evidence

a. An offender may request physical or documentary evidence (*e.g.,* videotapes, memoranda, etc.) to be considered by the Disciplinary Hearing Officer. State Form 39585, NOTICE OF DISCIPLINARY HEARING shall be used to record any evidentiary requests made at the screening. Additional pages may be used, if necessary. If the offender brings relevant evidence to the hearing, the Disciplinary Hearing Officer shall consider the evidence.

b. When an offender requests evidence, the Disciplinary Review Officer shall determine whether such evidence exists and, if available, provide the evidence to the Disciplinary Hearing Officer.

c. When an offender requests evidence that may contain security related information (such as surveillance video recordings) the Disciplinary Hearing Officer may determine that due to the nature of the evidence, the offender should not be granted access to it. In such case, the Disciplinary Hearing Officer shall review the evidence and prepare a detailed summary of the evidence. The Disciplinary Hearing Officer shall sign the summary and a copy shall be provided to the charged offender at least 24 hours prior to

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the hearing. Additionally, the Disciplinary Hearing Officer shall document on the REPORT OF DISCIPLINARY HEARING that the evidence was reviewed outside the presence of the offender and the reason for this action, as well as what was discovered during the review.

If an offender requests the contents of a confidential Intelligence and Investigations Report, the Investigator shall prepare a summary of the report to provide the offender. The offender shall receive a copy of this report at least twenty-four (24) hours prior to the hearing, unless the offender has waived their twenty-four (24) hour notice.

In the case of video evidence, the detailed summary shall be documented by fully completing State Form 55721, "DISCIPLINARY HEARING VIDEO EVIDENCE REVIEW." If the video evidence has no value as evidence in the Disciplinary Hearing due to the video not showing any part of the incident, the staff person completing State Form 55721 shall specifically note that the video evidence has no value as evidence and document the reason (e.g., the video was not the correct scene, the video was recorded before or after the incident occurred, the view of the scene is blocked by persons or a physical object, the video is out of focus, or other cause). **All video evidence shall be permanently retained regardless of whether it has value or no value as evidence.**

It is not sufficient to simply state that an offender may not personally review evidence because it presents a safety or security concern. If the offender requests evidence that contains security related information, the Disciplinary Hearing Officer shall specifically articulate in the record the reason for the safety and security concern. The reason should be legitimate and clearly stated. The reason should be stated in a way sufficient to convey to the offender and a reviewer of the record the safety and security reason without divulging confidential information.

d. Evidence that may pose a threat to the safety and security of the facility or persons involved in the hearing (*i.e.*, weapons, controlled substances, controlled substance analogs, intoxicating substance, tobacco, etc.) need not be presented at the hearing. A picture may be taken of the evidence and the picture presented. In such cases, the actual evidence shall be kept in a safe and secure location until all appeals, including any court actions, are concluded.

e. Any evidence requested by an offender, either at the time of screening or during the disciplinary hearing, shall be addressed.

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Requests for evidence shall not be denied without a written explanation documented on the REPORT OF DISCIPLINARY HEARING.

f. Non-video evidence relating to a disciplinary hearing on a charge not causing a grievous loss shall be maintained for thirty (30) calendar days. After thirty (30) calendar days, the evidence may be destroyed.

g. In cases where evidence cannot be retained (such as home-made alcohol, food items, perishable items or items that pose a serious threat to the safety and security of the facility, a staff person, or an offender), photographs, videos or document summaries may be used to preserve the evidence in lieu of keeping the actual evidence.

h. When photographs are kept in lieu of the actual evidence, the photographs shall be filed in the offender's facility packet and maintained with the disciplinary hearing report.

i. In specific cases, the facility may keep evidence longer than the above time periods if it appears to be in the best interests of the Department.

j. All evidence shall be kept in a secure location and chain of custody procedures followed.

k. Video Evidence: Video evidence indicating guilt, video evidence that indicates no guilt, video evidence requested by the charged offender, and video evidence showing the incident in any way shall be maintained permanently on a facility network server designated as the storage area of Disciplinary Hearing videos. The video file shall be named with the offender's last name, first name, DOC number, and Disciplinary Hearing Case Number (*i.e.*, Smith John 123456 IYC 14-12-0100)

(1) If a facility receives a court order to submit a video for review in litigation, the Disciplinary Review Officer shall retrieve the video file from the server and forward it to the requesting court or the Deputy Attorney General assigned to the case or an attorney with the IDOC Legal Division; with a copy to the Deputy Warden of Operations, or equivalent.

(2) If a facility receives a court order to submit a video for review in litigation and the video is on a server in another facility, the facility receiving the court order shall request the facility in possession of the video file to forward the

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video file to the requesting facility with copy to each Deputy Warden of Operations, or equivalent. Once the requesting facility receives the video file, a staff person designated by the Deputy Warden of Operations, or equivalent, shall forward the video file to the ordering court or the Deputy Attorney General assigned to the case or an attorney with the IDOC Legal Division.

(3) All video evidence requested by an offender shall be maintained permanently. If a video evidence request is overly broad and unduly burdensome, the Disciplinary Review Officer may ask the offender what the offender believes the video evidence will show. Based on the information obtained from the offender and the conduct offense, the Disciplinary Review Officer may narrow the request for video evidence to a reasonable time frame. The Disciplinary Review Officer should document on State Form 39585 NOTICE OF DISCIPLINARY HEARING (SCREENING REPORT) the video evidence the offender requested, the reason the offender requested the video evidence, the reason the Disciplinary Review Officer narrowed the offender's request, and the video evidence that was retained. The Disciplinary Hearing Officer shall also note on the REPORT OF DISCIPLINARY HEARING if an offender's request for video evidence was denied or narrowed and the reason for such.

l. Request for an Examination of a Body: If an offender requests that some part of the offender's body be examined at the hearing in order to verify the presence or absence of a marking relevant to a case, such as a tattoo, the Disciplinary Hearing Officer, if appropriate, may look at the identified part of the offender's body and document in writing or by photograph the presence or absence of the marking. The Disciplinary Hearing Officer may request that another staff person review the offender's body and submit testimony regarding the presence or absence of the marking. If this requires review of an offender's breasts, genitalia, or buttocks, the reviewing officer shall be of the same gender as the offender. A second staff person of the same gender should also be in the room to observe.

E. OPERATION OF DISCIPLINARY HEARINGS:

1. Conduct of hearing:

a. No staff person who has had any role in a particular conduct report, whether as the reporting or witnessing staff person, as an

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investigator in the case or as a Disciplinary Review Officer, may serve as the Disciplinary Hearing Officer.

b. The Disciplinary Hearing Officer shall call witnesses and hear testimony and review evidence both favorable and unfavorable to the accused offender. Should the offender choose to waive his/her rights to a witness/Lay Advocate/evidence during the disciplinary hearing, the Disciplinary Hearing Officer shall note such waiver on the REPORT OF DISCIPLINARY HEARING and the offender shall sign indicating acknowledgment of this waiver. If possible, another staff member should witness and sign this waiver.

c. The Disciplinary Hearing Officer shall afford each offender all rights as contained in this policy and administrative procedure and on State Form 39585.

d. An offender may not be compelled to testify and the offender's silence may not be used against the offender.

e. The offender and Lay Advocate shall be permitted to be present throughout the hearing except during the deliberations or when facility safety or security would be jeopardized. The reasons for excluding an offender from the hearing, other than during deliberations, must be documented on State Form 39586, REPORT OF DISCIPLINARY HEARING.

f. A disciplinary hearing may be conducted in the absence of an offender when the offender refuses to appear, waives the right to appear, or becomes disruptive either before or during the hearing. The reason for the absence shall be documented on State Form 39586, REPORT OF DISCIPLINARY HEARING in the Offender's Comment section and a witness shall initial the reason why the offender is being excluded from the hearing.

g. Continuances or postponements of the hearing may be granted at the discretion of the Disciplinary Hearing Officer. In such cases, the continuance or postponement shall be noted on State Form 49521, POSTPONEMENT OF DISCIPLINARY HEARING. The offender shall be provided a copy of this form.

A new date shall be set for the hearing and indicated on State Form 49521.

(1) A disciplinary hearing may be postponed for up to seven (7) business days (excluding weekends and holidays) from the originally scheduled hearing.

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(2) A hearing may be postponed or continued multiple times if the facility documents the need for another postponement or continuance.

(3) Any postponement or continuance of the hearing shall be for a reasonable time period and shall be for good cause, including:

(a) Preparation of a defense;
(b) Illness or unavailability of the offender or a staff person;
(c) Further review of factual matters relevant to the hearing;
(d) Pending criminal court prosecution or investigation by an outside law enforcement agency; and/or,
(e) To obtain witness testimony.

(4) A Disciplinary Hearing Officer may continue the hearing to seek clarification from the reporting staff person regarding the written documents. However, the best practice is to call the reporting staff person as a witness and have the clarification discussion in front of the offender, and to document this event and the discussion in a witness statement or upon the Report of Disciplinary Hearing.

h. If an offender is not available for a hearing (e.g. out to court), the hearing shall be postponed until the offender is available. The hearing shall be scheduled and held within seven (7) business days (excluding weekends and holidays) from the date the offender becomes available at the facility.

i. The Disciplinary Hearing Officer may excuse him/herself from hearing a particular case if the Disciplinary Hearing Officer believes that there is any reason why he/she cannot give the offender a fair and impartial hearing. The fact that the Disciplinary Hearing Officer has heard other cases involving the same offender is not justification for the Disciplinary Hearing Officer to be considered unable to be fair and impartial. If the Disciplinary Hearing Officer asks to be excused from a particular case, another Disciplinary Hearing Officer shall be assigned to hear that case.

2. Deliberation and Decision:

a. The Disciplinary Hearing Officer shall consider all evidence (physical, written, and verbal) obtained in the disciplinary process. Observers shall not enter into discussions with the

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Disciplinary Hearing Officer or attempt to influence the Disciplinary Hearing Officer's decision.

b. The decision shall be guilty, not guilty, or dismissed. If an offender admits guilt or the evidence shows guilt of an equal or lesser related disciplinary code violation as indicated in ATTACHMENT I, the Disciplinary Hearing Officer may find the offender guilty of such code violation and shall document on the REPORT OF DISCIPLINARY HEARING any change in the original charged offense. Any change in the charged offense must have a clear and reasonable relation to the original offense.

c. A not guilty or guilty finding shall be supported by a preponderance of the evidence. A preponderance of the evidence means "more likely than not."

(1) The decision shall be based solely upon information obtained during the hearing process, including staff reports, statements from the charged offender, evidence derived from witnesses, documents and physical evidence, if any.

(2) The Disciplinary Hearing Officer shall document all evidence considered in the disciplinary hearing on the REPORT OF DISCIPLINARY HEARING.

(3) The Disciplinary Hearing Officer shall not simply check a box. Further explanation or description of what was relied upon and what was considered is required.

(4) The evidence relied upon shall be documented in the "Evidence Relied Upon" section of the REPORT OF DISCIPLINARY HEARING. The Disciplinary Hearing Officer shall articulate how the evidence relied upon supports the not guilty or guilty finding. The "Evidence Relied Upon" section may list all or a subset of all the evidence considered. It is the evidence the Disciplinary Hearing Officer relied on to support his or her decision.

(5) A written record of disciplinary hearings shall be made and maintained for a period of twelve (12) months by the Disciplinary Hearing Officer.

A Disciplinary Hearing Officer should avoid using generic language such as "staff reports" in the written portion of the explanation of evidence. A Disciplinary Hearing Officer should specifically identify the witness statement and reports the Disciplinary Hearing Officer considered and relied upon (for example: "C.O. Smith's and C.O. Jones' witness statements were considered and relied upon").

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All of the presented reports, witness statements, and evidence is to be *considered* during a disciplinary hearing, whether the evidence supports the charge, disproves the charge, is meaningful, or not meaningful. A Disciplinary Hearing Officer should list all of this as considered material. The material relied upon are the reports, witness statements, and evidence presented that form the basis of the decision. A Disciplinary Hearing Officer should also list these items and identify them as the items upon which the decision is based.

3. Sanctions:

a. Sanctions shall be imposed in accordance with this policy and administrative procedure and shall take into account the following guidelines:

(1) Any allowable sanction or combination of sanctions may be imposed. However, consistent progressive discipline should be used before maximum sanctions are assessed, unless the offense itself is of such a serious nature as to warrant maximum sanctions.
(2) The rationale for imposing a sanction or combination of sanctions must be documented on the REPORT OF DISCIPLINARY HEARING.
(3) Any period of disciplinary restrictive status imposed as a result of a prohibited act committed while an offender is already in restrictive status housing shall be served consecutively to any other disciplinary restrictive status sanction the offender has previously received.
(4) No sanction of extra work may exceed twenty (20) hours for any one (1) rule violation or more than four (4) hours in any 24-hour period. An offender shall not receive state wages for extra work.
(5) Seriousness of the instant offense.
(6) Frequency and nature of the offender's prior violations.
(7) The degree to which the violation disrupted or endangered others or the security of the facility or program.
(8) Offender's attitude and demeanor during the hearing.
(9) Likelihood of the sanction having a corrective effect on the offender's future behavior.
(10) Current security level assignment.
(11) Current participation in education, rehabilitative or work programs.
(12) Sanctions imposed for comparable offenses and circumstances by other offenders with similar histories.

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b. In determining the appropriate sanction for an offender found guilty of a disciplinary offense, a staff person may consider as aggravating or mitigating factors the following:

(1) The offender's prior disciplinary record, especially during the past twelve (12) months;
(2) The offender's mental health status/state at the time of the violation, including the motivation for the offense and the offender's attitude toward the offense and the victim, if any;
(3) Whether the offender has previously been found guilty of the same or a similar offense and, if so, how often and how recently;
(4) The nature or value of the property involved, if the offense involved property of another;
(5) Whether the violation created a risk of serious disruption at the facility or whether the violation created a risk of serious injury to another person;
(6) Whether the offender was aware that his/her actions were an offense when the offense was committed;
(7) Mitigating factors, such as coercion, family difficulties, etc., which may have caused anxiety and any special circumstances;
(8) Whether the offense created a risk to the safety and security of the facility, a staff person, an offender or the community; and,
(9) Any other factors relevant to determining an appropriate sanction.

c. Recommended sanctions shall be within the disciplinary code guidelines [See Procedure IX. E. 3. (e)].The recommended sanctions shall be limited to the following:

(1) Written or verbal reprimand.
(2) Extra work, not to exceed 20 hours for each offense.
(3) Loss or limitation of privileges.
(4) Placed on Room/Cell/Housing Assignment Confinement.
(5) Placed on Building Confinement**.**
(6) Change in work or housing assignment or status.
(7) Restitution.
(8) Disciplinary restrictive status shall be for a fixed period of time. Disciplinary restrictive status time for multiple offenses may be given concurrently, except when given as a sanction for a violation which occurred while the offender was in disciplinary restrictive status housing.
(9) Reassignment to a lower credit class and/or deprivation of specified earned credit time, if the violation is of a Major

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(Class A or B) offense, except for offenders who have been sentenced to life imprisonment.

(a) If a demotion is recommended by the Disciplinary Hearing Officer, the offender shall be notified of:

- The date of the action;
- The next review date; and,
- The projected release date as a result of the demotion.

(b) Earned credit time/release date calculations shall be in accordance with the administrative procedures for Policy 01-04-101, "Adult Offender Classification," and done by a Certified Credit Time Calculator.

(10) Facility community service goals, if established by the Warden.

d. All or part of the above sanctions may be suspended by the Disciplinary Hearing Officer pending the offender's future behavior, provided the circumstances of the case, as well as the offender's behavior, merit such action.

(1) The length of time that an offender may be under a suspended sanction is six (6) months from the date of the disciplinary hearing that imposed the suspended sanction.
(2) When an offender is under a suspended sanction and is found guilty of a Major (Class A or B) offense, the offender shall have the full and entire suspended sanction invoked.
(3) The imposition of the suspended sanction shall be effective the date of the new hearing.
(4) When imposing sanctions, suspended time may be added to sanctions applied to the current offense. The total time of the sanctions may then exceed the allowable limits.

e. A guilty plea or finding may result in the imposition of any sanction or combination of sanctions mentioned in Procedure IX. E. 3. b of this policy and administrative procedure.

The maximum allowable sanctions for each class of offense for offenders are as follows:

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SANCTION	CLASS A [1]	CLASS B	CLASS C	CLASS D
Disciplinary Restrictive[2] Status Housing	6 months	3 months	15 days	NONE
Reduction in credit class[3]	1 grade	1 grade	NONE	NONE
Loss of earned credit time[4]	6 months[3]	3 months	NONE	NONE
Restriction of privileges	45 days	30 days	15 days	5 days
Extra work (up to four [4] hours per 24-hour period)	20 hrs	20 hrs	20 hrs	10 hrs
Restitution[5]	Restitution in the assessed amount of the loss (A-D)			
Room Confinement[6]	NONE	15 days	5 days	NONE
Building Confinement [7]	NONE	30 days	15days	NONE
Reprimand	Written	Written	Written	Verbal
Suspension from Work[8]	30 days	15 days	5 days	NONE
Facility Community Service Goals (If established by Facility Head)	1 goal	1 goal	NONE	NONE

[1] Harm to a Staff Person, Volunteer, Visitor or Contractor. If any adult offender is found guilty of a violation of offense code A 117 "Battery Against a Staff Person, Volunteer, Visitor, or Contractor," A 100 "Violation of Law," or A 115 "Nonconsensual Sexual Act," and the offensive act results in bodily injury being caused to the staff person, volunteer, visitor, or contractor, the offender may receive, in addition to the other sanctions listed above, a loss of the entire balance of the offender's accumulated earned credit time.

Additionally, if an offender is found guilty of any subsequent violation of any major offense outlined in the Disciplinary Code for Adult Offenders after being found guilty of violating offense codes A117, A100, or A115 resulting in bodily injury during his/her current commitment period, the offender may receive, in addition to the sanctions listed above, loss of up to the entire balance of the offender's accumulated earned credit time, based on the severity of the subsequent violation.

A Report of Conduct alleging an act of battery must include a clear description of the bodily injury as defined by this policy suffered by the victim of the act of battery. In order to take the entire balance of the offender's accumulated earned credit time, if possible, photographs or other documentation of the bodily injury should be included as evidence to

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support a Report of Conduct alleging a violation of A117 or A115 or A100 involving bodily harm to a staff person, volunteer, or visitor.

[2] The amounts of time listed are the maximum allowable disciplinary restrictive status sanction for a single offense with the following exceptions:

- Offenders who commit the most serious (egregious) offenses, (Codes 100, 102, 103, 106, 108, and 117 shall be subject to a maximum of one (1) year in disciplinary restrictive status housing. All cases involving an offender battery on a staff person shall be referred to the local Prosecutor for possible criminal prosecution.
- Additional restrictive status time may be imposed for multiple offenses, up to a maximum of one (1) year in disciplinary restrictive status housing. Offenders placed in disciplinary restrictive status housing may be allowed privileges consistent with the security of the facility after 60 days in restrictive status. Restriction of recreation is limited to no more than 10 consecutive days for offenders in disciplinary restrictive status housing and may only result from violations involving recreation.

[3] Offenders found guilty of certain egregious Class A offenses (Codes 100, 102, 103, 106, 108, and 117) shall be subject to sanctions of up to a three (3)-step demotion in Credit Class with justification by the Disciplinary Hearing Officer.

Offenders who have been committed to the Department as a "Credit Restricted Felon" shall be assigned to Credit Class IV, or Credit Class C if the committing offense was committed on or after July 1, 2014. "Credit Restricted Felons" may only be dropped to Credit Class III or Credit Class D if the committing offense was committed on or after July 1, 2014. These offenders can only be assigned to Credit Class IV or Credit Class III, or Credit Class C or D if the committing offense was committed on or after July 1, 2014. If an offender who is a "Credit Restricted Felon" is found guilty and given a sanction involving a demotion to Credit Class III, or Credit Class D, or a loss of earned credit time, the Division of Classification at Central Office is to be notified immediately. Also, if a "Credit Restricted Felon" is promoted from Credit Class III to Credit Class IV, or promoted from Credit Class D to Credit Class C, or has lost earned credit time restored, the Division of Classification shall be notified immediately. Only a staff person of the Division of Classification at Central Office shall calculate time for "Credit Restricted Felons."

[4] Offenders found guilty of the egregious offenses mentioned above shall be subject to a loss of up to 12 months of Earned Credit Time with justification from the Disciplinary Hearing Officer. If an offender does not have the appropriate earned credit time to satisfy this sanction, educational credit may be used to supplement.

[5] Restitution. Paper documentation justifying an amount of restitution must be included in the record of an offender disciplinary case that imposes restitution as a sanction. If an offender is charged with and convicted of destruction of property, an invoice or similar document listing the replacement cost of the destroyed item must be included in the evidence given to the offender and considered by the DHO. If no invoice or similar

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document exists, a signed and dated written statement from a facility or Central Office Administration staff person with experience and knowledge of procuring a replacement item must be included stating the normal amount paid for said item, and the documentation must be included in the evidence given to the offender and considered by the Disciplinary Hearing Officer.

A grievous loss is defined, in part, as being an amount of restitution over $250.00. Accordingly, if an offender is found guilty of a C or D offense, and restitution is imposed against the offender in an amount above $250.00, that C or D conviction imposes a grievous sanction.

In accordance with Policy and Administrative Procedure 02-03-116, "Offender Urinalysis Program," offenders may be required to pay restitution in the amount of the cost of the initial urinalysis test and/or confirmation test.

Restitution for Medical Expenses: If the offender is assessed a restitution sanction for medical expenses, the Disciplinary Hearing Officer shall make a good and honest effort to determine the precise amount of the medical bills in question. The Disciplinary Hearing Officer may set forth the amount of the medical restitution in a Report of Disciplinary Hearing so long as no actual medical information is included. The offender will be provided with copies of the medical bills so long as all medical and personal information is redacted from the bills.

If it is not possible to determine the amount of medical restitution at the time of hearing due to ongoing medical treatment or a delay in receiving the medical bills, the Disciplinary Hearing Officer may assess a medical expense restitution sanction up to an estimated amount.

As an example, a Disciplinary Hearing Officer may state: "The offender is sanctioned to pay restitution for the medical expenses incurred due to the injured staff person (or offender or other person). The precise amount of the medical restitution is unknown at this time due to ongoing medical treatment and receipt of outstanding bills. Accordingly, the offender is sanctioned an estimated medical restitution amount up to and including $ 100,000.00. The offender will receive copies of the redacted medical bills after the bills are received by the facility." The amount set forth in this example is just a suggestion, and a Disciplinary Hearing Officer is encouraged to use his or her own judgment and experience to determine the appropriate amount of an estimate. A Disciplinary Hearing Officer may postpone the conclusion of a hearing in order to obtain information necessary to determine the appropriate amount of an estimate of the total medical cost.

A Disciplinary Hearing Officer shall make certain that appropriate facility personnel are aware of an ongoing medical restitution sanction, and that a hold is placed upon the offender's trust account if appropriate. A facility Warden or designee shall make certain that appropriate facility personnel track medical bills from a given event, and that the bills are accounted for and assessed against the subject offender and that the offender is appropriately notified when monies are withdrawn from the offender's trust account for purposes of payment of a medical restitution sanction.

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[6] The Warden or designee may authorize the offender to leave his/her living quarters during the hours of confinement for attendance at religious services, medical appointments, showers, and visits. The Warden or designee may remove any or all electronic equipment (e.g., radios, televisions, and tablets) from the offender's living quarters if room/cell confinement is ordered.

[7] During the hours of confinement, the offender may only leave the building with specific authorization. The Warden or designee may authorize the offender to leave the building for attendance at religious services, medical appointments, and visits.

[8] Offenders may be suspended from work without pay as a Class A, B, or C sanction. If the offender is suspended from a work assignment as a disciplinary sanction, the offender shall not be terminated from their work assignment as a result of the suspension unless the offender's conviction makes him/her ineligible for a work assignment in accordance with Department or facility procedures. Offenders may be terminated from a work assignment based upon the safety and security of the facility and the likelihood that continuing the offender in a work assignment eligible classification will result in further disciplinary actions. Offenders may remain job eligible after a finding of guilt for a Class A or Class B offense, but may be required to change work assignments based upon the safety and security of the facility. Following a suspension from work, the offender shall be returned to the same or an equivalent work assignment as soon as possible.

f. The following shall not be imposed as disciplinary action:

(1) Corporal punishment.

(2) Deprivation of Recreation/Exercise in Confinement

(a) Confinement without the opportunity for at least one (1) hour of exercise outside the immediate living quarters five (5) days per week, unless the Department finds and documents that this opportunity will jeopardize the physical safety of the offender, others, or the security of the facility.

(b) If abuse of the recreation/exercise privilege occurs, the access to recreation/exercise may be restricted by the Disciplinary Hearing Officer and the reasons for denying access shall be documented in writing.

(c) The opportunity for recreation/exercise may also be withdrawn if a Mental Health staff person determines that to allow it could potentially be injurious to the offender's safety or the safety of others.

(d) Court orders requiring different standards shall apply where applicable.

(3) A substantial change in heating, lighting, or ventilation.

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(4) Restrictions on authorized or issued clothing, bedding, mail, reading and writing materials or the use of hygienic facilities, unless these privileges are abused by the offender.

(5) Restrictions on medical, mental health, and dental care, access to courts, legal counsel, government officials or grievance proceedings and access to personal papers and legal research materials.

(6) A deviation from the diet provided to other committed persons in the facility or program except:

(a) For documented medical reasons; or,

(b) In cases where the offender abuses or misuses the diet, such as throwing food items at others or failure to return meal utensils when instructed, and a determination is made in writing to place the offender on an alternative diet as provided in the administrative procedure for Policy 04-01-301, "The Development and Delivery of Foodservices."

(7) Humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.

g. Offenders who have been convicted of a criminal offense which does not provide earned credit time (e.g., capital offenses, life without parole) and who have been found guilty of a Major offense violation may be sanctioned with a loss of earned credit time, demotion in Credit Class, or both which shall be imposed if the offender's sentence is modified to a term of years. In such cases, the effective date of the imposition of the lost earned credit time or demotion in Credit Class shall be the date of the disciplinary hearing. An offender may submit an appeal in accordance with this policy and administrative procedure.

h. When sanctions involving loss of privileges are imposed, the facility shall ensure that the offender is provided at least minimal access to the privilege. For example, an offender who receives a loss of telephone privileges shall be permitted access to the Offender Telephone System in order to make calls to the offender "hotline" and to telephone his/her attorney or legal representative. An offender who is given a commissary restriction shall be permitted to purchase personal hygiene items and over-the-counter medication. Offenders who are in restrictive status housing shall not be given a recreation restriction unless the violation involves the recreation program and in those cases, the offender shall continue to be offered a reduced recreation schedule

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permitting at least ½ hour of recreation activity outside the restrictive status housing cell five (5) days per week.

4. Reports:

Upon completion of a disciplinary hearing, a written summary of the proceedings shall be made which shall include the findings of fact, the evidence relied upon, and the reasons for the sanction imposed.

a. State Form 39586, REPORT OF DISCIPLINARY HEARING, shall be used for this purpose.

b. The Disciplinary Hearing Officer shall ensure that this form is completed correctly and with as much detail as possible and a copy provided to the offender. The Disciplinary Hearing Officer shall list on the form all evidence the Disciplinary Hearing Officer considered and the evidence the Disciplinary Hearing Officer relied upon in reaching the Disciplinary Hearing Officer's decision.

c. All REPORT OF DISCIPLINARY HEARING forms shall be forwarded to the Warden or designee in administration for review to ensure that the sanctions recommended are in accordance with this policy and administrative procedure. During this review, the sanctions may be reduced if appropriate but may not be increased.

d. Once the recommended sanction has been approved, the Warden or designee shall ensure that the approved sanctions are initialed and entered into the Offender Information System (OIS) and that the Disciplinary Hearing Officer is notified of the decision regarding the sanctions.

e. The Disciplinary Hearing Officer shall cause the REPORT OF DISCIPLINARY HEARING with the approved sanctions to be delivered to the offender and a copy placed in the offender's facility packet.

f. A copy of the hearing record and supporting documents shall be maintained in the Disciplinary Hearing Officer's records.

5. Correction of Errors:

a. Errors (e.g., misspellings, incorrect ID numbers, etc.) found on disciplinary reports (i.e., REPORT OF CONDUCT, REPORT OF DISCIPLINARY HEARING forms) may be corrected at any time prior to the rendering of judgment when detected by or brought to the attention of the Disciplinary Review Officer or Disciplinary Hearing Officer.

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b. The staff person making such changes or corrections shall initial these changes or corrections.

c. Failure to detect or correct such errors that do not have a substantial impact on the offender's ability to present a defense shall not be grounds for overturning a decision by the Disciplinary Review Officer or Disciplinary Hearing Officer.

6. Expunging of Records:

a. If an offender is found not guilty or upon review, a finding of guilt is reversed, or the charge is dismissed, the offender's record shall be expunged of any reference to the specific charge, and all sanctions rescinded within thirty (30) days of the not guilty finding or reversal. Correspondence to the Warden or designee from the Appeal Review Officer shall document the dismissal of the case number. The Warden or designee shall review the correspondence, cause the expungement of the charges from the offender's packet, and forward a copy to be filed in the offender's facility packet (Section 4).

b. Pre-hearing restrictive status housing records showing housing assignment or restrictive status housing unit logs shall not be expunged from records.

c. Each Warden shall assign a staff person or persons to be responsible for these actions.

d. A copy of the records may be kept in a separate secure location for purposes of defending against litigation. Such expunged records may only be used to defend against litigation and not for purposes of classification, reports to the Parole Board, and/or to a court, or to determine an offender's past disciplinary records.

7. Reimbursement of Lost Wages (Not including Work Release):

An offender otherwise entitled to State wages:

a. Who is released from pre-hearing restrictive status housing without being charged;
b. Whose charge is being dismissed;
c. Who is found not guilty; or,
d. Whose guilty finding is overturned on appeal or by a court shall have those State wages, for which the offender is eligible, reimbursed for the period of time from the offender's removal from the work assignment due to the alleged disciplinary violation until the date of the disciplinary hearing. Such pay will be at the

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rate of State wages paid to the offender prior to being removed from his/her work assignment or at the lowest rate of State wages for which the offender is eligible, if previously assigned to an ICI work assignment in accordance with the Offender Employment Operating Standard. The Disciplinary Hearing Officer shall advise the Supervisor of Classification in these cases and the offender shall be returned to the previous assignment eligibility status as soon as possible and shall be given priority for a work assignment.

8. Credit Class Review:

The Disciplinary Hearing Officer shall review and timely process a disciplinary action which resulted in a credit class demotion. An offender who has been demoted in credit class shall be reviewed for promotion 90 days from the effective date of the last guilty finding by a Disciplinary Hearing Officer until the offender is:

- Promoted to Credit Class I, if the committing offense was committed prior to July 1, 2014;
- Promoted to Credit Class A, if the committing offense is a Level 6 felony committed on or after July 1, 2014; or,
- Promoted to Credit Class B, if the committing offense is a Level 1-5 felony committed on or after July 1, 2014.

a. If an offender, while within a Department facility, has maintained a clear conduct record (i.e. NO findings of guilt or guilty pleas for any REPORTS OF CONDUCT for Class A or Class B offenses) for 90 calendar days from the effective date of the last guilty finding by a Disciplinary Hearing Officer or the equivalent person in a jail, the offender shall be promoted to the next higher Credit Class.

b. There shall be no appeal of the denial of a Credit Class promotion due to additional disciplinary actions.

c. No offender shall receive a Credit Class promotion if the promotion would place the offender within forty-five (45) days of his/her EPRD, regardless of his/her type of conviction. This precludes offenders that are already within the forty-five (45) days until EPRD from receiving further Credit Class promotions.

d. To promote, the assigned staff person shall complete State Form 6949 PETITION FOR RESTORATION OF TIME.

9. Restoration of Deprived Credit Time

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This subsection addresses the restoration of an offender's earned credit time that was deprived as a result of a disciplinary action during the current commitment period, active sentences only with the Department while housed in a Department facility, while assigned to a Community Transition Program, or in a privately operated facility under contract with the Department, including a county jail. No offender is entitled to a restoration of deprived earned credit time, except to the extent that he/she meets criteria established in the following procedures. The offender shall use State Form 6949, "PETITION FOR RESTORATION OF TIME," for this purpose.

a. An offender may petition for restoration of deprived earned credit time only if he/she meets the following eligibility criteria:

1. The offender is:

a) For offenses committed prior to July 1, 2014:

1.) A Level A through D felony offender must be in Credit Class 1 for six (6) continuous months prior to submission of the petition.
2.) A Credit Restricted Felon (CRF) offender must be in Credit Class 4 for six (6) continuous months prior to submission of the petition.

b) For offenses committed on or after July 1, 2014:

1.) A Level 6 Felony offender must be in Credit Class A for six (6) continuous months prior to submission of the petition.
2.) A Level 1 through 5 Felony offender must be in Credit Class B for six (6) continuous months prior to submission of the petition.
3.) A Credit Restricted Felon (CRF) offender must be in Credit Class C for six (6) continuous months prior to submission of the petition.

2. The offender must not have been found guilty of any Class A or B conduct code violations within the six (6)-month period preceding submission of the petition.

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3. Effective June 1, 2015 an offender may not petition for restoration of time that was taken under any of the following conduct codes:

   a. A-100, Violation of Law;
   b. A-102, Battery;
   c. A-108, Escape;
   d. A-113 Trafficking;
   e. A-114, Sexual Act with a Visitor;
   f. A-115, Non-consensual Sex Act;
   g. A-117, Assault on a Staff Person; or,
   h. A-121 Use and/or Possession of Cellular Telephone or Other Wireless or Cellular Communications Device
   i. A-111, Conspiracy/Attempting/Aiding or Abetting relating to the conduct codes in a-h.

4. The offender must have no reports of guilty findings, pleas of guilt, or pending conduct reports while the petition for restoration is being considered (i.e., clear conduct record with no findings of guilt; or guilty pleas for any Class A or Class B offense);

5. Community Service goals, as established by the Warden and imposed as a sanction at the Disciplinary Hearing must be verified as successfully completed by the appropriate staff person in order for the offender to qualify for restoration. Documentation indicating verified completion of Community Service Goals must be attached to the petition at submisison; and,

6. The offender must not be serving any disciplinary restrictive status time for any disciplinary action imposed at the time the petition is submitted.

b. Credit time restored in the previous six (6) months as a result of a successful petition for restoration is conditioned upon the offender's continued good conduct. Once a petition for restoration is approved, a guilty finding in the next six (6) months of a Class A or B conduct code shall cause the most recently approved petition for restoration, during the current commitment period, active sentences only, but those not prior to June 1, 2015 and administrative procedure, to be rescinded. To

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rescind, the assigned staff person shall complete a petition and enter the reason for rescission of previously restored credit time.

c. An offender may petition for restoration of time only once every six (6) months from the date of the last restoration approval.

d. No requests for credit time may be filed unless the time was deprived while serving the current commitment period, active sentences only, with no findings of guilt June 1, 2015 and administrative procedure as indicated in subsection 3, a-i of this section. Credit time deprived while serving a previous commitment period, or prior to release to parole, probation, or community corrections supervision on the current commitment period, active sentences only, cannot be restored.

e. If an offender submits a petition for restoration prior to the date of eligibility, the petition shall be rejected and returned to the offender with an explanation, including the earliest possible date of eligibility.

f. Once a petition for restoration of earned credit time is submitted, the designated staff person shall review the offender's records to determine if the offender meets the minimum eligibility requirements, and shall:

1. Determine the appropriate number of days, if any, to be restored to the offender;

2. Complete the appropriate section of State Form 6949;

3. Sign the petition verfying the review has been completed and the offender is eligible for restoration of the number of days determined to be restored, dependent upon the offender meeting the criteria for time restoration;

4. If the facility has established Community Service goals, the designated staff person shall work with other appropriate staff persons to determine whether the petitioner successfully completed the specific facility-based Community Service Goals required before the offender is eligible to file any successive petition for restoration of deprived credit time; and,

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5. Forward all approved petitions for restorations to the appropriate staff person for entry to the offender information system.

g. If approved, deprived credit time shall be restored only in the following manner:

1. A maximum of sixty (60) days of deprived credit time shall be restored upon approval of the first petition for restoration.

2. Approval of any subsequent petitions for restoration of earned credit time shall result in up to sixty (60) days of deprived earned credit time being restored for each successful subsequent petition, subject to the limitations in subsections 3 and 4, below;

3. The total maximum amount of deprived earned credit time that can be restored is fifty percent (50%) of the cumulative amount of restorable earned credit time;

4. Credit time that was never earned as a result of a demotion in Time Earning Credit Class cannot be restored as "deprived" credit time.

h. The facility-based community service goals to be accomplished by the offender to become eligible to file any petition for restoration of deprived earned credit time may, if established by the facility, include, but are not limited to:

1. Completion of a fixed number of hours of specifically-assigned housing unit or facility-based work assignments, above what would otherwise be expected of the offender;

2. Active and significant engagement in approved volunteer projects designed to help others in need;

3. Completion of any specifically designed (non-credit time earning) rehabilitative activity or program approved by the Warden or designee; or,

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4. Successful completion of any other educational or pro-social exercises (non-credit time earning) approved by the Warden or designee.

i. The effective date of the restoration of any deprived earned credit time shall be the date when the Warden or designee signs the petition. A staff person shall enter the restored days into the offender information system as soon as possible after the decision to restore time has been made.

j. Earned credit time deprived from a Department offender housed in a county jail, while in a Community Transition Program (CTP), or while in a contracted facility may be restored.

1. Earned credit time deprived by a county sheriff shall be restored in the same manner as earned credit time deprived while in a Department facility.

2. When the offender is received at a Department intake unit or facility, a staff person shall review the offender's record to determine whether earned credit time has been deprived.

3. If the offender has been deprived earned credit time and the offender appears to be eligible for restoration, a staff person shall advise the offender on eligibility and the procedures to petition for restoration.

4. If it is determined that the offender would have been eligible for earned credit time restoration, the designated staff person shall determine the amount of earned credit time the offender would have been eligible to receive. In these cases:

a) The offender shall be granted all of the deprived earned credit time they would have received if the offender had been housed in a Department facility and timely petitioned for restoration; and,

b) Such petitions shall be processed consistent with this procedure.

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k. Warden or designee shall be the first level of appeal for restoration of time petitions. Classification Division at Central Office shall be the second level of appeal.

l. If an offender is transferred to another facility while a petition is under review, the facility holding the offender when the petition was submitted shall complete the review and forward the result to the receiving facility. The receiving facility shall ensure that the offender is notified of the final decision and that the petiton for restoration of earned credit time is filed in the offender's packet and any restoration is recorded in the offender information system.

m. No offender shall receive a restoration of deprived credit time if the restoration results in placing the offender within forty-five (45) days of his/her EPRD, regardless of conviction.

X. APPEAL OF DISCIPLINARY DISPOSITION:

A. An offender who desires to appeal a disciplinary disposition shall complete State Form 39587, "DISCIPLINARY HEARING APPEAL," within fifteen (15) calendar days from the date of the disciplinary hearing or receipt of the REPORT OF DISCIPLINARY HEARING.

1. In the appeal, the offender shall state the specific reasons such a review is requested.

2. A disciplinary action may only be appealed for failure of the facility to follow the due process requirements in this policy and administrative procedure, where there is a question regarding the sufficiency of the evidence relied upon, or in cases where the sanctions given are outside the sanctioning guidelines in these procedures.

3. An offender may not appeal minor errors in the disciplinary reports unless the offender can show that the error resulted in a due process error.

B. Offenders who have entered a guilty plea may appeal only the sanctions imposed.

C. The first level of appeal shall be to the Warden or designee of the facility where the hearing was held who shall consider the offender's statements, review for any due process or sanctioning errors and disciplinary consistency.

1. The response shall be written on State Form 39587, "DISCIPLINARY HEARING APPEAL," and provided to the offender.

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2. The Warden or designee is the final reviewing authority for appeals for Minor offenses (Class C and D offenses) and for Major offenses (Class A or B offenses) that do not involve imposed grievous sanctions.

3. The Warden or designee shall respond to the appeal within 30 days from the date of receipt. A copy of the appeal decision shall be given to the offender and a copy placed in the offender's file.

D. When responding to a disciplinary appeal of an offender who is no longer at the facility, the Warden or designee should have the appeal and the facility's response scanned into IRIS and should send a copy of the appeal and response to the facility litigation liaison or other appropriate person at the facility where the offender is presently located, and ask that the response be delivered to the offender, and the documents be placed in the packet, and that the appropriate entry be made in OIS indicating that a response has been issued.

E. An offender who has received an imposed sanction involving a grievous loss, and who is not satisfied with the appeal response from the Warden or designee, may appeal the Warden's response to the Appeal Review Officer.

1. The appeal shall be on State Form 39587, "DISCIPLINARY HEARING APPEAL," and may be based only upon the same concerns in the first level appeal.

2. Concerns that deviate from the first level appeal may not be considered.

3. The appeal to the Appeal Review Officer must be submitted within fifteen (15) days from the date of receipt of the Warden or designee's appeal response. All available documentation relating to the appeal shall be included in the materials the offender submits to the Appeal Review Officer. If the offender wishes to maintain a copy of the documents for his/her records, the offender must make a copy before sending it to the Appeal Review Officer. Only the appeal response shall be returned to the offender. All other documentation shall be filed.

4. The appeal shall include a copy of the Warden or designee's response. Appeals not including the response of the Warden or designee shall be denied.

5. The Appeal Review Officer shall review the appeal and make a decision within 30 days from the date the appeal is received. The response shall be sent by the Appeal Review Officer to the designated facility staff person as an attachment to an e-mail.

6. After receipt of the appeal response, the designated facility staff person shall personally deliver the response to the offender, and cause a copy to be filed in the offender's facility packet. (Facilities shall ensure that a staff

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person is available to fulfill this task when the designated facility staff person is away from the facility.)

a. Appeal responses shall be treated as privileged correspondence.

b. The offender shall be required to sign both his/her copy of the appeal and the copy being retained in the facility packet.

c. The designated facility staff person shall sign and date both copies and return one copy to the facility's records department for filing in the offender's facility packet and processing into the IRIS system.

d. The designated facility staff person shall ensure that any modifications made to the sanctions in the appeal response are forwarded to the appropriate facility staff person to make such changes in a timely manner.

F. Disciplinary Hearing Appeals shall not be considered legal correspondence as defined in the administrative procedure for Policy 02-01-103, "Offender Correspondence"; therefore, the offender shall be responsible for all costs associated with disciplinary appeals.

G. Appeals at either level may be granted, denied, modified, or remanded upon cause for a re-hearing. If the appeal is remanded for a re-hearing, the reason for the remand will be addressed with the facility in a confidential attorney-client email. A letter indicating a re-hearing shall be issued to the offender.

H. An order to re-hear a case shall be sent to the offender, and the facility. The re-hearing shall be scheduled and held within seven (7) business days (excluding weekends and holidays) from the date the facility receives the order for a re-hearing, unless staff documents indicates in writing that cause for a delay exists.

The re-hearing shall be heard by a different Disciplinary Hearing Officer. The offender shall retain all rights of the disciplinary hearing, including the right to appeal the decision of the Disciplinary Hearing Officer.

XI. <u>SUSPENSION OF RIGHTS AND/OR PROCEDURES</u>:

A. Any rights enumerated in this policy and administrative procedure may be suspended upon declaration by the Warden that an emergency situation exists, as provided in Policy 02-03-102, "Emergency Response Operations." Upon resolution of the emergency security situation, all suspended rights and/or procedures shall be reinstated.

B. A Departmental investigation and a Disciplinary Hearing Officer action may be suspended at the discretion of the Warden if it appears that such action may have an adverse effect on an outside criminal investigation or prosecution. The offender

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shall be notified expeditiously of such suspension. Such suspension shall be documented in writing and a copy forwarded to all appropriate staff persons.

XII. APPLICABILITY:

This policy and administrative procedure applies to all staff persons and incarcerated adult offenders committed to and/or in the custody of the Department.

_____signature on file_____ _____
Robert E. Carter, Jr. Date
Commissioner