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<p>Legal References (includes but is not limited to)</p> <p>IC 11-8-2-5(a)(8) IC 11-11-5-1 <i>et seq.</i> IC 35-50-6-7</p>	<p>Related Policies/Procedures (includes but is not limited to)</p> <p>01-04-101 02-04-102</p>	<p>Other References (includes but is not limited to)</p> <p>ACA: ACI: 4-4206, 4-4226 through 4-4248, 4-4281, 4-4320 CO: 2-CO-3C-01</p>
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I. PURPOSE:

This policy establishes the rules of conduct for adult offenders committed to the Department of Correction and the procedures to be followed by staff 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, 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 insure that copies of these disciplinary procedures are posted or maintained in prominent locations so that staff and offenders may have access

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

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

III. DEFINITIONS:

For the purpose of this policy and its administrative procedures, 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 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. **ATTEMPT:** Planning to do something that would be a violation of these

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- D. 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.
  
- E. BODILY INJURY: Any injury or illness which causes a physical impairment, including physical pain.
  
- F. 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.
  
- G. CONDUCT REPORT: A summary of an alleged violation committed by an offender as documented by staff.
  
- H. 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.
  
- I. DISCIPLINARY REVIEW OFFICER: Staff designated by a Facility Head, either full-time or part-time, to review conduct reports and conduct Screening hearings in accordance with these administrative procedures.
  
- J. DISPOSITION: The result of a disciplinary proceeding.
  
- K. DUE PROCESS: These rights consist of:
  - At least 24 hours written notice of the charged violation before a disciplinary hearing;
  - The right to be heard in a disciplinary hearing;
  - The right to be represented by a staff member;
  - The right to be heard by a neutral hearing officer;
  - The right to present evidence and witnesses;
  - The right to cross-examine witnesses;
  - The right to a written statement of the reasons for the disciplinary action;
  - The right to appeal the disciplinary action.

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- L. **EFFECTIVE DATE:** The date of the finding of guilt as a result of a violation of the Disciplinary Code.
  
- M. **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.
  
- N. **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 segregation in excess of 60 days and/or restitution in excess of \$200.00.
  
- O. **HEARING:** An administrative process to receive and review evidence and testimony and determine an offender's guilt or innocence and, if found guilty, the sanction(s) imposed.
  
- P. **HEARING OFFICER:** The staff person(s) designated by the Facility Head and charged with the responsibility to hear disciplinary cases.
  
- Q. **INCIDENT DATE:** The date on which the alleged rule infraction occurred or staff became aware of the violation.
  
- R. **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.

S. **INTERNAL AFFAIRS OFFICER:** A staff person appointed on a full

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- U. INTOXICATING SUBSTANCE: Anything which if taken into the body may alter or impair normal mental or physical functions, not including tobacco.
- V. LAY ADVOCATE: A staff person or qualified offender assigned or chosen to assist the charged offender in the preparation of his/her case.
- W. MAJOR OFFENSE: Any Class A or Class B offense listed in these administrative procedures 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 these administrative procedures.
- X. MINOR OFFENSE: Any Class C or Class D offense as listed in these administrative procedures.
- Y. NONCONSENSUAL SEXUAL ACT: Nonconsensual contact of a sexual nature by an offender with another person including: contact between the penis and the vagina or the penis and the anus including penetration, however slight; contact between the mouth and the penis, vagina or anus; or, penetration of the anal or genital opening of another offender 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.)
- Z. OFFENDER: An adult person committed or ordered by a court to the care and custody of the Department or to facilities contracting with the Department.
- AA. 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, offenders are presumed to be responsible for any property, prohibited property or contraband that is located on their person within their cell or

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- BB. PRE-HEARING SEGREGATION (TEMPORARY CONFINEMENT):  
The confinement of an offender in a cell until an investigation is completed or a hearing is held.
  
- CC. 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.
  
- DD. SANCTION: A penalty imposed on an offender as a result of a disciplinary action, in accordance with these administrative procedures.
  
- EE. SEGREGATION: 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.
  
- FF. SERIOUS BODILY INJURY: An injury to a person that requires urgent and immediate 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:
  - Serious permanent disfigurement;
  - Unconsciousness;
  - Extreme pain;
  - Permanent or protracted loss or impairment of the function of a bodily member or organ; or
  - Loss of a fetus.
  
- GG. SEXUAL CONTACT: Contact between persons that includes any of the following:
  - Kissing, except for that allowed under Department policy and

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- HH. **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.
  
- II. **SOCIAL MEDIA:** Any internet-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, MySpace, Twitter and blogs.
  
- JJ. **STAFF:** Any full-time, part-time, temporary or contractual person with the Department, including the Indiana Parole Board.
  
- KK. **STATE WAGES:** Monies paid by a facility for a facility work/education assignment, not including wages paid by PEN Products, a PEN Products joint venture program or a private employer of an offender in Work Release.
  
- LL. **WORKING DAY:** Monday through Friday, excluding weekends, state holidays and emergency days declared in writing by the Facility Head.
  
- MM. **VIOLATION:** An offense listed in these administrative procedures with which an offender has not complied.

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.

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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.
  6. All instances of disciplinary sanctions, including room restriction, suspension of privileges or other restrictions, shall be logged, dated and signed by the staff member ordering the sanction(s).
- B. PERSONS AFFECTED:
- These administrative procedures apply to all incarcerated adult offenders committed to and/or in the custody of the Department.
- C. STAFF TRAINING AND OFFENDER ORIENTATION:
1. Offender Notification:
    - a. The Department shall develop a document that contains all chargeable offenses, range of penalties and a summary of the disciplinary procedures.
    - b. This document shall be given to each offender and a similar document shall be made available to each staff person who has routine or regular contact with offenders. Should an offender lose his/her copy of the document, he/she may request a replacement copy. The offender shall be charged \$.10 for the replacement in accordance with Policy 04-01-104, "Inmate Trust Fund."
    - c. Each offender shall be required to sign a receipt for this document and this receipt shall be filed in the offender's facility packet.



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- (1) The offender is provided a copy of the document indicated in IV. C. 1;
  - (2) A receipt indicating that these administrative procedures were 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.
- e. If the number of offenders speaking a specific language is sufficient, the Department shall determine the feasibility of translating these procedures into the offenders' native language.

2. Staff Training:

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

Staff who serve as a Disciplinary Review Officer, Hearing Officer or Appeal Responder shall be provided specialized training to ensure that they are aware of their responsibilities and that they understand the requirements of these administrative procedures.

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

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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 Emergency Response; and,
3. Review and decide on appeals of offender disciplinary cases that include a grievous loss, disciplinary segregation in excess of 60 days and/or restitution in excess of \$ 200.00 and which have been denied at the Facility Head level.

V. REPORTING VIOLATIONS:

A. MINOR OFFENSES (CLASS C AND D)

1. WARNING

- a. Staff who witnesses or is made aware that an offender has committed a Minor Offense may determine that an INFORMAL CONDUCT REPORT or a REPORT OF CONDUCT is not required. In these cases, the staff member may counsel and warn the offender.
- b. Staff 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

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would not be served by writing a REPORT OF CONDUCT or INFORMAL CONDUCT REPORT in this case.

- c. Staff shall give warnings to offenders as soon as possible after witnessing or becoming aware of the violation but no later than 24 hours after the staff person becomes aware of the offense.

2. INFORMAL CONDUCT REPORT:

- a. Staff who witnesses an offender commit a Minor Offense may prepare an Informal Conduct Report if the staff 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. Staff 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 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 or Unit Team Manager or 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 sanction(s) is/are consistent and in accordance with these administrative procedures

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formal disciplinary process.

- g. The offender shall be advised that if he/she accepts the INFORMAL CONDUCT REPORT the following rights regarding a disciplinary hearing are waived:
  - (1) A hearing before a Disciplinary Review Officer or Hearing Officer;
  - (2) Presentation of witnesses and other evidence;
  - (3) Assistance of a lay advocate;
  - (4) Impartial decision maker;
  - (5) Confrontation and cross-examination of witnesses;
  - (6) Findings of fact; and,
  - (7) Appeal of the sanction(s) 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 State Form 39589, 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 hours period) and/or up to 30 days restriction of privileges, in accordance with Procedure IX. E. 3. e.
  
- k. If the offender agrees to the INFORMAL CONDUCT REPORT, the staff person shall inform the offender of the sanction(s). Once the offender agrees to the INFORMAL

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- 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.
- 3. REPORT OF CONDUCT:
  - a. A staff person who witnesses or has reason to believe that a Class C offense has occurred and a Warning or an INFORMAL CONDUCT REPORT is not appropriate or the offender does not agree to the INFORMAL CONDUCT REPORT shall prepare a State Form 39590, REPORT OF CONDUCT.
  - b. The REPORT OF CONDUCT shall include, at a minimum, the following information:
    - (1) The specific rule(s) violated;
    - (2) A formal statement of the charge;

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- c. Staff listed on a REPORT OF CONDUCT as witnesses must prepare a written statement. The reporting staff person shall be responsible for collecting the statements of those staff listed as witnesses on the REPORT OF CONDUCT and attaching these statements to the REPORT OF CONDUCT.
  
- d. 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.
  
- e. 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 segregated 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 segregated under investigation status;
  - (b) The staff person reporting the incident is incapacitated due to injury; or,
  - (c) The offender was in a disciplinary segregation unit at the time that the alleged incident occurred.
  
- f. 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

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- (2) If the REPORT OF CONDUCT is satisfactory, the supervisor shall initial next to the reporting staff **person's signature**, advise the reporting staff person and forward the REPORT OF CONDUCT to the Disciplinary Review Officer.
  - (3) The immediate supervisor shall complete the review and forward the REPORT OF CONDUCT within 24 hours of receipt.
  
- g. The Internal Affairs 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 Internal Affairs staff** for investigation. In such cases, the Internal Affairs Officer assigned the case shall be responsible for obtaining and attaching all non-confidential staff witness statements.
  
- h. The Unit Management Team or Hearing Officer may request 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 Internal Affairs Officer shall report the findings on State Form 39591, REPORT OF INVESTIGATION OF INCIDENT, and, if appropriate, issue a REPORT OF CONDUCT.
  
- i. When an investigation is necessary, the investigation shall commence within 24 hours from the time the Internal Affairs Officer is notified of the need for an investigation. The investigation shall be completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation.

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2. Offenders alleged to have committed a Major Offense shall not have the option of a Warning or an INFORMAL CONDUCT REPORT.
3. Staff writing a REPORT OF CONDUCT for a Major Offense shall follow the steps in Procedure V. A. 3. b through h.

**VI. PRE-HEARING SEGREGATION:**

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

Offenders placed in temporary confinement shall be placed in the appropriate segregation unit consistent with the order and security of the facility and the unit.



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by the Facility Head or his/her designee within 72 hours, including weekends and holiday.

Pre-hearing segregation time shall be credited toward any disciplinary segregation time imposed by the Hearing Officer.

Offenders who have 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 segregation 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 Facility Head or designee, an offender who satisfies one or more of the following shall be reassigned immediately to Credit Class III, 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

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1. Law enforcement agency arrest report.
  2. Formal charge filed with a court of criminal jurisdiction.
  3. Parole Agent's report.
  4. Department of Correction warrant.
  5. State Form 39588, SEGREGATION/CONFINEMENT REPORT.
  6. State Form 39590, REPORT OF CONDUCT.
- C. Upon disposition of the allegation(s), 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. 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 and shall earn the credit time that would have been earned had the offender not been reassigned to Credit Class III.
  2. Have earned credit time deprived in accordance with the approved sanction(s) 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.

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on the offender disciplinary process prior to commencing these duties.

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

- 2. The reporting staff person's immediate supervisor shall submit State Form 39590, REPORT OF CONDUCT, to the Disciplinary Review Officer in sufficient time (preferably within 24 hours from the date of the incident) to allow the Disciplinary Review Officer to meet with the offender and schedule a hearing within seven (7) working days from the date of the incident or from the date that the staff person first became aware of the alleged violation or after the completion of an investigation by the Internal Affairs.

Generally, the Disciplinary Hearing shall be held within seven (7) days (excluding weekends and holidays) of the alleged violation. However, there may be valid reasons why the Disciplinary Hearing cannot be held within that time frame. Holding the Disciplinary Hearing outside this time frame is not grounds for a case to be dropped, 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

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shall immediately notify the Facility PREA Coordinator. The REPORT OF CONDUCT shall be reviewed by the Facility PREA Coordinator to determine if the REPORT OF CONDUCT warrants such a charge or requires the initiation of the facility Sexual Assault Response Team (SART), an investigation of sexual abuse, and subsequent completion of a Sexual Incident Report.

- d. Dismiss duplicate charges when the reporting staff person files more than one (1) report on a particular incident and duplication of charges is evident.
  - e. Approve or disapprove the final report.
  - f. Assign a case number to the REPORT OF CONDUCT that consists of a facility abbreviation (ISP, WCC, ISF, IMW, 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.
  - g. Determine if an Internal Affairs investigation is warranted and, if so, refer the REPORT OF CONDUCT to the Custody Supervisor or higher authority, requesting an Internal Affairs investigation.
4. The review process shall be completed, if possible, in sufficient time to allow the disciplinary hearing to be held within seven (7) working days from the date of the incident and will consist of the following:
- a. Give the charged offender a copy of the REPORT OF CONDUCT.
  - b. Determine the offender's plea and enter the plea in the

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- (3) The ability to appear and speak in his/her own behalf;
- (4) The ability to call witnesses and present 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 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;
  - (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 ability to have a lay advocate as indicated in Procedure IX. D. 1;
- (7) A written statement by the fact-finder of the evidence relied on and the reasons for the disciplinary action;
- (8) 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. 5; and,
- (9) 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. 6.

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- (1) If such a request is for a specific individual, the Disciplinary Review Officer shall obtain appropriate identifying information so the Lay Advocate/witness(es) may be contacted.
  - (2) If no specific Lay Advocate is requested, the offender may request that the Disciplinary Review Officer appoint one.
  - (3) Such a request or the lack thereof shall be documented on State Form 39585.
  - (4) If the accused offender requests specific witness(es), the Disciplinary Review Officer shall ask the accused offender whether the witness was present at the incident that led to the charge and the expected testimony of the witness(es).
- f. Schedule a hearing no less than 24 hours following the notification to the offender before a Hearing Officer for a Major offense or the Unit Management for a Minor offense.
  - g. Ensure the requested witness(es) is/are asked for his/her testimony and the lay advocate is notified in writing of the pending conduct hearing.
  - h. Ensure that requested evidence is accessible to the Hearing Officer or Unit Management. If requested evidence is not available, then advise the Hearing Officer or Unit Management that the evidence is not available for review and the reason for its unavailability.
  - i. Review the OIS 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

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- a. REPORT OF CONDUCT case number.
- b. Offender's name and number.
- c. Rule violation and code number.
- d. Date of hearing.
- e. Type of hearing.
- f. Sanction imposed.

**B. FACILITY INTERNAL AFFAIRS INVESTIGATIONS:**

If it is determined that an investigation must be conducted by the Facility's Internal Affairs staff, the Custody Supervisor or other designated staff shall contact the Facility's Internal Affairs staff and request that an investigation be conducted. Investigations conducted by the Internal Affairs staff shall be in accordance with the administrative procedures for Policy 00-01-103.

**IX. DISCIPLINARY HEARING:**

**A. DISCIPLINARY REVIEW OFFICER HEARINGS:**

The Disciplinary Review Officer may conduct disciplinary hearings (disposition hearings) in cases where the offender pleads guilty to a Major or Minor offense and where an offender waives the right to 24-hours notice of the hearing in writing. The Disciplinary Review Officer may impose sanctions in accordance with the sanctioning guidelines found in Procedure IX. E. 3. (d).

**B. HEARING OFFICER:**

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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 REPORT OF CONDUCT, unless the offender waives the 24 hours notice. The Disciplinary Review Officer and the Hearing Officer shall ensure that no hearing is held in less than 24 hours from the time that the offender receives State Form 39585, unless the offender voluntarily waives the 24 hours notice.

An offender may voluntarily waive the right to a hearing or to the 24 hours notice of the hearing. The waiver shall be documented on State Form 39585, NOTICE OF DISCIPLINARY HEARING. The waiver shall be reviewed by the Facility Head or her/his designee and initialed.

D. LAY ADVOCATE/WITNESS/EVIDENCE:

1. Lay Advocate:

a. A Lay Advocate shall be appointed to assist the charged offender when the 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.

b. Offenders will have the ability to select a staff member or another offender from an approved list to serve as his/her



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- d. In the event that an offender refuses to attend a hearing, a Lay Advocate shall not appear on the offender's behalf.
  
- e. The Facility Head shall establish a list of available Lay Advocates. This list may consist of either staff or 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 the Department's Disciplinary Code, Policy, 02-04-101;
  - (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 segregation, unless the Facility Head determines that it would be in the best interests of the safety and security of the facility to allow an offender in the same segregation 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 offenders 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 Facility Head may exempt offenders desiring to be Lay Advocates from meeting the criteria indicated in (1) and (4) above.

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more than one (1) security level of offenders, the Lay Advocate must be from the same security level as the offender, unless otherwise approved by the Facility Head.

- h. Lay Advocates shall not request, require, receive or accept any form of compensation from an offender for advice or assistance.
- i. The requested Lay Advocate is not required to assist the charged offender.
- j. The duties of the Lay Advocate include ensuring that the charged offender understands the charge(s) and disciplinary process, assisting the charged offender with developing a defense to the charge(s) and explaining the charged offender's rights in regards to appealing any decision by the Hearing Officer. These duties do not include acting as the offender's legal representative during the hearing or speaking on behalf of the offender.

2. Witnesses:

- a. Charged offenders may request that staff or other offender witness testimony be presented at the disciplinary hearing.
  - (1) Witnesses who are not staff or other offenders shall not be permitted to attend the hearing.
  - (2) Offenders shall be permitted to present in-person testimony at the hearing from no more than two (2) witnesses, unless the Hearing Officer determines that special circumstances exist which would indicate that additional in-person testimony is appropriate.

- b. The offender or lay advocate may request that additional

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- d. An offender may request a witness at the time of screening by advising the Disciplinary Review Officer of the request for a witness or a witness statement.
- e. Additionally, the offender may contact the Disciplinary Review Officer or other designated staff any time prior to one (1) working day before the scheduled disciplinary hearing and request a witness or a witness statement.
- f. If the offender requests a witness(es), the Disciplinary Review Officer shall require the offender to summarize **each witness' expected testimony and shall document the offender's response on the State Form 39585, NOTICE OF DISCIPLINARY HEARING.** Additional pages may be added, if necessary.
- g. If a witness(es) is requested, State Form 35447, NOTICE TO WITNESS/LAY ADVOCATE, shall be used to notify the witness(es).
- h. Witnesses notified by State Form 35447 shall be required to provide testimony to the Hearing Officer either in person or by written statement.
- i. 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(s).
- j. Unless the safety and security of the facility will be threatened, when possible, an offender should be permitted any witnesses who can present relevant and non-repetitive testimony at the hearing. All other requested witnesses shall be offered the opportunity to present a written statement based upon questions presented by the accused

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- (3) 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 witness(es)' expected testimony at the hearing.

NOTE: Unavailable means that an offender witness is deceased, has been transferred to another facility, has been released from the Department, is hospitalized, is in segregation or has escaped. Staff unavailability means that the staff person is deceased, ill and on sick leave, on vacation, personal or other previously approved leave, on a different shift or bracket, on a scheduled day off or no longer employed at the facility.

- l. There is no absolute right to confront and/or cross examine witnesses. However, the offender may submit questions to the Hearing Officer prior to the hearing. Nor does the accused offender have any right to obtain disclosure of the identity of such person.
- m. If the Hearing Officer determines that the witness should not appear, whether or not the witness received a NOTICE TO WITNESS/LAY ADVOCATE, the 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:

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n. 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 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 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.

3. Evidence

a. Charged offenders may request physical or documentary evidence (*e.g.*, videotapes, memoranda, etc.) be considered by the 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. Failure to request physical or documentary evidence at the time of screening results in a waiver of the right to present evidence that staff must collect and provide to the Hearing Officer. If the offender brings relevant evidence to the hearing, the Hearing Officer shall consider the evidence.

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granted access to it. In such case, the Hearing Officer shall review the evidence and prepare a detailed summary of the evidence. The Hearing Officer shall sign the summary and a copy shall be provided to the charged offender at least 24 hours prior to the hearing. Additionally, the 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.

- 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, 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. Requests for evidence shall not be denied without a written explanation documented on the REPORT OF DISCIPLINARY HEARING.
- f. Evidence considered in a hearing for a Minor offense violation shall be kept for 90 days and then disposed of in accordance with Department procedures.
- g. Evidence considered in a hearing for a Major offense violation shall be kept for one (1) year from the date of the last appeal response, unless staff is aware that the offender either has filed or intends to file in court appealing the

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

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, as an investigator in the case or as a Disciplinary Review Officer, may serve as the Hearing Officer.
- b. The 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 Hearing Officer shall note such waiver on the REPORT OF DISCIPLINARY HEARING and the offender shall sign indicating acknowledgment of this waiver.
- c. The Hearing Officer shall afford each offender all rights as contained in these administrative procedures and on State Form 39585.
- d. An offender may not be compelled to testify and the

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- f. A disciplinary hearing may be conducted in the absence of an offender when the offender refuses to appear, or 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.
  
- g. Continuances or postponements of the hearing may be granted at the discretion of the 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) working days from the originally scheduled hearing.
- (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 staff.
  - (c) Further review of factual matters relevant to the hearing.
  - (d) Pending criminal court prosecution or investigation by an outside law enforcement



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

2. Deliberation and Decision:

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

(1) The decision shall be based solely upon information obtained during the hearing process, including staff reports, statements from the charged offender,

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3. Sanction(s):
  - a. Sanction(s) 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 segregation imposed as a result of a prohibited act committed while an offender is already in segregation shall be served consecutively to any other disciplinary segregation 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(s) having a corrective effect on the offender's future behavior

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- (1) The offender's prior disciplinary record, especially during the last year.
  - (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 which may have caused anxiety and any special circumstances.
  - (8) Whether the offense created a risk to the safety and security of the facility, staff, other offenders or the community.
  - (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.

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- (10) Reassignment to a lower credit class and/or deprivation of specified earned credit time, if the violation is of a Major (Class A or B) offense, except for offenders who have been sentenced to life imprisonment.
  - (a) If a demotion is recommended by the 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.
- d. All or part of the above sanctions may be suspended by the 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(s) invoked.

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- 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 these administrative procedures.

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

<u>SANCTION</u>	<u>CLASS A</u>	<u>CLASS B</u>	<u>CLASS C</u>	<u>CLASS D</u>
Disciplinary segregation <sup>1</sup>	6 months <sup>2</sup>	3 months	15 days	NONE
Reduction in credit class <sup>7</sup>	1 grade <sup>2</sup>	1 grade	NONE	NONE
Loss of earned credit time <sup>7</sup>	6 months <sup>3</sup>	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 hr	20 hr	20 hr	10 hr
Restitution	Restitution in the amount of the loss or less.		Up to \$ 200.00	NONE
Room Confinement <sup>4</sup>		15 days	5 days	
Building Confinement <sup>5</sup>		30 days	15days	
Reprimand	Written	Written	Written	Verbal
Suspension from Work <sup>6</sup>	30 days	15 days	5 days	

<sup>1</sup> The amounts of time listed are the maximum allowable disciplinary segregation 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 Segregation. All cases involving an offender assault/battery on staff shall be referred to the local Prosecutor for possible criminal prosecution

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<sup>2</sup> Offenders found guilty of certain egregious Class A offenses (Codes 100, 102, 103, 106, 108, 117) shall be subject to sanctions of a two (2) step demotion in Credit Class with justification by the Hearing Officer.

<sup>3</sup>Offender 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 Hearing Officer.

<sup>4</sup>The Facility Head 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 Facility Head or designee may remove any or all electronic equipment (e.g., radios and televisions) from the offender's living quarters if room/cell confinement is ordered.

<sup>5</sup>During the hours of confinement, the offender may only leave the building with specific authorization. The Facility Head or designee may authorize the offender to leave the building for attendance at religious services, medical appointments and visits.

<sup>6</sup>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.

<sup>7</sup>Offenders who have been committed to the Department as a "Credit Restricted Felon" shall be assigned to Credit Class IV. "Credit Restricted Felons" may only be dropped to Credit Class III. These offenders can only be assigned to Credit

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- 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 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 member 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.
  - (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 and dental care, access to

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- (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 procedures 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 Time Earning 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 Time Earning Class shall be the date of the disciplinary hearing. An offender may submit an appeal in accordance with these administrative procedures.
- 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



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

- a. State Form 39586, REPORT OF DISCIPLINARY HEARING, shall be used for this purpose.
- b. The Hearing Officer shall ensure that this form is completed correctly and with as much detail as possible and a copy provided to the offender.
- c. All REPORT OF DISCIPLINARY HEARING forms shall be forwarded to the Facility Head or designee for review to ensure that the sanctions recommended are in accordance with these administrative procedures. During this review, the sanctions may be reduced if appropriate but may not be increased.
- d. Once the recommended sanction has been approved, the Facility Head or designee shall ensure that the approved sanctions are initialed and entered into the Offender Information System (OIS) and that the Hearing Officer is notified of the decision regarding the sanctions.
- e. The 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 hearing officer's records.

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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 Hearing Officer.

6. Expunging of Records:

- a. If an offender is found not guilty or if upon review a finding of guilt is reversed, the offender's record shall be expunged of any reference to the charge and all sanctions rescinded within thirty (30) days of the not guilty finding or reversal.
- b. Pre-hearing segregation records showing housing assignment or segregation unit logs shall not be expunged from records.
- c. Each Facility Head shall assign staff 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 segregation without

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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 rate of state wages paid 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 a PEN Products work assignment in accordance with the Offender Employment Operating Standard. The 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 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 Hearing Officer until the offender is promoted to Credit Class I.

- 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 Hearing Officer or the equivalent person in a jail, the offender shall be promoted to the next higher Credit Class.
- b. Offenders convicted of a disciplinary code violation, except for Class C or Class D violations, or who the Parole Board has determined to be parole violators within the 90 day period shall be advised by the Hearing Officer that they

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- c. There shall be no appeal of the denial of a Credit Class promotion due to additional disciplinary actions.
  - d. 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.
9. Restoration of Earned Credit Time:
- a. An offender may petition for the restoration of earned credit time that has been deprived as a result of a disciplinary action 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. The offender shall use State Form 6949, PETITION FOR RESTORATION OF TIME, for this purpose.
  - b. The restoration of deprived credit time shall be based solely upon the offender's behavior. If the offender meets the eligibility criteria, the restoration of deprived credit time shall be automatic. The Facility Head shall designate staff responsible for the review, approval and timely processing of restoration petitions. The staff designated to complete these reviews shall be knowledgeable in these administrative procedures and in the restoration of earned credit time.
  - c. An offender may petition the staff designated by the Facility Head for restoration of credit time deprived, if the offender meets all of the following eligibility criteria:
    - (1) Must have attained Credit Class I and been in Credit

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- (3) Must not be serving disciplinary segregation time for any disciplinary action;
  - (4) The offense must not have been for a violation of any federal, state or local criminal law (Code 100), assault with a weapon or inflicting serious injury (Code 102), escape (Code 108), sexual act with visitor (Code 114), non-consensual sexual act against another offender (Code 115) or assault on staff (Code 117). An offender who has been found guilty of any of these offenses shall not be eligible for the restoration of any lost earned credit time as a result of that violation; and,
  - (5) Must have no pending reports of conduct at the time of submission of the petition for restoration of time and must remain free of any reports of conduct until the review of the petition is complete; and,
  - (6) Upon consultation with the lead psychologist and reviewing psychiatrist, it is determined the offender's behavior was directly related to his/her serious mental illness, the Facility Head may restore credit time.
- d. An offender may file a petition for restoration of time only once each six (6) calendar months from the date of submission of the last petition. The credit time being requested must be credit time that was deprived while serving the current sentence. Credit time deprived while serving a previous sentence or prior to release to parole or probation supervision on a current sentence can not be restored.
- e. If an offender submits a petition prior to the date that he/she is eligible, the petition shall simply be returned to the offender indicating that he/she is not eligible and

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- (2) The designated staff person(s) shall complete the appropriate sections of State Form 6949.
  - (3) If the offender meets all criteria, the designated staff person shall sign the petition verifying the review has been completed, the offender's eligibility and the amount of earned credit time that will be restored.
  - (4) Once the designated staff person has reviewed and approved the petition, the designated staff person shall forward the approved petition to appropriate staff for entry in the Offender Information System (OIS).
- g. If the petition for restoration of earned credit time that has been deprived as a result of a disciplinary hearing is approved, the earned credit time shall be restored in the following manner:
- (1) Approval of the first petition shall result in 25% of the original amount of the TOTAL lost earned credit time being restored;
  - (2) Approval of the second petition shall result in 25% of the original amount of the TOTAL lost earned credit time being restored; and,
  - (3) Approval of the third petition shall result in 25% of the original amount of the TOTAL lost earned credit time being restored.
  - (4) The maximum amount of credit time that can be restored for petitions for the restoration of earned credit time is 75% of the credit time deprived for any eligible disciplinary action.
  - (5) Credit time shall be restored based upon the cumulative amount of eligible lost earned credit time.
  - (6) Credit time that is not earned due to a demotion in

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- i. Deprived earned credit time shall not be restored to an offender if by restoring the deprived earned credit time, the offender's projected release date would be in fewer than 45 days from the date the time was restored.
  - (1) In such a case, the designated staff person may restore only that portion of the earned credit time that will allow the offender to remain in the facility for at least 45 days from the date of restoration.
  - (2) The 45 days shall allow the facility to ensure that release plans and all appropriate notifications (e.g., victim/witness, community transition program, etc.) are completed.
  
- j. Time deprived a Department offender housed in a county jail may be restored when the offender is transferred to the Department.
  - (1) Earned credit time deprived by a county sheriff or by order of a court shall be restored in the same manner as time deprived while in a Department facility.
  - (2) When the offender is received at a Department intake unit, staff shall review the offender's record to determine whether earned credit time has been deprived.
  - (3) If earned credit time has been deprived and the offender appears to be eligible for restoration, staff at the intake unit shall advise the offender that he/she may submit a petition for restoration of time.
  - (4) If it is determined that the offender would have been eligible for earned credit time restoration previously, the designated staff in the intake unit shall determine the amount of time that the offender

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- k. The decision of the Facility Head's designated staff person shall be final. There is no appeal from the denial of the request for the restoration of earned credit time. Since the calculation of the earned credit time eligible for restoration is completed automatically by OIS an offender may not appeal the amount of earned credit time restored.
- 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 results to the holding facility. The holding facility shall ensure that the offender is notified of the final decision and that the petition for restoration of earned credit time is filed in the offender's packet and any restoration is recorded in OIS.
- m. The Unit Team shall review the offender's Conduct history to determine whether the offender has been deprived of any earned credit time due to disciplinary action.
  - (1) If the offender has been deprived of earned credit time, the Unit Team shall determine whether the offender has had any of the deprived credit time restored.
  - (2) If the offender has had earned credit time deprived, but none has been restored, the Unit Team shall determine whether the offender is eligible to submit a petition for the restoration of earned credit time and, if so, instruct the offender on how to submit such a petition.
  - (3) In such cases, the Unit Manager or designee shall prepare a report to the Facility Head or designee explaining the significant accomplishments of the offender and shall indicate that the offender has met



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*the earned credit time that had been deprived.*

(NOTE: This additional 15% shall be taken from the 25% of the deprived earned credit time that is not restorable under the above procedures.)

(6) The maximum amount of earned credit time that can be restored through the routine petition for restoration of time and the recommendation for the restoration of additional earned credit time shall be 90% of the total amount of earned credit time that has been deprived from the offender.

n. Offenders who are not eligible for the restoration of earned credit time in accordance with Procedure 9 c (4) may be considered for the restoration of earned credit time for significant progress toward the completion of the offender's Case Management Plan. In such cases, the maximum amount of time that can be restored to the offender is 25% of the total amount of credit time deprived. In these cases, the offender must have maintained clear conduct (no findings of guilt for a Class A or B violation) for one (1) year and must not be in disciplinary segregation at the time that the recommendation is made by the Unit Team.

o. No offender shall receive a restoration of earned credit time if the restoration results in placing the offender within forty-five (45) days of his/her EPRD, regardless of type 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) days from the date of the disciplinary hearing or receipt

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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 sanction(s) imposed.
- C. The first level of appeal shall be to the Facility Head 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.
    - 2. The Facility Head 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 the sanctions as indicated in X. D.
    - 3. The Facility Head 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. An offender who has received sanctions involving a grievous loss, and who is not satisfied with the appeal response from the Facility Head or designee may appeal the Facility Head's response to the Appeal Review Officer.

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3. The appeal to the Appeal Review Officer must be submitted within fifteen (15) days from the date of receipt of the Facility Head or designee's appeal response.
  4. The appeal shall include a copy of the Facility Head or designee's response. Appeals not including the response of the Facility Head 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 and shall notify the offender of his/her decision in writing.
- E. Disciplinary Hearing Appeals shall not be considered legal correspondence as defined in the administrative procedures for Policy 02-01-103, "Offender Correspondence"; therefore, the offender shall be responsible for all costs associated with disciplinary appeals.
  - F. 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 shall be stated on the appeal response and returned to the facility with a copy of the offender's appeal.
  - G. An order to re-hear a case shall be sent to the offender, the Facility Head and the Disciplinary Review Officer. The re-hearing shall be scheduled and held within seven (7) working days from the date the Disciplinary Review Officer receives the order for a re-hearing, unless the Facility Head or designee indicates in writing that cause for a delay exists.

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

XI. SUSPENSION OF RIGHTS AND/OR PROCEDURES:

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

\_\_\_\_\_  
(signature on file)  
Bruce Lemmon, Commissioner

\_\_\_\_\_  
Date

Visited 03/18/2015