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<b>POLICY AND ADMINISTRATIVE PROCEDURE</b> <b>Manual of Policies and Procedures</b>			

Title <b>THE DISCIPLINARY CODE FOR ADULT OFFENDERS</b>
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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 <i>et seq.</i> IC 35-50-6-7 HEA 1006	01-04-101 02-04-102	ACA: ACI: 4-4206, 4-4226 through 4-4248, 4-4281, 4-4320 CO: 2-CO-3C-01

**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 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.

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

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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 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 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 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.
- 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;

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- 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 Superintendent, 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 opportunity to have the disciplinary case heard before an impartial decision maker (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 (Hearing Officer) of the evidence relied on and the reasons for the disciplinary action.
- L. **EFFECTIVE DATE:** The date of the finding of guilt as a result of a violation of the Disciplinary Code.
- M. **FACILITY COMMUNITY SERVICE GOALS:** Objectives approved by the Superintendent for the betterment of the facility or community. Examples include, but are not limited to: facility sanitation projects and participation in community/facility fundraisers

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- N. **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.
- O. **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 \$200.00.
- P. **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.
- Q. **HEARING OFFICER:** The staff person(s) designated by the Superintendent and charged with the responsibility to hear disciplinary cases.
- R. **INCIDENT DATE:** The date on which the alleged rule infraction occurred or staff became aware of the violation.
- S. **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.
- T. **INTERNAL AFFAIRS OFFICER:** A staff person appointed on a full-time, part-time or case-by-case basis by a Superintendent to conduct investigations of alleged offender violations or illegal activities in accordance with Policy 00-01-103, "The Operation of the Internal Affairs Unit."
- U. **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.

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- V.     **INTOXICATING SUBSTANCE:** Anything which if taken into the body may alter or impair normal mental or physical functions, not including tobacco.
- W.     **LAY ADVOCATE:** A staff person or qualified offender assigned or chosen to assist the charged offender in the preparation of his/her case.
- X.     **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 these administrative procedures.
- Y.     **MINOR OFFENSE:** Any Class C or Class D offense as listed in this policy and administrative procedure.
- Z.     **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 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 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.)
- AA.    **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.
- BB.    **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 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.

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- CC. 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.
- DD. 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.
- EE. 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.
- FF. SANCTION: A penalty imposed on an offender as a result of a disciplinary action, in accordance with this policy and administrative procedure.
- GG. 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.
- HH. 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.
- II. 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.

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- JJ. **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, Twitter and blogs.
- KK. **STAFF MEMBER/EMPLOYEE:** Any and all persons employed by the Department, including contractors and volunteers.
- LL. **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.
- MM. **WORKING DAY:** Monday through Friday, excluding weekends, State holidays, and emergency days declared in writing by the Superintendent.
- NN. **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.
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.

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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. STAFF TRAINING AND OFFENDER ORIENTATION:**

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.
    - 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(s) 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



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offender can understand, by an employee or a volunteer designated by the Superintendent. 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. 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 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 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 and for the specialized training provided to those staff that have a role in the Disciplinary Process.

#### C. APPEAL REVIEW OFFICER

The Commissioner shall designate a staff person in the Department's Central Office to serve as the 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:

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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 Training; and,
3. Review and decide on appeals of offender disciplinary cases that include a grievous loss, disciplinary restrictive status housing in excess of 60 days and/or restitution in excess of \$200.00 and which have been denied at the Superintendent 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 (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. 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 related procedure or rule within the last year to the best of the staff member'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

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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. 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 this policy and administrative procedure.
- f. Staff 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

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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 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 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 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

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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;
    - (3) Any unusual offender behavior;
    - (4) Any known staff or offender witnesses;
    - (5) A description of any physical evidence (written or photographic) and the disposition of this evidence;
    - (6) Any immediate action taken, including the use of force; and,
    - (7) The reporting staff person's signature and the date and time of the report.
  - c. Staff listed on a REPORT OF CONDUCT as witnesses must prepare a written statement. The reporting staff

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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 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.
- 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 understandable.
  - (1) 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.
  - (2) If the REPORT OF CONDUCT is satisfactory, the supervisor shall sign the appropriate box on the

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form, 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 to the case shall be responsible for obtaining and attaching all non-confidential staff witness statements.
  - h. The Unit 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.
- B. MAJOR OFFENSES (CLASS A AND B):
1. Staff 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. Offenders alleged to have committed a Major Offense shall not have the option of a Warning or an INFORMAL CONDUCT REPORT.

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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.
4. 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 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 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 restrictive status housing unit consistent with the order and security of the facility and the unit. The unit shall operate in accordance with the policy and administrative procedure governing the operation of the type of restrictive status housing unit in which the offender is placed.

Placement in a restrictive status housing unit prior to a determination of guilt or innocence must be approved in writing by the Shift Supervisor or higher authority. State Form 39588, RESTRICTIVE STATUS HOUSING REPORT,



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shall be used for this purpose. A copy of State Form 39588 is to be given to the offender within 24 hours of admission. The RESTRICTIVE STATUS HOUSING REPORT shall be reviewed by the Superintendent or designee within 72 hours, including weekends and holiday.

Pre-hearing restrictive status time shall be credited toward any disciplinary restrictive status housing 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 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 Superintendent 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

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documents is completed or the date of the earliest document when more than one (1) is completed:

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, RESTRICTIVE STATUS HOUSING 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, 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 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.

#### VIII. CONDUCT REPORTS: REVIEW AND INVESTIGATION:

##### A. REVIEW OF CONDUCT REPORTS:

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1. Each Superintendent shall appoint one (1) or more staff person(s) to serve as Disciplinary Review Officer(s).
  - 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 Superintendent 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 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.

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- c. Determine if the REPORT OF CONDUCT includes a charge for sexual conduct. If it is determined that the REPORT OF CONDUCT charges an offender with any type of sexual conduct, the Disciplinary Review Officer shall immediately notify the PREA Compliance Manager. The REPORT OF CONDUCT shall be reviewed by the PREA Compliance Manager 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) days (excluding weekends and holidays) from the date of the incident and shall 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 appropriate box on State Form 39585, "NOTICE OF DISCIPLINARY HEARING."
  - c. Advise the offender of the following:

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- (1) Have at least 24 hours to prepare for the hearing, including time and place of the hearing;
  - (2) The opportunity to have the disciplinary hearing heard by an impartial decision-maker;
  - (3) The ability to appear and speak on 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. 6; 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. 7.
- d. Inform offenders that a guilty finding can result in demotion in credit class and/or deprivation of earned credit time, recommendation for transfer to higher security level (if charged with a Class A or B violation), and/or an order for restitution.

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- e. Determine if a Lay Advocate and/or witness(es) is/are requested by the offender.
  - (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 Team 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 Team. If requested evidence is not available, then advise the Hearing Officer or Unit Team that the evidence is not available for review and the reason for its unavailability.
- i. Review 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.

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

- 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; and,
- 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 procedure 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.

**B. HEARING OFFICER:**

At each facility, the Superintendent shall appoint one or more staff persons to serve as a Hearing Officer. Staff appointed to serve as Hearing Officers shall be required to successfully complete the Department's training for Hearing Officers within one year of being appointed. The Superintendent shall submit the names of staff persons appointed to serve as Hearing Officers or alternate Hearing Officers to the Appeal Review Officer.

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

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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 Superintendent or 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 shall have the ability to select a staff member or another offender from an approved list to serve as his/her lay advocate. (NOTE: Facilities may choose to allow only staff to serve as Lay Advocates if this restriction appears to be in the best interests of the facility and the offenders.)
- c. 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. Offenders charged with a Minor offense (Class C or D) violation and who are to have a formal hearing may request a Lay Advocate.
- d. In the event that an offender refuses to attend a hearing, a Lay Advocate shall not appear on the offender's behalf.



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- e. The Superintendent shall establish a list of available Lay Advocates. This list may consist of staff, 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 Superintendent 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 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 Superintendent may exempt offenders desiring to be Lay Advocates from meeting the criteria indicated in (1) and (4) above.
- f. 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 Hearing Officer may appoint another Lay Advocate from the approved list.
- g. 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 security level as the offender, unless otherwise approved by the Superintendent.

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- 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 witnesses submit written statements to the Hearing Officer
  - c. If additional witness testimony is determined to be appropriate, the Hearing Officer or other designated staff may interview any such witness(es) and report the results of the interview at the hearing.
  - 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.

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- e. Additionally, the offender may contact the Disciplinary Review Officer or other designated staff any time prior to one (1) day (excluding weekends and holidays) 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 offender at the time he/she is screened.
- k. A witness' personal appearance at a disciplinary hearing may be denied if the Hearing Officer finds:
  - (1) The presence of the witness would subject the witness to a substantial risk of harm;
  - (2) The testimony of the witness would result in the admission of irrelevant or repetitive testimony; or,
  - (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

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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 restrictive status housing 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:
    - (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.
- 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.

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- (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.
  - b. When the offender requests evidence, the Disciplinary Review Officer shall determine whether such evidence exists and, if available, provide this evidence to the Hearing Officer.
  - c. When the offender requests evidence that may contain security related information (such as surveillance video recordings) the 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 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

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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.

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 member 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 and by what, the video is out of focus, or other cause).

- 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. 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. Evidence considered in a hearing for a Major offense violation resulting in grievous loss shall be kept for six (6) months 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 disciplinary hearing.

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- h. In cases where the evidence cannot be retained for long-terms (such as home-made alcohol, food items, perishable items or items that pose a serious threat to the safety and security of the facility, staff, or offenders), photographs or document summaries may be used to preserve the evidence in lieu of keeping the actual evidence.
- 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.
- l. Video evidence indicating guilt, video evidence that indicates no guilt, relevant 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(s) shall be named with the offender's last name, first name, DOC number, and Disciplinary Hearing Case Number (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 electronically to the requesting court, with a copy to the Assistant Superintendent 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 electronically forward the video file to the requesting facility with copy to each Assistant Superintendent of Operations, or equivalent. Once the requesting facility receives the video file, staff

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designated by the Assistant Superintendent of Operations, or equivalent, shall forward the video file to the ordering court.

#### **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 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.



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- 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) days (excluding weekends and holidays) 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; and,
    - (d) Pending criminal court prosecution or investigation by an outside law enforcement agency.
- 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) days (excluding weekends and holidays) from the date the offender becomes available at the facility.
- 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.

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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, evidence derived from witnesses and documents and physical evidence, if any.
    - (2) The evidence relied upon shall be documented in the "Evidence Relied Upon" section of the REPORT OF DISCIPLINARY HEARING.
    - (3) A written record of disciplinary hearings shall be made and maintained for a period of twelve (12) months by the Hearing Officer.
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

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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(s) 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.
- b. In determining the appropriate sanction(s) for an offender found guilty of a disciplinary offense, staff may consider as aggravating or mitigating factors such circumstances, but not limited to, 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;

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- (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, staff, other offenders 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) A change in security level or transfer to a more secure facility or program.
  - (9) 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.
  - (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.

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- (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.
- (11) Facility community service goals, if established by the Superintendent.
- 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.
  - (3) The imposition of the suspended sanction(s) 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.

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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 Restrictive <sup>1</sup> Status Housing	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 assessed amount of the loss (A-D)			
Room Confinement <sup>4</sup>	NONE	15 days	5 days	NONE
Building Confinement <sup>5</sup>	NONE	30 days	15days	NONE
Reprimand	Written	Written	Written	Verbal
Suspension from Work <sup>6</sup>	30 days	15 days	5 days	NONE
Facility Community Service Goals (If established by Facility Head)	1 goal	1 goal	NONE	NONE

<sup>1</sup> 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 assault/battery on staff 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.

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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.

<sup>2</sup> 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 Hearing Officer.

<sup>3</sup> 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 Hearing Officer.

<sup>4</sup> The Superintendent 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 Superintendent 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 Superintendent 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, 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

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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 in 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 C to Credit Class D, or has lost earned credit time restored, the Division of Classification shall be notified immediately. Only staff of the Division of Classification in Central Office shall calculate time for "Credit Restricted Felons."

- 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.



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- (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 reason(s); 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-

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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 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(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 Superintendent or designee 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 Superintendent 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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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 Hearing Officer.
  - 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 Hearing Officer.
  
6. Expunging of Records:
  - a. If an offender is found not guilty or, if 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 Superintendent from the Appeal Review Officer shall document the dismissal of the case number. The Superintendent 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 Superintendent 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.

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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(s) is(are) 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 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, 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

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- 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 whom the Parole Board has determined to be parole violators within the 90 day period shall be advised by the Hearing Officer that they shall not be promoted in credit class. The Hearing Officer shall determine the effective date of the offender's last guilty finding and shall set the date for the offender's next Credit Class review 90 calendar days from that date. The offender shall be advised as to the date of the next review and that in order to be promoted in Credit Class he/she must maintain a clear conduct record until that date.
  - 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. This precludes offenders that are already within the forty-five (45) days until EPRD from receiving further Credit Class promotions
9. Restoration of Deprived Credit Time
- 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.

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- 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) In Credit Class 1, if the committing offense was committed prior to July 1, 2014, and has been 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 and has been 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 and has been 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.
  3. The offender must not have been found guilty of violating any of the following conduct codes after the effective date of this policy and administrative procedure:
    - a. A-100, Violation of Law;
    - b. A-102, Assault/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 Staff; or,
    - h. A-121 Use and/or Possession of

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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.

A guilty finding on any of the above conduct violations committed after the effective date of this policy and administrative procedure shall constitute the ineligibility of restoration with regard to any and all deprived credit time which occurred during the current commitment period.

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 Superintendent, imposed as a sanction at the Disciplinary Hearing must be verified by the appropriate staff as successfully completed to qualify for restoration with noted documentation indicating verified completion of Community Service Goals attached to the petition at submission; 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. Any credit time restored 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, any subsequent guilty finding on violations of a Class A or B conduct code shall cause all previously-approved petitions for restoration during the current commitment

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period, active sentences only, but those not prior to the effective date of this policy and administrative procedure, to be rescinded and any further petitions filed to be denied for the remainder of the current commitment period with, the original credit time deprivation(s) to be reinstated. To rescind, the assigned staff member 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. The credit time that is requested to be restored must be time that was deprived while serving the current commitment period, active sentences only. 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 after the effective date of this policy 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. 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.
- 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:



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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 verifying 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 appropriate staff to determine whether the petitioner successfully completed the specific facility-based Community Service Goal(s) required before he/she is eligible to file any successive petition(s) for restoration of deprived credit time; and,
  5. Forward all approved petitions for restorations to the appropriate staff 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

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fifty percent (50%) of the cumulative amount of restorable earned credit time;

4. Deprived earned credit time shall be restored, except to the extent that it would cause the offender's **earliest possible release date (EPRD)** to be less than forty-five (45) days from the date the earned credit time is to be restored.
  5. 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 Superintendent or designee; or,
  4. Successful completion of any other educational or pro-social exercises (non-credit time earning) approved by the Superintendent or designee.
- i. The effective date of the restoration of any deprived earned credit time shall be the date when the designated staff person signs the petition. Staff shall enter the restored days into the offender

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information system as soon as possible after the decision to restore time has been made.

- j. Earned credit time deprived a Department offender housed in a county jail, while in a Community Transition Program (CTP), or while in a contracted facility may be restored when the offender is transferred to a Department facility.
  1. Earned credit time deprived by a county sheriff or by court order 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, staff 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, staff 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. The decision of the Superintendent or designee shall be final. There is no appeal of the denial of the request for the restoration of deprived earned credit time; nor is there any appeal of 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 result to the receiving facility. The receiving 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 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) 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 reason(s) 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.

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- 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 Superintendent 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 Superintendent 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 Superintendent 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 Superintendent or designee may appeal the Superintendent'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 Superintendent 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.

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4. The appeal shall include a copy of the Superintendent or designee's response. Appeals not including the response of the Superintendent 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 as an attachment to an e-mail.
6. After receipt of the appeal response, the designated facility staff 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 staff is available to fulfill this task when the designated facility staff 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 shall sign and date both copies and return one copy to the facility's records department for filing in the offender's facility packet.
  - d. The designated facility staff shall ensure that any modifications made to the sanctions in the appeal response are forwarded to the appropriate facility staff to make such changes in a timely manner.
- E. 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.
- 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 Superintendent and the Disciplinary Review Officer. The re-hearing shall be scheduled and held within seven (7) working days (excluding weekends and

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holidays) from the date the Disciplinary Review Officer receives the order for a re-hearing, unless the Superintendent 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:**

- A. Any rights enumerated in this policy and administrative procedure may be suspended upon declaration by the Superintendent 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 Hearing Officer action may be suspended at the discretion of the Superintendent if it appears that such action may have an adverse effect on an outside criminal investigation or 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.

#### **XII. APPLICABILITY:**

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

signature on file  
Bruce Lemmon, Commissioner

\_\_\_\_\_  
Date