



Operating Procedure

Effective Date September 1, 2011	Number 861.1
Amended 9/21/11 , 1/17/12, eff. 7/1/12, 6/25/12, eff. 12/1/12, 6/26/13, 7/22/13	Operating Level Department
Supersedes Operating Procedure 861.1 (8/1/07)	
Authority COV §53.1-25; §53.1-39; §53.1-188; §53.1-189; §53.1-202.4; §18.2-371.2; §18.2-390; §18.2-391 BOC 6VAC15-31-300, 6VAC15-31-310	
ACA/PREA Standards 4-4226 through 4-4248, 4-4320, §115.41, §115.52, §115.72, §115.78	
Office of Primary Responsibility Deputy Director of Operations	

Subject
OFFENDER DISCIPLINE, INSTITUTIONS

Incarcerated Offender Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	FOIA Exempt Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Attachments Yes <input checked="" type="checkbox"/> #6 No <input type="checkbox"/>
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I. PURPOSE

This operating procedure, to be known as the Offender Disciplinary Procedure, establishes the code of offenses, the penalties for violation of this code, and the disciplinary process for all offenders incarcerated in Department of Corrections institutions.

II. COMPLIANCE

This operating procedure applies to all institutions operated by or under contract to the Department of Corrections (DOC) Practices and procedures shall comply with applicable State and Federal laws, Board of Corrections policies and regulations, ACA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Advisor – A staff member or offender provided to assist an accused offender in the disciplinary process.

Assault - Simple Assault is intentional, impermissible physical contact by one person upon another, where the victim does not suffer serious injury. Aggravated Assault is intentional, impermissible physical contact involving a weapon and/or resulting in serious injury or committed with the intent to inflict serious injury.

Calendar Day - Any 24-hour day regardless of weekends or holidays

Discovery of an Offense - The time that facts sufficient to establish an offense has been committed and the accused offender was involved in its commission come to the attention of the employee writing the *Disciplinary Offense Report*

Documentary Evidence - Written information relevant to the *Disciplinary Offense Report*, which is in the possession of the facility. Offenders may only use the *Request for Documentary Evidence* to obtain documents that are normally accessible to the offender.

Employee - A person who is paid by the Department of Corrections on an hourly, salaried, or contractual basis, or who is paid by another state agency for working in a position within the perimeter of a DOC facility or in a position which supervises offenders.

Good Time - For purposes of this procedure, "good time" refers to Good Conduct Time (GCT), Good Conduct Allowance (GCA) and the equivalent Earned Sentence Credits (ESC).

Informal Resolution – A process whereby eligible offenders accused of less serious infractions may accept a disciplinary penalty and avoid the infraction becoming part of the offender’s permanent record.

Institutional Classification Authority (ICA) - The facility staff person designated to conduct offender case review hearings. Hearings related to special housing status review are formal due process hearings.

Institutional Hearings Officer (IHO) – The employee who is the sole fact finder in a disciplinary hearing and decides guilt or innocence of the accused offender and imposes an appropriate penalty.

Disciplinary Segregation - Special purpose bed assignment, in which the offender is confined without privileges - imposed by the Institutional Hearings Officer as a penalty for conviction of a disciplinary offense.

Officer-in-Charge (OIC) – A Unit Manager or designated ranking security officer of a correctional facility - this is normally the Shift Commander, or the Assistant Shift Commander.

Penalty Offer – A process whereby the offender accused of a disciplinary infraction may plead guilty to the infraction, accept a defined penalty, and avoid a formal disciplinary hearing.

Pre-Hearing Detention (PHD) - Special purpose bed assignments, utilized under proper administrative process, for the immediate confinement of offenders who have been charged with an offense under the Offender Disciplinary Procedure, are awaiting a Disciplinary Hearing, and are considered to be a potential threat to persons or property, or for escape.

Qualified Mental Health Professional (QMHP) – An individual employed in a designated mental health services position as a Psychologist or Psychology Associate, Psychiatrist, Social Worker (Masters level) or Registered Nurse or an individual with at least a Masters degree in psychology, social work or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

Rehearing - A process whereby a Disciplinary Offense Report is heard over again due to a procedural error or when the offender was charged with an incorrect offense code. When a rehearing is ordered, VACORIS will create a new Disciplinary Offense Report to be served on the offender. All mention of the original conviction will be expunged from the offender's Central Criminal Record, Institutional Criminal Record and the Disciplinary Conviction list in VACORIS in accordance with Operating Procedure 050.1, *Incarcerated Offender Records Management*.

Reporting Officer - Any employee who observes or who receives reliable information indicating a violation of the Code of Offenses or of institutional rules and regulations, and files a written *Disciplinary Offense Report*. The Reporting Officer should have sufficient knowledge of the incident to answer questions of the Institutional Hearings Officer and the accused offender about the facts of the offense.

Vacate - The process used to change the Disciplinary Offense Report to a higher, equivalent, or lesser offense where the offender was charged with an incorrect offense code.

Working Day - Weekdays, Monday through Friday, except official state holidays

IV. PROCEDURE OVERVIEW

- A. The Disciplinary Hearing is an administrative due process proceeding. Although strict rules of evidence do not apply, sufficient evidence must be presented at the hearing to support by a finding of guilt.
- B. In accordance with COV §53.1-39 and constitutional law, corporal punishment and inhumane treatment are expressly prohibited.
- C. This operating procedure applies to the discipline of all offenders incarcerated in Virginia Department of Corrections institutions.
 1. Each offender in a DOC institution will receive a copy of this operating procedure.
 2. All documents relating to a disciplinary offense or appeal shall be written in English.
 3. Each institutional employee will be given a copy of this operating procedure and will receive training on the rules of offender conduct, the rationale for the rules, and the sanctions available. (4-4229)

4. Both offenders and staff will sign, verifying receipt of this operating procedure. The receipt, signed by the offender, (such as [Receipt of Offender Discipline Procedure](#) (861_F1)) will be maintained in the offender's facility record. (4-4228)
 5. Each facility will provide offenders and staff with a copy of the facility rules and regulations during orientation.
- D. All attached forms (other than *Receipt of Offender Discipline Procedure*) associated with this procedure will be used as designed and shall not be customized by facilities. All forms available in VACORIS must originate from VACORIS without modification.
- E. The need to translate the Offender Disciplinary Procedure into other languages will be determined by the Offender Discipline Unit. (4-4228)
- F. An Institutional Hearings Officer (IHO) under supervision of the Facility Unit Head or designee shall conduct each disciplinary hearing.
1. Institutional Hearings Officers shall have the following qualifications:
 - a. Appointed by the Facility Unit Head, with approval of the Manager of the Offender Discipline Unit
 - b. Have a thorough understanding of the disciplinary process
 - c. Be an objective and impartial decision-maker (4-4240)
 - d. Follow Institutional Hearings Officer Code of Ethics by demonstrating the appropriate:
 - i. Competencies
 - ii. Independent Decision-Making
 - iii. Dignity and Decorum
 - iv. Professional Conduct
 - v. Personal Conduct
 - vi. Confidentiality
 - e. Successfully complete the training requirements set by the Deputy Director of Operations
 2. Any IHO who investigates a *Disciplinary Offense Report*, was an eyewitness to the offense, or has material knowledge of the offense should be disqualified from conducting the Disciplinary Hearing.
 3. Each facility shall have one or more Alternate Institutional Hearings Officers to conduct disciplinary hearings in the absence of the IHO and in cases where the IHO must be disqualified.
 - a. Only Sergeant level staff or above may serve as an Alternate IHO. An Institutional Ombudsman should not serve as an Alternate IHO. The Deputy Director of Operations must specifically approve exceptions to these requirements.
 - b. Each Alternate IHO must be appointed, approved, and trained the same as an IHO. The Alternate IHO must complete all required training prior to conducting a Disciplinary Hearing.
 - c. For major institutions, the Alternate IHO shall conduct five hearings per quarter to maintain their certification. If certification lapses, the Alternate IHO will retake Basic Skills for Hearings Officer prior to serving as IHO.
- G. Advisors, Interpreters, and Translators
1. When a literacy, language barrier, or other limitation exists, the IHO should appoint an interpreter, translator, and/or advisor to assist the offender in understanding the disciplinary procedure and as needed in the disciplinary process. (4-4228, 4-4243)
 2. Advisors must possess an adequate knowledge of the disciplinary process and all relevant operating procedures accessible to offenders.

3. Offender advisors should be paid in accordance with the *Offender Work Program & Payroll System Manual* for hours scheduled by the IHO or OIC to assist offenders in accordance with this operating procedure.
4. Advisors, interpreters, and translators are forbidden to accept any form of payment, gratuity, or gift from any offender they assist or from the offender's family or friends.
5. The role of the advisor will vary from case to case based on the specific needs of the offender. For example, where a literacy or language problem exists, the offender may need additional assistance in considering the Penalty Offer, completing the *Reporting Officer Response Form*, *Witness Request Forms*, or *Request for Documentary Evidence*, or preparing an appeal.
6. The offender may not choose a specific offender advisor. The IHO or OIC will assign an advisor based on a list of offenders approved to serve as advisors.
7. When the accused offender desires a staff advisor, the offender may select an employee whose services are conditional on availability and on the employee's willingness to serve. If the requested staff advisor is not available or willing, the IHO should assign an offender advisor.
8. Staff advisors may be utilized in lieu of offender advisors at any facility during a lockdown or when an offender advisor is unavailable.
9. In Security Level 5 prisons or a Segregation Unit at any facility, the IHO may appoint a staff advisor in lieu of an offender advisor or when a requested employee is not available.
10. Attorney representation is not permitted in Disciplinary Hearings.
11. When the offender requests an advisor to assist in considering the *Penalty Offer* or preparing *Reporting Officer Response Form*, *Witness Request Form*, or *Request for Documentary Evidence*, the IHO or OIC must ensure that a staff or offender advisor is provided within the 24/48-hour response period.
12. Although the advisor is not expected to serve as an advocate for the accused offender, the advisor and the IHO are expected to ensure the offender receives a fair hearing.
13. The IHO will monitor the advisor to ensure the offender receives an appropriate level of assistance.
14. The appointed staff advisor should not have been involved in the investigation of the offense, nor should they have been a witness to the offense for which they serve as an advisor.

V. CODE OF OFFENSES (4-4226)

A. Category I Offenses

100. Killing or attempting to kill any person
101. a. Escape or attempted escape
b. Making threats or plans to escape
102. Possession or use of a weapon, sharpened instrument, ammunition, explosive or incendiary device, or any chemical, poison or substance capable of maiming, blinding, disfiguring or causing any serious injury or death (weapons include facsimiles of these devices)
103. Inciting to riot or rioting
104. Setting a fire resulting in actual damage or injury to persons or property
105. a. Aggravated assault upon a non-offender
b. Aggravated assault upon an offender

NOTE: In the case of an altercation between two offenders, this offense will apply only to the offender who attacks or initiates the actual physical contact, See Section III. for definitions of aggravated and simple assault.

106. a. Sexual assault upon or making forcible sexual advances toward a non-offender (§115.78[e])
b. Sexual assault upon or making forcible sexual advances toward an offender (§115.78[a, g])
108. a. Seizing or holding hostage or in any manner unlawfully detaining any non-offender against their will
b. Seizing or holding hostage or in any manner unlawfully detaining any offender against their will.
110. Possession of corrections officer's or other corrections employee's uniform or parts thereof
111. Stealing, intentionally destroying, altering or damaging state, or any person's property
112. Demanding or receiving anything of value under threat of any kind, including by extortion or blackmail
NOTE: The threat may be verbal, including in person or by telephone, or in writing, including by mail. When a Disciplinary Offense Report for this offense code is written, the Reporting Officer should describe the type of threat used in the commission of this offense.
116. a. Refusal to provide sample for DNA analysis (First refusal)
b. Refusal to provide sample for DNA analysis (Second refusal)
c. Refusal to provide sample for DNA analysis (Third and subsequent refusal)
119. Refusal to participate in testing, classification, or reentry preparation
NOTE: This offense code should be used only once during a continued period of refusal.
a. Preventative/prophylactic therapies and/or treatment for contagious diseases which are determined by the medical authority or state/federal law or regulation to present a public health risk
b. Diagnostic, educational, psychological, or other required evaluation
c. Refusal to participate in reentry planning or preparation
NOTE: Includes such actions as refusal to obtain birth certificate (unless no birth certificate exists), refusal to obtain Social Security Card or DMV identification, refusal to provide a viable home plan or assist in home plan development within 12 months of projected release date, refusal to assist in application for benefits, and refusal to participate in other re-entry planning and preparation.
d. Refusal to participate in required sex offender/crimes against minors registration
NOTE: Includes refusal to provide fingerprints, sign registration form, etc. A Disciplinary Offense should not be written for 119d until the Virginia State Police confirm that the offender is required to register.
e. Refusal to participate in or removal from a residential cognitive community program
NOTE: Includes cognitive therapeutic community programs, cognitive community re-entry programs, and Sex Offender Residential Treatment (SORT) programs. This charge should be written by a member of the cognitive community treatment team based on a treatment team decision to remove the offender from the community or the offender's voluntary withdrawal. The Description of Offense should cite any pattern of inappropriate behaviors and resulting interventions imposed by the community. This charge may be written in addition to any charges relating to specific incidents that may have been a factor in the treatment team's decision to remove the offender from the community.
120. a. Possession or use of security materials, devices, or equipment
b. Tampering with security materials, devices, or equipment

- c. Possession of tools or implements with which to disable, alter, tamper, or interfere with security materials, devices, or equipment

NOTE: Security materials, devices, and equipment include, but are not limited to, security keys, handcuffs, locking devices, communications equipment, maps, security cameras and monitors, security procedures, and instructions for the manufacture or operation of such devices or equipment.

- 121. False statements or charges against an employee

NOTE: Due to the sensitive nature of this offense, it is important that it is handled with utmost caution and fairness to avoid hindering the offender's right to file complaints against employees. The purpose of this offense is to prevent offenders from fabricating false charges against corrections employees. Before this offense can be brought, there must be an investigation by an impartial third party to determine that there are no facts that could substantiate the statement or charge. The investigation should include, but is not limited to, interviewing the offender who made the allegation and the employee who is the subject of the allegation. The employee who is the subject of the statement/charge will not be the Reporting Officer. This offense code excludes reports of sexual abuse and offender grievances made in good faith, based upon a reasonable belief that the alleged conduct occurred. Such a report shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. (§115.78[f]) (§115.52[g])

- 122.
 - a. Possession of unauthorized or un-prescribed drugs
 - b. Possession of paraphernalia for administration of drugs
 - c. Under the influence of drugs (pertains to any use of un-prescribed drugs)
 - d. Refusal to submit to drug test
 - e. Distribution of unauthorized or un-prescribed drugs
 - f. Adulteration, dilution or substitution of specimen for the purpose of compromising the results of the drug test

NOTE: An offender who tests positive for dilution of the specimen due to ingesting excessive liquids, should be given a warning with no disciplinary charge and retested. An offender who tests positive for dilution of the specimen on any subsequent test after receiving one warning should be charged with Offense Code 122f.

- 123. Commission of fraud or bribery by any means of communication
- 124. The spitting/throwing or otherwise transferring of bodily waste/fluids on another person
- 125. Intimidation of any person in the furtherance of gang activities
- 126. Recruitment of any person into gang participation or activities
- 127. Involvement in gang activities not otherwise listed as an offense in this operating procedure
- 128. Participating in, or encouraging others to participate in, a work stoppage, or a group demonstration
- 129. Gathering around or approaching any person in a threatening or intimidating manner
- 130. Failure to comply with the rules and regulations of any community release, work release, or pre-release program not otherwise listed as a Category I offense in this operating procedure, or a *Disciplinary Offense Report* that resulted in a loss of Good Conduct Time

NOTE: The imposition of this offense code is not limited to Category I Offenses. If the Disciplinary Offense Report that was written by the local jail resulted in a loss of Good Conduct Time, but is a Category II Offense then offense code 130 should be used.

131. Possession of Unauthorized Communication Devices, to include, but not limited to, cell phones, pagers, personal digital assistants, 2-way communication devices, and any enabling components such as chargers, power cords, batteries, connectors/adapters, etc.
132. Possession/Construction of a device designed to deceive Staff, to include, but not limited to, the Fabrication of a Dummy.
133. Refusal to obey an order to comply with the Department's grooming standard
134. The malicious wounding or to otherwise cause bodily injury to, administering poison to, or exposing poison with the intent that it be consumed by canines working in DOC facilities or other animals under DOC care.
135. Solicitation of Staff Misconduct - *an offender commits this offense when he/she attempts or is complicit to an act(s) where he/she seeks to obtain by coercion, persuasion, intimidation, or influence, to entice any staff into an unlawful act and/or violation of DOC policy or procedure. This offense code excludes sexually related infractions. A Disciplinary Offense Report for this offense code should be written only after the findings of a third party investigation. If a Disciplinary Offense Report is appropriate, the employee investigating the incident will serve as the Reporting Officer.*
136. Threats or Intimidation of Public Officials – *an offender commits the offense when he/she communicates to a public official with the intent to cause, or to instill, the fear of death, injury, terrorism, or intimidation. Such communication may be verbal, physical, or written.*
137.
 - a. Lewd or obscene acts directed toward or in the presence of another
 - b. Indecent exposure

NOTE: Indecent exposure is any nudity in public or intentional exposure of intimate parts when such exposure is likely to be observed by non-consenting persons. This does not apply to the accidental observation of nudity at such time and place where the offender would not reasonably expect to be observed as required for, but not limited to, medical or security purposes.
138. Breach or attempting to breach the security perimeter with contraband
139. Self-mutilation or other intentionally inflicted self-injury

NOTE: This offense should only be given when a QMHP has established that the offender can be held accountable for their behavior as documented on an [Offender Mental Health Assessment](#) (861_F2) provided to the IHO.
140.
 - a. Possession or use of tobacco products
 - b. Possession of tobacco related paraphernalia – *Includes but is not limited to lighters, matches, pipes, rolling papers, tobacco pouches, ash trays, cigarette rolling machines, and cigarette cases*
141. False claim of medical emergency resulting in unnecessary off-site testing or treatment

NOTE: A Disciplinary Offense Report for this offense code must be based on definitive medical proof that the claim is false.
197. Gang activity related to any of the offenses in Category I

NOTE: Before a Disciplinary Offense Report for this offense code is written, sufficient information must exist to establish that the offense code violated was related to a gang. To identify behavior related to gang activity, place offense code 197 in front of the appropriate Category I offense code.
198.
 - a. Conspiracy or making plans to commit any of the offenses in Category I
 - b. Attempting to commit any of the offenses in Category I
 - c. Aiding and abetting another to commit any of the offenses in Category I

d. Threaten to commit any of the offenses in Category I

199. Violation of conditional suspension (probation) of a Disciplinary Hearing penalty as suspended for any offense in Category I.

NOTE: When an offender is charged with this offense, only the un-served portion of a previously suspended penalty may be re-imposed upon conviction of this offense.

B. Category II Offenses

Any Category II Offense with two asterisks (**) following the offense title should be considered for an informal resolution if the offender is eligible.

200. Refusing to work or refusing to attend school or other program assignments mandated by procedure or by law, or failure to perform work or program assignment as instructed.

201. Disobeying an order **

205. Delaying, hindering, or interfering with an employee in the performance of duties **

NOTE: A Disciplinary Offense Report for this offense code should only be given if the offender's actions intentionally interfere with, delay or hinder the performance of an employee's job assignment.

206. Lying or giving false information to an employee **

NOTE: This offense code excludes reports of sexual abuse and offender grievances made in good faith, based upon a reasonable belief that the alleged conduct occurred. Such a report shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. (§115.78[f]) (§115.52[g])

207. Manufacture, possession, or transfer of forged documents

208. Possession of stolen property **

209. Engaging in sexual acts with others by consent *NOTE: This offense code does not apply to any sexual act involving an employee. (§115.78[g])*

212. Threatening bodily harm to any person verbally, by gesture or actions, or in writing

NOTE: When a Disciplinary Offense Report for this offense code is written, the Reporting Officer should quote the threatening language or describe the gestures or behavior observed.

213. Failing to follow facility count procedures or interfering with count **

217. Unauthorized possession of any currency or coin, or of any check, money order, lottery ticket, or other negotiable instruments **

218. Fighting with any person **

NOTE: When no injuries are sustained by either offender, an informal resolution may be considered.

219. Hiding in any area

222. Vulgar or insolent language or gestures directed toward an employee, or directed toward, or in the presence of, persons who are not offenders or employed by DOC (general public, volunteers, visitors) **

NOTE: When a Disciplinary Offense Report for this offense code is written, the Reporting Officer should quote the insolent or vulgar language or describe the gestures used.

223. Charging or accepting any compensation for legal assistance or for other services **

224. Possession of contraband **

NOTE: Possession of sexually explicit materials by any offender under the age of 18 constitutes a violation of Offense Code 224.

226. Gambling, possession of gambling equipment or paraphernalia, or operating a gambling pool**
227. Unauthorized sale or transfer of personal property **
228. Unauthorized use or abuse of mail or telephone **
229. Being in an unauthorized area **
232. Unauthorized contact with or harassment of any private citizen or off duty employee, in person, by mail, or by telephone or other communication system/device.
NOTE: The offender should not be charged with this offense if contact is proven to be consensual with an off-duty employee.
233.
 - a. Making sexual advances, either physical, verbal in nature, or in writing toward a non-offender without their consent (§115.78[e])
 - b. Making sexual advances, either physical, verbal in nature, or in writing toward an offender (§115.78[a, g])
236. Tattooing, piercing or branding of self or others, or the possession or use of tattooing, piercing or branding equipment or paraphernalia
237.
 - a. Intentionally throwing, smearing, pouring or discarding of food, trash, body wastes/fluids or other substances, except into an approved receptacle
 - b. Intentionally flooding any area
238. Setting a fire NOT resulting in actual damage or injury to persons or property
239.
 - a. Simple assault upon a non-offender
 - b. Simple assault upon an offender
241.
 - a. Possession of intoxicants
 - b. Possession of paraphernalia for manufacture of intoxicants
 - c. Under the influence of intoxicants
 - d. Refusal to submit to breathalyzer/alcohol test
243. Failure to follow posted or written facility rules and regulations, including the Facility Orientation Handbook **
244. Unauthorized use of facility supplies, tools, equipment, or machinery **
245. Leaving area of confinement without permission
246. Unauthorized possession and/or use of offender identification cards **
247. Possession of gang related materials or paraphernalia
248. Using or attempting to use codes, signs, dress or other outward manifestations of gang involvement or association
249. Failure to comply with the rules and regulations of any community release, work release, or pre-release program not otherwise listed as a Category II offense in this operating procedure
250. Possession of Personal Information - *Personal information concerning currently employed staff, contractors, volunteers or their immediate family member not voluntarily given to the offender by the individual involved. Including, but not limited to, social security numbers, unpublished home addresses or telephone numbers, driver's license number or other like information not authorized for the offender to possess.*
251. Unauthorized Transfer of Funds
297. Gang Activity related to any of the offenses in Category II

NOTE: Before a Disciplinary Offense Report for this offense code is written, sufficient information must exist to establish that the offense code violated was related to a gang. To identify behavior related to gang activity, place offense code 297 in front of the appropriate Category II offense code.

- 298. a. Conspiracy or making plans to commit any of the offenses in Category II
- b. Attempting to commit any of the offenses in Category II
- c. Aiding and abetting another to commit any of the offenses in Category II
- d. Threaten to commit any of the offenses in Category II

NOTE: The reviewing staff member may consider an informal resolution when this offense code (298) is attached to a Disciplinary Offense Report that is approved for this type of resolution.

- 299. Violation of conditional suspension (probation) of a Disciplinary Hearing penalty as suspended for any offense in Category II

NOTE: When an offender is charged with this offense, only the un-served portion of a previously suspended penalty may be re-imposed upon conviction of this offense.

VI. AUTHORIZED DISCIPLINARY PENALTIES

The following penalties may be imposed for violations of the Code of Offenses. Penalties are listed in order of severity from least to most severe, except Penalty 12.

- 1. Reprimand
- 2. Loss of one of the following privileges for a maximum of 60 calendar days
 - a. Unit commissary
 - b. Recreation and/or extracurricular activities
 - c. Personal electronic device
 - d. Telephone
 - e. Visiting
- 3. Loss of two of the following privileges for up to 60 calendar days for Category II Offenses and up to 90 calendar days for Category I Offenses.
 - a. Unit commissary
 - b. Recreation and/or extracurricular activities
 - c. Personal electronic device
 - d. Telephone
 - e. Visiting
- 4. Cell or quarters restriction for a maximum of 30 calendar days
- 5. A fine of up to \$12.00 to be placed in the commissary fund or loss of pay for a maximum of 60 hours of work
- 6. Disciplinary Segregation from one (1) to fifteen (15) calendar days
- 7. Disciplinary Segregation from one (1) to thirty (30) calendar days
- 8. Loss of good time of up to 30 days good conduct allowance or equivalent earned sentence credits and up to thirty (30) days disciplinary segregation
- 9. Loss of good time of up to 90 days good conduct allowance or equivalent earned sentence credits

and up to thirty (30) days disciplinary segregation

10. Loss of good time of up to 180 days good conduct allowance or equivalent earned sentence credits and up to thirty (30) days disciplinary segregation
11. Loss of good time up to all accumulated good conduct allowance or earned sentence credits and up to thirty (30) days disciplinary segregation
12. Restitution - In addition to penalties listed above, conviction of certain offenses, listed in the *Notations and Exceptions* section may result in the imposition of restitution payment for damages to facility-owned or facility-issued property and/or payment for recovery of the cost of medical treatment of a bodily injury that is inflicted intentionally on any person (see COV §53.1-32.01). This penalty may be imposed instead of, or in addition to, any other penalty authorized for the offense.

VII. DETERMINING THE PENALTY

A. Only one penalty within the penalty range specified may be imposed for each violation, except for restitution (Penalty 12).

1. The penalty ranges for Category I Offenses are listed below.
2. Penalties 1-7 may be imposed for Category II offenses. Penalty 12 may be imposed for 218 and 236.
3. Penalties 1-4 may be imposed for Informal Resolutions.
4. The term Mandatory requires the imposition of the penalty as indicated below (no lesser penalty can be imposed).
5. Mandatory penalties and penalties accepted under the Informal Resolution Process cannot be suspended.
6. Any case involving a loss of good time in excess of 180 days, or equivalent earned sentence credits, must be reviewed and approved by the Deputy Director of Operations.

B. Penalty Range for Category I Offenses:

- Offense codes that have a penalty range of 1-10 and 12, if applicable, are as follows: 102, 110, 111, 112, 120a/b/c, 121, 123, 124, 128, 129, 130, 131, 132, 134, 137a/b, 138, 139, 140a/b, 141, and 198.
- Offense codes that have a penalty range of 7-11 are as follows: 125, 126, 127 and 197.
- Offense codes that have a penalty range of 1-11 and 12, if applicable, are as follows: 101b, 103, 104, 105a/b, 106a/b, 108a/b, 122a/b/c/d/e/f, 135, 136.

C. MANDATORY Penalties:

- Offense codes: 100, 101a and 116C have a MANDATORY penalty of: Loss of ALL Accumulated Good Time and up to 30 Days Disciplinary Segregation. A lesser penalty cannot be offered during the penalty offer process.
- Offense Code: 116b has a MANDATORY penalty of: 180 Days Loss of Accumulated Good Time and up to 30 Days Disciplinary Segregation. A lesser penalty cannot be offered during the penalty offer process.
- Offense Codes: 116a, 119a/b/c/d/e have a MANDATORY penalty of: 90 Days Loss of Accumulated Good Time and up to 30 Days Disciplinary Segregation. A lesser penalty cannot be offered during the penalty offer process. Administrative Segregation prisons are exempt from imposing the mandatory disciplinary segregation penalties for these offenses and shall impose only the loss of Good Time portion of the mandatory penalties.
- Offense Code: 133 - MANDATORY penalty of Reprimand only. No other penalty may be imposed.

D. Enhanced Penalties for Repeated Violations of Category I Offenses

1. Additional convictions of the same Category I Offense Code number occurring within one year will be subject to enhanced penalties. Different letters under the same offense code number and Offense Codes 197 or 198 a/b/c/d with the same offense code number are counted as additional convictions i.e., 122a, 198b-122b, and 122c are all the same offense code number.
 2. The second conviction of the same Category I Offense Code number within one year will be subject to the following mandatory penalties in addition to any of the regular penalties above.
 - a. Offender will be placed in Good Time Class Level IV for one year.
 - b. Offender will be allowed visits only from immediate family for six months and all visits will be non-contact.
 - c. Offenders will have no access to telephone calls for six months.
 - d. Offenders will be reviewed for possible security level increase.
 3. The third conviction of the same Category I Offense Code number within one year will be subject to the following mandatory penalties in addition to any of the regular penalties above.
 - a. Offender will be placed in Good Time Class Level IV for two years.
 - b. Offender will be allowed visits only from immediate family for one year and all visits will be non-contact.
 - c. Offender will have no access to telephone calls for one year.
 - d. Offender will be reviewed for possible security level increase.
 4. Any additional conviction of the same Category I Offense Code number while on visiting and telephone restrictions from a previous conviction will be subject to the following mandatory penalties in addition to any of the regular penalties above.
 - a. Offender will be placed in Good Time Class Level IV for four years.
 - b. Offender will be allowed visits only from immediate family for two years and all visits will be non-contact.
 - c. Offender will have no access to telephone calls for two years.
 - d. Offender will be reviewed for possible security level increase.
 5. If an additional conviction occurs while the offender is still under an enhanced penalty for a previous conviction, the appropriate enhanced penalty will be imposed from the date of the latest conviction. The offender will not be required to complete the previous enhanced penalty before the new one is imposed.
 6. After an offender under an enhanced penalty completes relevant programming and demonstrates a period of appropriate behavior, the ICA may consider reducing the enhanced penalty.
- E. Violation of Conditional Suspension (offense codes 199/299): only the un-served portion of a previously suspending penalty may be re-imposed upon conviction of offense codes 199/299.
- F. Meals will not be withheld, nor the standard menu varied, as a disciplinary sanction for an individual offender. (4-4320)
- G. In determining the appropriate penalty consideration shall be given to the nature and circumstances of the offense committed, the offender's disciplinary history, and the penalty imposed for comparable offenses committed by other offenders with similar histories. (§115.78[b])

VIII. NOTATIONS AND EXCEPTIONS

- A. Killing or attempting to kill any person - Offense 100: Any Disciplinary Hearing for this offense should be continued until court proceedings are concluded.
- B. Escape or attempted escape - Making threats or plans to escape or to leave area of confinement - Offense 101a:
1. Upon return of an escaped offender to custody, the facility where the escapee is housed will be responsible for conducting a Disciplinary Hearing for this offense. The facility from which the offender escaped will be responsible for the *Disciplinary Offense Report* and for arranging for a Reporting Officer, if necessary.
 2. Where criminal charges are pending, the Disciplinary Hearing may be delayed until after the criminal proceedings are concluded.
- C. Sexual Assault - Offenses 106a and 106b - An offender convicted of sexual assault and any offender victims should be referred to their Counselor for reassessment of the offender's risk of sexual victimization or abusiveness. At the discretion of the IHO, a conviction of Offenses 233a and 233b may also warrant referral. (§115.41[g])
- D. DNA Testing - Offenses 116a, 116b, and 116c - After an offender provides a blood sample for DNA analysis, Good Conduct Time/Earned Sentence Credits that were lost as a result of 116a, 116b, or 116c, may be administratively restored. No Good Conduct Time or Earned Sentence Credits lost as a result of these offenses will be restored until the offender complies with DNA testing requirements.
- E. *Disciplinary Offense Reports* for possession - Offenses 102, 110, 120 a/c, 122 a/b, 131, 132, 140 a/b, 207, 208, 217, 224, 226, 236, 241a/b, 246, 247, 250 and similar offenses: An offender may be charged with a "possession..." infraction when the item he is charged with having in his possession is either found on his person or physically within his control or is found in an area to which he can reasonably control the access of other offenders.
1. Each offender assigned to a double cell is individually responsible for anything found on his person or in his locker, whether locked or unlocked. Both offenders are jointly responsible, and both may be charged, for contraband found in the common areas of the cell, unless one offender claims responsibility for the contraband or there is additional reliable evidence linking the offender to the item. *NOTE: this provision applies to the above listed possession charges only.*
 2. All offenders assigned to a dormitory are individually responsible for their person and assigned locker(s). An offender should not be charged for possession of contraband found in an open dormitory area or other areas accessible by other persons, unless there is additional reliable evidence linking the offender to the item. The offender may not be charged solely on the fact that the item was found in the vicinity of the offender's living area if other persons have access to the area.
 3. Possession of material depicting sexually explicit nudity or sexual conduct, as defined in COV §18.2-390, by any person under the age of 18 is unlawful; therefore, such items are unauthorized for any offender under the age of 18 and possession of these items constitutes a violation of Offense Code 224.
- F. Forfeiture of contraband or property - Offenses 102, 110, 120 a/c, 122 a/b, 131, 132, 140 a/b, 207, 208, 217, 224, 226, 236, 241 a/b, 246, 247, 250, and similar offenses:
1. Items recovered that result in conviction of possession will be permanently confiscated from the accused. Where the owner of the property can be identified, the property will be returned to the owner, unless it must be held as evidence in an investigation.
 2. Recovered stolen items should be returned to the documented owner. If the owner of the stolen property cannot be identified, the stolen property should be disposed of in accordance with Operating Procedure 802.1 and COV §53.1-26.

3. All personal property seized from an offender related to a Disciplinary Offense must be handled in accordance with Operating Procedure 802.1, *Offender Property*, including issuing a *Notification of Confiscation of Property*, if appropriate.
- G. Unauthorized sale or transfer of personal property - Offense 227 - An additional penalty may be imposed for conviction of this offense, allowing the property to be confiscated and disposed of in accordance with Operating Procedure 802.1 at completion of the disciplinary appeal process.
- H. When a *Disciplinary Offense Report* is written on an offender for sex related offense codes (such as 233a, 233b, 198-106a, or 198-106b) based on a letter or other document written by the offender, the letter or other document shall be attached to the *Disciplinary Offense Report* and placed in the offender's Central and Institutional Criminal Records.
- I. Failure to follow posted facility rules and regulations - Offense 243 - An additional penalty may be imposed as specified below:
 1. Offenders, who fail to use personal electronic equipment in accordance with posted facility rules and regulations, may have such equipment confiscated for up to 30 days for the first violation.
 2. A second conviction within a six month period may result in having the equipment sent home or disposed of in accordance with Operating Procedure 802.1. The offender will not be permitted to purchase a replacement for the confiscated item for a period of 6 months from the date of conviction.
- J. Suspension of Penalty - A penalty assessed for a rule violation, except for specified mandatory penalties, may be suspended for a maximum of 120 days at any level of review, provided there are no subsequent disciplinary convictions during the time specified in the suspension. The IHO should maintain a log of all offenders to whom a conditional suspension has been granted to determine if an accused offender is under a suspended sentence. The IHO should also document the conditional suspension in the comment section on page 2 of the *Disciplinary Offense Report*.
- K. Violation of conditional suspension - Offenses 199, 299: Penalty restriction. If it is determined, subsequent to a conviction of any offense in Category I or II, that the offender violated the terms of a previous conditional suspension, the offender should be charged with Offense 199 or 299, Violation of Conditional Suspension for the offense Category. Only the un-served portion of a previously suspended penalty may be re-imposed upon conviction of this offense.
- L. Loss of Privileges:
 1. Penalty 2a: Loss of Commissary Privileges. When a penalty of loss of commissary privileges is imposed, the offender should be restricted from unit commissary during the specified time period. However, during the period of restriction, the offender should be permitted a one time purchase of stamps, a reasonable quantity of writing materials, Over-the-Counter medications in addition to personal hygiene items (offenders are required to be in compliance with Operating Procedure 864.1, *Offender Grooming and Hygiene*). This penalty should not be given consecutively, unless at least one commissary purchase is permitted at the completion of each 30 days to allow the offender to purchase only the items previously listed.
 2. Penalty 2b - Loss of Recreation and/or extracurricular activities may not be used to deny an offender assigned to administrative segregation status out-of-cell exercise as required by Operating Procedure 861.3, *Special Housing*. If misconduct relates specifically to an incident on, or en route to, or from the exercise area, the offender may be assigned to PHD. Per Operating Procedure 861.3 out-of-cell exercise may be denied in PHD status.
 3. Penalty 2c - Offenders may have personal electronic devices removed and stored for the period specified by the penalty.
 4. Penalty 2d - Loss of telephone does not apply to verified legal phone calls.
 5. Penalty 2e - Loss of visiting privileges - This penalty shall not be used to deny attorney visits. This

penalty is independent of non-contact visiting restrictions imposed for convictions for drug related *Disciplinary Offense Reports*, applied in accordance with Operating Procedure 841.5, *Offender Alcohol and Other Drug Testing and Treatment Services*. Visitors who violate visiting rules may have their visiting privileges suspended in accordance with Operating Procedure 851.1, *Visiting Privileges* and such restrictions are independent of disciplinary action taken against the offender.

- M. Loss of Privileges - Penalty 3 a-e: This penalty authorizes the loss of two of the listed privileges for up to 60 calendar days for Category II Offenses and up to 90 calendar days for Category I Offenses, subject to the same restrictions as listed above for Penalty 2 a-e (*see Section VIII., K*). The loss of two privileges should be concurrent with each other, for the same number of days during the same time period.
- N. Cell/Quarters Restriction - Penalty 4 - Offenders assigned to this status are confined to their individual cells/rooms/sleeping areas, with access to a sink and toilet. Offenders will only be allowed to leave their cell/sleeping area for meals, showers, visitation, or scheduled religious services, after which they will return to their assigned cell/bed. Cell/Quarters Restriction will continue until the offender's restriction time is completed.
- O. Fine or Loss of Pay - Penalty 5:
1. A fine of up to \$12.00 or the loss of pay of up to 60 work hours may be imposed. Both penalties cannot be assessed for conviction of the same offense. The IHO should notify the Business Office of this penalty using [Notice of Restitution/Loss of Pay/Deduction of Fine](#) (861_F3).
 2. When a fine is imposed, the fine will be deducted from the offender's account and placed into the commissary fund. If there are insufficient funds on the offender's account to cover the fine, the fine will be set up as an outstanding debt to be paid when the funds are deposited to the offender's account.
 3. When loss of pay is imposed, the penalty starts on the first day the offender is scheduled to work after the conviction for the infraction, and runs forward for the number of hours of work specified (up to 60 hours). During the penalty period, the offender works their regularly scheduled days and hours, but does not receive pay on his account.
 4. When an offender refuses to work following imposition of this penalty, the offender should be charged with "Refusing to Work", in accordance with this procedure. The loss of pay penalty for the original infraction will begin when the offender returns to work. The penalty, unless it is suspended, must be satisfied by working before the offender can start earning pay again.
- P. Loss of Good Time - Penalties 8-11 - 30 days of Good Conduct Time allowance is equivalent to 4.5 days of Earned Sentence Credits.
1. The loss of good time should be imposed in increments of Good Conduct Time allowance.
 2. This will automatically be computed as loss of Good Conduct Time allowance or the equivalent Earned Sentence Credits as appropriate.
 3. Except for Offense 116a, 116b, 116c, and 119a an offender cannot request restoration of Good Time.
 - a. To receive restored Good Time, the offender who has complied with the requirements that resulted in the conviction of Offense 116a, 116b, 116c, or 119a shall submit a request to the Facility Unit Head.
 - b. The Facility Unit Head will review the circumstances of the offender's refusal and subsequent compliance and make a recommendation to the Regional Administrator how much, if any, Good Time should be restored.
 - c. The Regional Administrator shall review the Facility Unit Head recommendation and forward to the Chief of Operations, Offender Management Services.

- d. The offender shall be notified by the responsible office when Good Time is restored or if the restoration is disapproved.
 - e. An offender not satisfied with the Good Time restoration should address the concern through the Offender Grievance Procedure.
- Q. Disciplinary Segregation Sentences - Penalties 6-11 - No offender will remain in Disciplinary Segregation for a period exceeding 30 consecutive days regardless of the number of offenses. Prior to serving any subsequent Disciplinary Segregation, the offender will be given a rest period of 15 consecutive days before being placed back in Disciplinary Segregation. The rest period can be served in segregation, general detention, or general population as determined by the ICA.
- R. Restitution, Penalty 12 - Costs to replace or repair facility-owned or facility-issued property that was intentionally damaged or destroyed by an offender and/or costs of medical treatment of a bodily injury that is inflicted intentionally on any person (see COV §53.1-32.01) should be recovered from the offender after conviction for a disciplinary offense.
- 1. Fee amount - The assessed restitution will be the actual cost to repair or replace damaged or destroyed property and/or actual cost of medical treatment of the bodily injury.
 - 2. Payment Procedure:
 - a. Costs to be included
 - i. Upon conviction of offenses 104, 110, 111, 120, 124, and 134 payment of restitution to the state may be imposed instead of, or in addition to, any other penalty authorized for the offense. The offender may be required to pay the cost of repair, cleaning, or replacement of state property that was intentionally altered or damaged. Funds recovered from the offender will be deposited into the general fund to offset costs incurred. When restitution is given for offense code 134, this may include the purchase price and training cost for a replacement animal or for any and all veterinarian expenditures relating to injuries caused to the canine by the offender.
 - ii. Upon conviction of offenses 100, 104, 105a/b, 106a/b, 124, 139, 218, and 236 payment of restitution to the state may be imposed instead of, or in addition to, any other penalty authorized for the offense. The offender may be required to pay the cost of treatment for all bodily injury (victim, self, or others) directly resulting from the offense. Funds recovered from the offender will be deposited into the general fund to offset costs incurred.
 - b. To determine restitution
 - i. For property damage, the IHO will contact the Business Office to determine the actual repair or replacement cost. When this amount is unknown at the time of the hearing, imposition of restitution may be continued until receipt of this information. The cost of restitution should not include labor costs when the facility makes the repairs. Any other penalty may be imposed upon conviction for the offense. The facility review and appeal process will not begin until the amount of restitution has been assessed by the IHO.
 - ii. For bodily injury, the IHO will contact the Business Office to determine the actual cost of treatment (outside vendors, facility Medical Department supplies/materials used, testing, prophylactic treatments, physical/occupational therapy, prosthetic/orthotic devices, etc.) for all bodily injury directly resulting from the offense. When this amount is unknown at the time of the hearing, imposition of restitution may be continued until receipt of this information. The cost of restitution should not include labor costs for treatment provided by the facility. Any other penalty may be imposed upon conviction for the offense. The facility review and appeal process will not begin until the amount of restitution has been assessed by the IHO.
 - c. The offender will have the opportunity to make a statement or present information regarding the amount of restitution to be assessed. The IHO will notify the offender in writing of the amount of restitution to be assessed against the offender's account by completing [Notice of Restitution/Loss of Pay/Deduction of Fine](#) (861_F3). The original will be forwarded to the Business Office to

ensure the fee is assessed against the offender's account. Copies of *Notice of Restitution...* will be attached to all copies of the disciplinary offense report, including the offender's appeal copies.

- d. The fee imposed will be charged to the offender's spend account. When there are insufficient funds to cover the *Disciplinary Offense Report*, restitution will be set up as an outstanding debt against the offender's account. Subsequent funds received by the offender will be deducted to pay the outstanding restitution.
- S. Referrals for Criminal Prosecution - The offender disciplinary process, as described in this procedure, is an administrative process that is separate and independent from the criminal judicial system.
1. An offender may be held accountable for a violation of the Code of Offenses through this disciplinary process, and may also be criminally prosecuted for the same offense.
 2. Generally, offender disciplinary actions should not be postponed pending the outcome of criminal prosecution, except as specified in this procedure or upon the request of the Commonwealth Attorney.
 3. Conviction of a disciplinary offense is not a prerequisite for referral for criminal prosecution. Referral for criminal prosecution may arise at any time during the disciplinary process based on information that an alleged crime was committed.
 4. When a disciplinary offense also involves possible criminal misconduct, the offender should be reminded of the right to remain silent during the disciplinary process.
 5. The IHO or other staff involved in the disciplinary process should not make promises or agreements to negotiate any plea or penalty related to a referral for criminal prosecution.
 6. *Disciplinary Offense Reports* based on a criminal conviction do not require the presence of the Reporting Officer.
- T. When an offender is in the custody of a jail or other DOC agency and receives a disciplinary report for a rule violation, the offense code may be converted to a corresponding offense code under this operating procedure.

IX. FILING OF DISCIPLINARY OFFENSE REPORT

- A. Any employee as defined in this operating procedure who has received training on the Offender Disciplinary Procedure may submit a *Disciplinary Offense Report* on any offender housed in a DOC institution. An employee, who has reasonable cause to believe an offense was committed, shall submit a *Disciplinary Offense Report* (see sample, Attachment 1) of the incident through VACORIS. (4-4232) This report should be submitted during the shift when evidence supporting the *Disciplinary Offense Report* is discovered and in time to allow the *Disciplinary Offense Report* to be served on the offender by midnight of the working day following discovery of the offense.
- B. The *Disciplinary Offense Report* should include documentation in the description of the offense of any investigation conducted prior to the writing of the *Disciplinary Offense Report*.
- C. *Disciplinary Offense Reports* for all offenses should include the following information regarding the alleged offense: (4-4233)
1. Name and number of offender charged
 2. Facility where the offense occurred
 3. Accused offender's cell or living area assignment
 4. Specific offense violated (Offense Code and Offense Title)
 5. Date and time the offense occurred
 6. Location where the offense occurred

7. Description of the offense using the formula who, what, when, where, and how to provide a summary of pertinent details. *NOTE: During an investigation, if a statement is received that confirms the offender has violated the Code of Offenses, the identity of that person should be included in the description of the offense, with the exception of the identity of a confidential informant. The description of the offense should reference any confidential information used as evidence.*
 8. Any unusual offender behavior
 9. Any physical evidence and its disposition
 10. Any immediate action taken, including the use of force
 11. Names of witnesses to the incident, if any *NOTE: The Reporting Officer should not reference witnesses during the hearing that are not listed on the Disciplinary Offense Report.*
 12. Title and printed name of Reporting Officer *NOTE: The Reporting Officer's title and name is captured electronically by submitting the Disciplinary Offense Report through VACORIS. No signature is required.*
 13. Date and time report is made
- D. Following the preparation of the *Disciplinary Offense Report*, the Reporting Officer shall:
1. Submit the completed report in VACORIS and provide further information to the OIC as requested. The Reporting Officer cannot request its dismissal after submitting the *Report*.
 2. Initiate no further contact relative to the *Disciplinary Offense Report* with the accused offender, requested witnesses, the IHO, or anyone else involved with the adjudicatory process before the hearing. This does not apply to contact by a representative of the facility administration during the penalty offer process, or when the Reporting Officer is interviewed by the OIC.
 3. Provide testimony at the hearing for *Category I* offenses in person, or if assigned to another facility than where the hearing is being held, via speakerphone or video conferencing. The Reporting Officer should summarize the circumstances that led to the *Disciplinary Offense Report* and answer all questions truthfully. The Reporting Officer should possess sufficient knowledge of the incident to answer questions of the IHO or the accused offender about the facts of the offense.
 4. The written *Disciplinary Offense Report* will stand as the testimony of the Reporting Officer for *Category II* offenses. The offender may request additional information, by completing a [Reporting Officer Response Form](#) (861_F4).
- E. Facility Unit Head as Reporting Officer
1. When the Facility Unit Head is the Reporting Officer for an offense, the Facility Unit Head should also serve as the OIC for that offense.
 2. The Regional Administrator will appoint a special IHO to conduct the Disciplinary Hearing.
 3. Appeals of Category I or II offenses shall be directed to the Regional Administrator without the facility level of appeal.
- F. Once a *Disciplinary Offense Report* is submitted in VACORIS, the Officer-in-Charge (OIC) will: (Note: If the OIC is the Reporting Officer, the next ranking officer should serve as OIC to process the *Disciplinary Offense Report*)
1. Within 24-hours of the report being submitted, review the *Disciplinary Offense Report* for completeness and accuracy of the information.
 2. Consider the need for Pre-Hearing Detention.
 3. Return the report for revision, if necessary

4. Ensure the offense code title corresponds to the alleged offense description
5. Investigate the situation as appropriate which may include interviewing the accused offender, Reporting Officer, or any relevant witness to obtain additional information, if necessary to determine if sufficient information exists to notify the offender that a *Disciplinary Offense Report* is being brought against him/her (4-4234)
6. Before disciplinary action is taken against an offender assigned to a Mental Health Unit, housed in Special Housing for a mental health reason (e.g. suicide watch), or against an offender who may be intellectually limited or mentally disordered to the extent they did not know what they were doing, the OIC will contact a QMHP to assess the following: (§115.78[c])
 - a. Whether the offender can be considered responsible for the offense
 - b. Whether the offender is considered capable of understanding a penalty offer
 - c. Whether the offender is capable of participating effectively in the hearing
 - d. Whether being placed in disciplinary segregation would be detrimental to the offender
 - e. The OIC will ensure that an *Offender Mental Health Assessment* (861_F2) is completed and forwarded to the IHO along with the *Disciplinary Offense Report*;
7. Enter the Scheduled Hearing date in VACORIS
8. Following review of the *Disciplinary Offense Report*, the Officer-in-Charge may take one or more of the following actions:
 - a. Not process the *Disciplinary Offense Report* due to lack of evidence or other irregularities and inform the offender
 - b. Dispose of the *Disciplinary Offense Report* informally by discussing it with the offender (OIC not process in VACORIS with explanation in *Comment*)
 - c. Prepare an *Informal Resolution*, if appropriate, or prepare a *Penalty Offer* and arrange to serve the *Disciplinary Offense Report* on the offender.
 - d. Refer all cases where criminal violations are suspected to Facility Unit Head to consider referral to a law enforcement agency. The appropriate law enforcement official will be notified where referral for criminal prosecution is warranted. (4-4231)

G. PRE-HEARING DETENTION

1. Until the Disciplinary Hearing, offenders may remain in their existing status unless they pose a threat to persons, property, or facility security.
2. In accordance with Operating Procedure 861.3, *Special Housing*, only the OIC or a higher authority can authorize Pre-Hearing Detention (PHD). While in PHD, the offender's status shall be reviewed in accordance with Operating Procedure 861.3, *Special Housing* and Operating Procedure 830.1, *Facility Classification Management*. (4-4235)
3. When PHD is utilized, the offender will be provided assistance, if requested, to:
 - a. Obtain names of witnesses
 - b. Meet with an offender or staff advisor
 - c. Otherwise prepare a defense
4. The IHO shall credit time spent in PHD or any other detention status, if the assignment was due to the *Disciplinary Offense Report*, to any disciplinary segregation time or cell restriction penalty, or to the number of days imposed for a penalty involving the loss of privileges, if those privileges were denied while on detention.

H. Informal Resolution (4-4230)

1. The OIC may offer an *Informal Resolution* when the offender has been charge free and has not received an Informal Resolution for a previous offense for the past 12 months.
 2. The *Code of Offenses* identifies the Category II Offenses eligible for an Informal Resolution.
 3. If the OIC determines that the circumstances surrounding the *Disciplinary Offense Report* warrant a formal hearing, the *Disciplinary Offense Report* and the *Penalty Offer* will be served on the offender.
 4. If the OIC determines that the offender qualifies for an *Informal Resolution*, the OIC will generate the *Informal Resolution Agreement* (see sample, Attachment 2) in VACORIS utilizing *Disciplinary Penalties* for the authorized penalty range. The OIC will ensure that 2 copies of the offer of an *Informal Resolution* are served on the offender by midnight of the next working day following discovery of the alleged offense. The offender has 24 hours to voluntarily accept or decline the offer.
 5. If the offender requests an advisor, does not speak or understand English, is hearing impaired, or where a literacy problem exists, the OIC should appoint an advisor and/or interpreter/ translator to assist the offender in consideration of the Informal Resolution.
 6. All accepted *Informal Resolution Agreements* should be forwarded to the Facility Unit Head or designee who should review the agreement to ensure that proper procedures were followed and that an appropriate penalty was assessed.
 - a. If the penalty was not within the authorized penalty range, the penalty may be reduced to an authorized penalty.
 - b. If proper procedures were not followed, the *Disciplinary Offense Report* will be dismissed.
 7. The OIC will maintain any *Informal Resolution Agreement* an offender accepts for 12-months, after which time, the report will be removed from the offender's Informal Resolution file. The *Disciplinary Offense Report* and the *Informal Resolution Agreement* will not appear in the offender's Central or Facility Criminal Record.
 8. An offender's refusal to accept an informal resolution will be documented on the *Informal Resolution Agreement, Part II*. The *Disciplinary Offense Report* and the *Informal Resolution Agreement* will be returned to the OIC to prepare a *Penalty Offer* and complete service of the *Disciplinary Offense Report* by midnight of the following working day. A copy of the declined *Informal Resolution Agreement* should be attached to the offense report to document the delay in service.
- I. The OIC will take the following steps to prepare to serve the *Disciplinary Offense Report* on the offender
1. Determine the appropriate penalty for the offense and prepare a *Penalty Offer* (see sample, Attachment 3) in VACORIS for delivery during the service of the *Disciplinary Offense Report*. For an offense that requires a mandatory penalty for conviction, the OIC shall not offer a lesser penalty.
 2. Complete the *ICA Referral Notification* (see Operating Procedure 830.1, *Facility Classification Management*), if Pre-Hearing Detention is utilized.
 3. Provide an interpreter/translator during the service of the *Disciplinary Offense Report* when the offender does not speak or understand English, is hearing impaired, or where a literacy problem exists. The interpreter/translator should be fluent and possess the skills necessary to communicate effectively with the offender. If an appropriate interpreter/translator is not available at the facility, the OIC should contact the IHO for assistance.

J. WAIVER OF HEARING/PENALTY OFFER PROCESS (4-4237)

1. An offender may waive the right to a Disciplinary Hearing by accepting a penalty offer. The offer of

- a penalty is mandatory but acceptance by the offender is voluntary. The offender may request the assistance of an advisor in the consideration of accepting the penalty offer.
2. The administration may offer any penalty authorized for the charged offense.
 - a. The offender may accept the offer, enter a guilty plea, and waive the right to a hearing.
 - b. The offender may refuse the offer and proceed with a Disciplinary Hearing.
 3. The offender's consideration of a penalty offer is not an admission of guilt and the IHO shall not consider it when determining the offender's guilt or innocence, nor in the imposition of any penalty.
 4. The OIC shall make the offer by generating a *Penalty Offer* in VACORIS.
 5. After the OIC completes Part I of the *Penalty Offer*, two copies will be served on the offender.
 6. The offender has 24-hours to accept the penalty offer. If the offender accepts the offer, the offender will sign Part III in the presence of a facility employee. The employee will sign to acknowledge receipt of the *Penalty Offer* and ensure that it is delivered to the IHO.
 7. If the Penalty Offer exceeds the authorized penalty range, or if the penalty is found to be excessive, the IHO may reduce the penalty and document this on page 2 of the *Disciplinary Offense Report*. The IHO will provide the offender a copy of the revised *Penalty Offer* and the *Disciplinary Offense Report* after the facility review is completed.
 8. When the penalty offer complies with procedure, the IHO shall:
 - Reference voluntary acceptance of the attached *Penalty Offer* on page 2 of the *Disciplinary Offense Report*
 - Enter the penalty and any modification to the offense code on the *Disciplinary Offense Report* and in VACORIS
 - Sign the *Disciplinary Offense Report*
 - VACORIS will electronically forward the *Disciplinary Offense Report* for facility review
 - Provide the offender a copy of the *Disciplinary Offense Report* and the Penalty Offer once the facility review is completed
 9. When the offense was improperly modified to a Lesser Included Offense, or when the penalty offer was improper because the alleged offense committed was subject to a mandatory penalty, the Penalty Offer should be corrected and re-served on the offender with an additional 24-hours to reconsider the revised Penalty Offer.
 10. A Penalty Offer accepted by the offender is not valid until reviewed and approved by the IHO.
 11. When the offender does not accept a Penalty Offer, or fails to return the *Penalty Offer* within the specified time limits, the IHO should complete Part III of the *Penalty Offer* documenting the offender's failure to respond, if needed, and schedule a Disciplinary Hearing.
 12. The IHO shall not be involved in any aspect of the Penalty Offer process. The IHO has the discretion to permit the offender to accept the *Penalty Offer* prior to or at the hearing. The IHO will then ask another employee to witness the offender's voluntary acceptance of the *Penalty Offer*.

X. ADVISEMENT OF RIGHTS/SERVICE OF THE DISCIPLINARY OFFENSE REPORT (4-4236)

A. Time Limits

1. The *Disciplinary Offense Report* should be served on the offender by midnight of the next working day following discovery of the alleged offense. Service of the *Disciplinary Report* should not occur between midnight and 6:00 AM nor when the offender is in in-cell restraints, suicide watch, or stripped cell. The *Disciplinary Report* should be served as soon as practical after the offender is removed from restraints, watch, or stripped cell, but no later than midnight of the following working

day.

2. An additional day is permitted before service if the offender is offered and does not accept an *Informal Resolution*.
3. The IHO, subject to review by the Facility Unit Head, should determine whether to dismiss the *Disciplinary Offense Report* if not served within the time limit. Factors that may be considered include, but are not limited to, the need to secure the services of an appropriate interpreter/translator to assist the offender during the service of the *Disciplinary Offense Report* or significant disruption of facility operations that prevent service within the time limit.
4. The OIC should document reasons for delay in service on the *Disciplinary Offense Report*.

B. Responsibilities of the Serving Officer

1. The OIC or designee (Corrections Officer Senior or above) will act as the Serving Officer for *Disciplinary Offense Reports* including:
 - a. Advise the offenders of their rights in the disciplinary process
 - b. Obtain offenders' signatures on the necessary forms
 - c. Witness that the *Disciplinary Offense Report* has been properly served
 - d. Return the signed/witnessed documents to the OIC.
2. Prior to serving *Disciplinary Offense Reports*, the Serving Officer must complete the required training. The IHO will ensure that the Serving Officer has a working knowledge of each of the offender's rights and can appropriately serve as the offender's advisor when required.
3. The Serving Officer shall meet with the offender and read to the offender all the information on the *Disciplinary Offense Report*.
 - a. Copies of the *Reporting Officer Response Form*, *Witness Request Form*, and *Request for Documentary Evidence* will be made available in each housing unit upon request by the offender. If the offender is assigned to Special Housing at the time the *Disciplinary Offense Report* is served, the Serving Officer will provide these forms to the offender as they accept the relevant rights.
 - b. When an offender advisor is requested for Right 1, the offender will not have a choice in the selection of an advisor. Each facility should maintain a list of offenders who are approved to serve as advisors.
 - c. When the accused offender desires a staff advisor for Right 1, the offender should be permitted to select an employee whose services are conditional on availability and on the employee's willingness to serve. If the requested staff advisor is not available or willing, the offender should be assigned an offender advisor.
 - d. Staff advisors may be utilized in lieu of offender advisors at any facility during a lockdown or when an offender advisor is unavailable.
 - e. Offenders housed in Security Level 5 prisons, or assigned to a Segregation Unit at any facility, may have a staff advisor appointed in lieu of an offender advisor or when a requested employee is not available. Appointed staff advisors should be knowledgeable about the disciplinary process and should not have been involved in the investigation of the offense or a witness to the offense for which they serve as an advisor.
 - f. Offenders will not be afforded nor permitted to retain an attorney to represent them in Disciplinary Hearings.
 - g. When the offender requests the services of an advisor to assist in preparing *Reporting Officer Response Form*, *Witness Request Form*, *Request for Documentary Evidence*, or for considering

the *Penalty Offer* (Rights 2, 3 and 7), the Serving Officer must ensure that a staff or offender advisor is provided within the 24/48-hour time frame and document the name of the advisor for input into VACORIS.

4. The Serving Officer shall inform the offender of the following rights: *NOTE: The offender is to state a preference to each right and the serving officer is to record on the Disciplinary Offense Report the offender's preference or lack of response to each right. Failure to respond or indicate a preference during the service of the Disciplinary Offense Report will constitute a waiver of the first three rights.*
 1. The right to an offender or a staff advisor to assist the offender at the Disciplinary Hearing
 2. The right to request witnesses and to request assistance from an advisor with completing the *Witness Request Form*
 3. The right to request documentary evidence and to request assistance from an advisor with completing the *Request for Documentary Evidence*
 4. The right to 24-hour minimum preparation time prior to the Disciplinary Hearing. The offender may waive the right to 24-hour notice prior to the hearing.
 5. The right to be present at the Disciplinary Hearing. Refusal to appear shall be considered an admission of guilt and a waiver of the offender's witnesses. The hearing shall be conducted in the offender's absence unless the offender has accepted a *Penalty Offer*.
 6. The right to question the Reporting Officer either in person (including by speakerphone or video conferencing if not at the facility where the hearing is held) for a Category I offense or through a *Reporting Officer Response Form* for a Category II offense
 7. The right to enter into a Penalty Offer. The Serving Officer should read to the offender the conditions of accepting the offer and witness the offender's signature that the offender understands the conditions as listed in Part II of the *Penalty Offer Form*. The offender has 24 hours to accept the penalty offer after service of the *Disciplinary Report*.
 8. The right to make a statement or the right to remain silent. Silence does not constitute an admission of guilt.
 9. The *Disciplinary Report* may be vacated and re-served as a different offense, which may be a higher, equivalent, or lesser offense code.
 10. You may be found guilty of a *Lesser-Included Offense*.
5. The Serving Officer shall request that the offender sign the *Disciplinary Offense Report* and witness the offender's signature or refusal to sign. Refusal to sign the *Disciplinary Offense Report* does not constitute a waiver of any of the offender's rights.
6. The Serving Officer shall read the *Penalty Offer* to the offender and explain the offender's rights in accepting or refusing the *Penalty Offer*. Accepting the *Penalty Offer* will waive any right to a Disciplinary Hearing, constitute a guilty plea to the offense specified in the offer, and accept imposition of the penalty indicated.
7. The Serving Officer shall request that the offender sign Part II of both copies of the *Penalty Offer*, and witness the offender's signature or refusal to sign. If the offender accepts the *Penalty Offer* during the service of the charge, the serving officer should witness the offender's acceptance of the penalty offer on the copy to be returned to the OIC.
8. The Serving Officer shall provide to the offender a copy of the *Disciplinary Offense Report* and one copy of the *Penalty Offer*.
9. The Serving Officer shall return the original *Disciplinary Offense Report* and a copy of the *Penalty Offer* to the OIC for entry of service information into VACORIS. The OIC or designee will ensure that the offender and the Serving Officer signed the *Disciplinary Offense Report* and the *Penalty Offer*. The OIC will forward the *Disciplinary Offense Report* and *Penalty Offer* to the IHO.

XI. OFFENDER PREPARATION FOR DISCIPLINARY HEARING

A. Access an advisor if needed

1. At the offender's request or if the offender has literacy, language or other limitations that may interfere with their ability to prepare for or represent themselves at the Disciplinary Hearing, the IHO or OIC shall appoint an advisor to assist the offender. The Disciplinary Hearing shall be conducted in English and all related documents must be written in English.
2. When the offender requests an advisor to assist in considering the *Penalty Offer* or preparing the *Reporting Officer Response Form*, *Witness Request Form*, or *Request for Documentary Evidence*, the IHO or OIC must ensure that a staff or offender advisor is provided within the 24/48-hour response period.

B. Consider the Penalty Offer

1. The offender has 24 hours after the *Disciplinary Report* is served to consider the Penalty Offer and may consult with an advisor upon request.
2. To accept a Penalty Offer, the offender must voluntarily sign Part III in the presence of a facility employee. Offender refusal to sign the *Penalty Offer* confirming acceptance will void the offer. If the offender wishes to accept the Penalty Offer but is unable to sign due to restraints, etc., the time to accept the offer should be extended so that the offender can voluntarily sign the *Penalty Offer*.
3. If the offender does not accept the *Penalty Offer*, the offense will be referred for a Disciplinary Hearing.
4. If the offender fails to respond to the Penalty Offer within the time limit, the offer will be terminated and the offense will be referred for a Disciplinary Hearing.

C. Submit the *Reporting Officer Response Form*, *Witness Request Form*, and/or *Request for Documentary Evidence*, if needed

1. Copies of the *Reporting Officer Response Form*, *Witness Request Form*, and *Request for Documentary Evidence* shall be available in each housing unit and/or from the Serving Officer.
2. For Category II offenses, the Reporting Officer is not required to appear at the hearing and the *Disciplinary Offense Report* will serve as the Reporting Officer's testimony. The offender may ask questions of the Reporting Officer for Category II offenses by submitting a completed [Reporting Officer Response Form](#) (861_F4) to the IHO within 48 hours after service of the *Disciplinary Report*.
3. Within 48-hours after the *Disciplinary Offense Report* is served, the offender must submit to the IHO one [Witness Request Form](#) (861_F5), with Part I complete, for each witness requested including the witnesses listed on the *Disciplinary Offense Report*.
4. Within 48-hours after the *Disciplinary Offense Report* is served, the offender must submit to the IHO, a [Request for Documentary Evidence](#) (861_F6) for any written evidence requested. If the offender has possession of written documentary evidence that is relevant to the *Disciplinary Offense Report*, the offender may provide the information to the IHO at the hearing without submitting a *Request for Documentary Evidence*. The IHO will rule on authenticity and relevancy of the information provided by the offender.
5. Except for good cause shown, failure to submit the proper, completed *Request* to the IHO within the time limit is a waiver of the offender's right to request Reporting Officer Response, Witnesses, or Documentary Evidence.

XII. TIME OF DISCIPLINARY HEARING (4-4238)

A. The OIC will schedule the case for a Disciplinary Hearing.

1. If the offender has NOT been placed on PHD for the *Disciplinary Offense Report*, the hearing should

be held no sooner than midnight of the second working day and no later than 30 calendar days after service of the *Disciplinary Offense Report*, unless a valid reason exists.

2. If the offender has been placed on PHD or any other detention status for the *Disciplinary Offense Report*, the hearing should be held no sooner than midnight of the second working day and no later than 15 calendar days after service of the *Disciplinary Offense Report*, unless a valid reason exists. If an offender has been physically moved to general population before the expiration of the 15-day time limit, the time limit for hearing the *Disciplinary Offense Report* will be 30 calendar days.
 3. Facilities that choose to comply with ACA Standard 4-4238 should maintain an Implementation Memorandum specifying that if an offender receives a *Disciplinary Offense Report*, the hearing should be held no sooner than midnight of the second working day and no later than seven working days after service of the *Disciplinary Offense Report*. Note: ACA Standard 4-4238 is not mandatory for facilities that are unable to comply.
 4. The IHO may conduct hearings outside the above time limits only in accordance with the Authorized Continuances.
 5. The offender will be given 24-hour notice of the hearing date unless the offender waives this right during the service of the *Disciplinary Offense Report*.
 6. When the offender receives more than one *Disciplinary Offense Report*, the IHO will hear each *Disciplinary Offense Report* individually.
- B. Where the hearing is started within the time limits, but a postponement is necessary, the offender should be given written notification of the revised hearing date 24-hours before the rescheduled hearing using *Notice of Postponement* (see sample, Attachment 4).

XIII. AUTHORIZED CONTINUANCES (4-4239)

- A. An Authorized Continuance is required for a hearing held more than 30 calendar days past the initial service of the *Disciplinary Offense Report*, or 15 calendar days after service of the *Disciplinary Offense Report* if the offender is assigned to PHD. The IHO notifies the offender of the continuance by using *Notice of Continuance* (see sample, Attachment 5).
- B. Authorized continuances are:
1. Reporting Officer, voluntary staff advisor, or witnesses are off duty or away from the facility on the date of the hearing
 2. Unavailability of the accused offender due to a medical condition, hospitalization, or temporary transfer to another location for medical purposes, court appearances, or other reasons
 3. The facility is awaiting results of blood or other laboratory tests
 4. Unavailability of staff due to escape, disturbance, or natural disaster
 5. Prolonged absence of Reporting Officer due to illness, temporary leave of absence, mandatory training or military leave
 6. Escape of the accused offender
 7. Awaiting the outcome of criminal charges as a result of this offense
 8. To obtain an appropriate interpreter/translator/advisor to assist the offender
- C. The IHO should hold the hearing within five working days after determining the continuance is no longer justified.
- D. The IHO must obtain permission from the Manager of the Offender Discipline Unit to hold a disciplinary hearing after the 15/30 day deadline for any reason other than an Authorized Continuance or suspension of this operating procedure due to a facility emergency. The IHO must request

permission for the continuance within 3 working days after the deadline for the hearing.

XIV. RESPONSIBILITIES OF THE INSTITUTIONAL HEARINGS OFFICER PRIOR TO HEARING

A. For all offenses, the IHO shall:

1. Review any *Witness Request Forms* submitted by the accused offender to determine relevance to the *Disciplinary Offense Report*. (4-4242)
 - a. Complete Part II of each *Witness Request Form*, indicating if the requested witness appears to have information relevant to the offense. If the offender does not indicate on the *Witness Request Form* that the witness has knowledge of the offense or information related to the incident, the IHO will not request a statement from that witness.
 - b. Inform witnesses who are determined to possess relevant information that the accused offender requested their testimony. The IHO will forward the *Witness Request Form* to the offender's requested witness to complete Part III and return.
 - c. Employees may not refuse to submit a statement when requested by the IHO.
 - d. If an offender witness refuses to submit a written statement, the IHO shall require the employee witnessing the refusal to document the refusal in writing.
 - e. If the requested witness is neither an employee nor another offender (i.e. a member of the public, such as a visitor), it is the offender's responsibility to provide the witness' mailing address to the IHO. If the requested witness is a former employee, volunteer or other private citizen whose address would not normally be known by, or made available to the offender, but is available to facility staff, the IHO should obtain the address and request a written statement from the witness. Outside witnesses may decline to submit a statement; failure to provide a statement by the specified time constitutes a waiver to testify at the hearing.
2. Review any *Request for Documentary Evidence* submitted by the accused offender to determine relevancy to the offense. Complete Part II indicating if the information requested appears relevant. (4-4242)
 - a. If the documentary evidence requested appears not to contain information relevant to the offense, or if the offender fails to describe the documentary evidence, or how the information is relevant to the *Disciplinary Offense Report*, the IHO will not obtain the information requested by the accused offender. The offender will be notified, using *Request for Documentary Evidence*, Part II, at least one half hour prior to the hearing that the documentary evidence will not be provided.
 - b. If the documentary evidence appears relevant to the offense, obtain the information requested. The IHO should give a copy of the Documentary Evidence to the offender at least one half hour prior to the hearing.
 - c. If the information does not exist, notify the accused offender at least one half hour prior to the hearing.
3. Determine the need for an interpreter or advisor
 - a. When the offender has a language or literacy problem, the IHO will provide an interpreter to assist in understanding the disciplinary procedure and to assist the offender in his/her defense.
 - b. When the attending DOC physician has certified the offender is hearing impaired and needs an interpreter, the IHO will provide one to assist in understanding the disciplinary procedure and to assist the offender in his/her defense.
 - c. When the offender is incapable of collecting and presenting evidence effectively, the IHO will appoint an advisor to assist the offender.
 - d. The hearing may be continued to ensure the offender has had adequate assistance in completing the *Reporting Officer Response Form* (when applicable), and requesting witnesses and

documentary evidence.

4. If appropriate, return the *Disciplinary Offense Report* to the OIC to offer an *Informal Resolution* for a Category II Offense.
5. The IHO shall examine each witness' statement for relevance and repetitiveness.
6. The IHO will complete Part IV of each *Witness Request Form* indicating whether the requested witness possesses information relevant to the offense. The completion of this section should occur before the offender receives copies of all *Witness Request Forms* at least one half hour prior to the hearing.
7. The IHO will document on the *Witness Request Form* and should state in the recorded hearing the reasons for the failure of any requested witness to appear/testify.
8. The IHO will document on the *Request for Documentary Evidence* and should state in the recorded hearing the reason for the denial of any Documentary Evidence requested by the accused offender.

B. For Category I offenses:

1. The IHO should read all witness statements into the record.
2. If a statement is relevant and non-repetitious, the IHO should ensure that the witness testifies in person at the hearing.
3. For Category I Offenses, the IHO will review multiple witness statements for repetitiveness. When witness statements are found repetitive, one of the requested witnesses will be called to the hearing. After determining that a witness does not possess relevant knowledge of the *Disciplinary Offense Report*, the IHO will not call the witness to the hearing nor require a written statement.
4. Staff may not decline to testify as witnesses, unless the IHO determines their testimony to be repetitious or not relevant.
5. An offender witness' written statement shall not be used in lieu of the witness' testimony at a Disciplinary Hearing, except at Security Level 5 and segregation units where the statement from an offender witness is sufficient.
6. Offenders and non-DOC employees are not required to testify as witnesses against their will.
7. When the witness is not available at the facility where the hearing is being conducted, the witness should testify by speakerphone, video conferencing, or submit a written statement to the IHO.
8. An outside witness, whose testimony is relevant and non-repetitious, should testify voluntarily, in person, by speakerphone, or video conferencing unless there are valid security considerations. If such witness is unavailable at the scheduled hearing time, the witness' personal testimony shall be waived and any written statement submitted by the witness should be entered into the record.

C. For Category II offenses:

1. Requested witnesses (i.e. offenders, staff, or outside witnesses) should provide testimony in writing on the *Witness Request Form*. The witness' personal appearance at the hearing is not required. The IHO should read all witness statements into the record.
2. Offenders and non-DOC employees should not be required to testify against their will.
3. The IHO has the discretion to call any witness to appear at the hearing, including the Reporting Officer, if determined necessary. The inability to obtain the personal appearance of the Reporting Officer, or of any other witness, once determined necessary by the IHO, will result in a dismissal of the *Disciplinary Offense Report*.

- D. At least one half hour prior to the hearing, if applicable, the IHO should make available a copy of all *Requests for Documentary Evidence*, *Witness Request Forms*, with the exception of confidential witness statements, and the *Reporting Officer Response Form* including all *Requests* the IHO deemed

not relevant. After receiving the copies, the offender's advisor should be permitted to confer with the accused offender for a period of at least one half hour before the offender's disciplinary hearing. *NOTE: The one half hour time period to confer with the advisor prior to the hearing should be provided to the offender even in the absence of any forms as noted above.*

- E. Where the IHO has NOT obtained written statements required by this section, the IHO will call requested witnesses to testify at the hearing, even though their testimony may be repetitious or irrelevant. This provision does not apply to outside witnesses requested by the offender, who have not returned witness statements, or for whom the offender has not provided a valid mailing address.

XV. RESPONSIBILITIES OF INSTITUTIONAL HEARINGS OFFICER AT HEARING

- A. The IHO shall ensure that the hearing is recorded. The IHO should further avoid any communication with the offender regarding the charged offense until the recording device is activated to ensure that all communications with the offender regarding the charged offense are recorded. If, at any time, the recorder is turned off during the hearing, the IHO should indicate this in the hearing and state the reasons. When the recorder is re-activated, the IHO should summarize the events that were not recorded, including the duration of time the recorder was off. (4-4240)
- B. When an offender waives the right or refuses to appear at a Disciplinary Hearing, except when the offender has voluntarily accepted a penalty offer, the IHO should verify the reasons the offender is not present. An effort should be made to establish that the offender's failure to appear is voluntary and is not due to circumstances beyond the offender's control. When the offender refuses to appear at the hearing, the IHO shall complete the following:
1. Have an employee with knowledge of the offender's refusal complete a [Refusal to Appear](#) (861_F7). *NOTE: The IHO should not serve as the employee receiving the offender's refusal, nor should the IHO serve as the employee witnessing the offender's refusal.*
 2. Conduct a disciplinary hearing in the offender's absence
 3. Read the *Disciplinary Offense Report* into the record
 4. Not require the Reporting Officer to be present at the disciplinary hearing
 5. Consider the offender's refusal to appear as an admission of guilt
- C. The IHO shall conduct the hearing in four stages in accordance with the *Format for Disciplinary Hearings* (see Attachment 6).
1. The IHO shall document the presence of the accused offender - If the accused offender is not present at the disciplinary hearing, the IHO will document the reason for the offender's absence in the hearing recording and in VACORIS. (4-4241)
 2. Will require the Reporting Officer (and all witnesses) to provide details of the alleged offense - When the Reporting Officer personally appears at the hearing, the Reporting Officer will provide verbal testimony as to why the *Disciplinary Report* was placed against the offender.
 3. For Category I offenses, the Reporting Officer shall testify in person. If the Reporting Officer is not assigned to the facility where the *Disciplinary Offense Report* is being heard, the testimony may be via speakerphone or video conferencing. Witnesses not located or assigned to the facility where the *Disciplinary Offense Report* is heard may testify via speakerphone, video conferencing, or a written statement.
 4. If the IHO requires the presence of the Reporting Officer or staff witness, this person shall appear at the hearing.
 5. For Category I Offenses, non-repetitive requested witnesses shall testify in person, including via speakerphone or video conferencing if necessary. The IHO may approve exceptions to use written witness statements instead of personal testimony for outside witnesses for security considerations

and for offender witnesses at Security Level 5 prisons and all segregation units. The IHO will read remaining witness statements into the record for consideration.

6. For Category II offenses, the Reporting Officer and witnesses are not required to appear at the hearing.
7. If the offender requests the review of a video/audio recording and/or physical evidence, the need to review such recordings or evidence is determined by the IHO. The IHO may temporarily adjourn the hearing to review the video/audio recording and/or physical evidence. When the hearing reconvenes, the IHO will summarize the relevant observations for the record. Offenders may not request the presence of physical evidence (weapons, drugs, contraband, etc.) at the hearing.

D. The Institutional Hearings Officer:

1. May question the reporting officer, offender, and each witness as necessary to clarify facts surrounding the alleged offense
2. Shall remain objective and render a fair and just decision based solely on the facts presented at the hearing
3. Shall rule on all matters of evidence - This includes, but is not limited to, ruling on relevancy and repetitiveness of the testimony provided at the hearing. It is not necessary to follow strict rules of evidence.
4. Should ensure that the advisor and the accused offender are given full opportunity to conduct a defense for the offender, to include presentation of arguments on behalf of the accused
5. Should ensure that any offender or other person who may be subject to possible retaliation submits confidential testimony for the protection of the witness
6. Shall exercise all powers necessary to ensure orderly proceedings, including the removal of anyone attempting to disrupt the hearing - If the accused is removed, the hearing shall continue in their absence. The IHO should state in the hearing the reasons for the removal of any person from the hearing.
7. May adjourn the hearing to allow the correction of a minor technical error. If, in the judgment of the IHO, the error did not impair the offender's ability to prepare a defense, the error may be corrected at the hearing and the hearing may continue. If the error impaired the offender's ability to prepare a defense, the hearing should be postponed for at least 48-hours to let the offender re-prepare a defense including the opportunity to submit *Witness Request Forms*, *Request for Documentary Evidence* or *Reporting Officer Response Form*. The offender may waive the postponement, allowing the hearing to proceed with the revised *Disciplinary Offense Report*.
8. May determine that the offender was charged with an incorrect offense and vacate the *Disciplinary Offense Report* to a higher, equivalent, or lesser offense code.
 - a. The description of offense must be able to support the new offense code without revision.
 - b. A *Disciplinary Report* may only be vacated before an actual decision of guilt or innocence is rendered.
 - c. The *Disciplinary Offense Report* should be re-served on the offender with all rights observed, to include the right to a full Disciplinary Hearing for the revised offense, within five working days following the IHO's decision to vacate the *Disciplinary Offense Report*.
 - d. The Disciplinary Hearing should not be held sooner than 48-hours after the revised *Disciplinary Offense Report* is served.
 - e. The offender may waive postponement allowing the IHO to amend the report and proceed with the hearing.
9. May temporarily adjourn the hearing to summon a witness or to secure a document necessary for a

full airing of the issues - The summoned witness should personally appear at the hearing or testify by speakerphone. Reconvening the hearing does not require 24-hour notice. When the hearing does not reconvene on the same day, the offender will be notified at least one hour before the hearing reconvenes.

10. Shall consider the written report and testimony of the Reporting Officer, the testimony of any witnesses, and the statement of the accused offender - The accused offender should be given the opportunity to explain his version of the offense. (4-4242)
11. Shall make a fair decision of innocence or guilt –
 - a. The decision shall be based solely on evidence presented at the hearing. (4-4244)
 - b. A preponderance of evidence presented at the hearing shall be sufficient to support a finding of guilt. (§115.72)
 - c. This decision should be clearly stated in the presence of the accused offender before the hearing is concluded.
12. Shall record all information required on the *Disciplinary Offense Report*, to include a clear summary of the evidence upon which a guilty decision and subsequent penalty were based. (4-4245)
13. The IHO should refer the offender to the Institutional Classification Authority (ICA) for review if the outcome of the hearing is likely to affect the offender's housing status, Security Level, or Good Time Award Level. (see Operating Procedure 830.1, *Facility Classification Management*)
14. Shall impose a penalty within the range authorized for each offense. The IHO has the authority to suspend any penalty imposed with the exception of mandatory penalties.
15. The IHO should refer any offender convicted of offenses numbered 100 through 108, 116, 200 (if assignment required by *Reentry Plan*), and multiple Category I offenses to the ICA for review of Good Time Class Level unless the offender is in Class Level IV.

XVI. RECEIPT OF TESTIMONY FROM CONFIDENTIAL WITNESSES

The following safeguards will be observed when the testimony of confidential witnesses is received:

- A. A confidential informant is an offender or other person whose identity must be withheld and protected for that individual's personal safety.
- B. Confidential information presented to the IHO will be in writing and must state facts and the manner in which the confidential informant came to know those facts. Either the confidential informant or the investigator who took the statement shall sign it.
- C. The IHO will excuse the offender, the offender's advisor, and all witnesses from the hearing so that the Reporting Officer can read the confidential statement(s) into the record.
 1. The IHO should state the reasons for the offender being excused from the hearing and document this explanation in VACORIS.
 2. When the offender returns to the hearing, the Reporting Officer will summarize the statement(s) received to the extent that it will not reveal the identity of the informant(s).
 3. The investigator should maintain the original confidential statements for at least 4 years. The IHO will have access to the statements upon request. The confidential statements will not be placed into the accused offender's facility or criminal records.
- D. The IHO is responsible for assessing the reliability of the information received from each confidential informant.
- E. The offender may question the Reporting Officer; however, the Reporting Officer is to present the information in a manner that will not reveal the identity of the confidential source. The accused

offender does not have the right to confront, cross-examine, or know the identity of the confidential informant(s).

- F. A finding of guilt in a Disciplinary Hearing should not be based solely on uncorroborated confidential information from a single informant, unless circumstances of the incident and knowledge possessed by the confidential informant convince the IHO that the informant's information is reliable. In an un-witnessed assault, for example, the statement of an injured assault victim may be sufficient evidence to support a guilty finding without corroborating evidence.

XVII. INSTITUTIONAL REVIEW

VACORIS will forward all *Disciplinary Offense Reports* to the Facility Unit Head, designee, or unit manager (if applicable), who should complete the review within five working days. The purpose of the review is to determine if proper procedures were followed and to ensure that the appropriate penalty was assessed. (4-4247) The reviewer shall have the same authority as listed under Appeal to Facility Unit Head.

XVIII. COPY TO OFFENDER OF THE DISCIPLINARY OFFENSE REPORT (4-4245)

- A. At the conclusion of the hearing, the IHO should inform the offender of the right to appeal to the Facility Unit Head any finding of guilt or the penalty imposed.
- B. The offender's preference should be entered in VACORIS.
- C. Within 15 working days after the institutional review is completed, the IHO or designee should provide a copy of the *Disciplinary Offense Report* to the offender.
- D. If the offender was not previously provided copies of any *Request for Witness*, *Request for Documentary Evidence*, the *Reporting Officer Response Form*, or the *Notice of Restitution/Loss of Pay/Deduction of Fine*, a copy of each should be provided to the offender along with the copy of the completed *Disciplinary Offense Report*. The copy given to the offender will provide a written record of the decision made and the reason supporting the decision.
- E. The offender shall sign Page 2 of the *Disciplinary Offense Report* to document receipt of the completed copies.
 - 1. An employee shall witness receipt by the offender.
 - 2. The time period for appeal shall begin immediately upon documented receipt of these copies by the offender.
 - 3. The IHO shall document in VACORIS that the offender has received the completed *Disciplinary Offense Report*.

XIX. APPEALING DISCIPLINARY ACTIONS (4-4248)

- A. An offender has the right to appeal any finding of guilt, and/or degree of punishment imposed, to the Facility Unit Head via the [Disciplinary Appeal](#) (861_F8). Appeals shall comply with all specified time limits. An offender has the right to seek the assistance of an advisor in preparing a disciplinary appeal.
- B. If an offender has accepted a Penalty Offer, waived the right to appear at the hearing, or entered a guilty plea, but later appeals the *Disciplinary Offense Report*, only the following issues may be considered:
 - 1. If there was an acceptance of a Penalty Offer, if applicable
 - 2. If there was an admission of guilt
 - 3. If there is serious error of procedure or imposition of the penalty

- C. Category II violations where the offender has accepted an Informal Resolution have no appeal available.
- D. All appeals and supporting documents must be written in English; the IHO will provide interpreter assistance if needed.

XX. APPEAL TO THE FACILITY UNIT HEAD

- A. No appeal may be filed until the accused offender receives a copy of the completed *Disciplinary Offense Report*.
- B. Appeals should be submitted on the *Disciplinary Appeal*
- C. Appeals must be submitted to the Facility Unit Head (Contract Liaison at any private correctional facility) within 15 calendar days following the offender's receipt of the copy after the completion of the facility review.
 - 1. Appeals based on a *Disciplinary Offense Report* where the Facility Unit Head is the Reporting Officer shall be submitted to the Regional Administrator for the first level of appeal.
 - 2. The offender shall attach to the appeal a copy of the completed *Disciplinary Offense Report* (pages 1 and 2) copies of all *Witness Request Forms*, and if applicable, the *Reporting Officer Response Form* and *Request for Documentary Evidence* and any other document referenced in the appeal.
 - 3. Within 2 working days of receiving a *Disciplinary Appeal*, the office of the Facility Unit Head will document the date received on the *Appeal* and in VACORIS. A copy of page 1 of the *Disciplinary Appeal* will be returned to the offender to confirm receipt of the *Appeal*.
- D. The Facility Unit Head should respond in writing to the offender within 20 working days of receipt of the offender's *Appeal*. The response shall address each issue raised in the appeal. The disposition of the *Appeal* shall be entered in VACORIS.
- E. The Facility Unit Head shall have the authority to:
 - 1. Approve the action of the Institutional Hearings Officer
 - 2. Reduce the recommended penalty if it is determined to be excessive (the Facility Unit Head will inform the offender of the decision to reduce the penalty when he/she responds to the offender's appeal)
 - 3. Suspend any penalty, or portion thereof, at any time before its expiration, with the exception of good conduct time or earned sentence credits forfeited for conviction for offense 100 or 101a. Good time or earned sentence credits forfeited as the result of a conviction for Offenses 116 a/b/c and 119 may only be suspended if the offender has, subsequent to being charged, provided a sample for DNA analysis or has submitted to testing/treatment.
 - 4. Order a re-hearing when there has been a procedural error. When a re-hearing is ordered, any penalty in force shall be halted and the penalty already served shall be credited to the penalty resulting from the re-hearing. When a re-hearing is ordered, a copy of the *Disciplinary Offense Report* should be served on the offender within five working days following receipt of the re-hearing order by the IHO.
 - 5. Order a re-hearing to a higher, equivalent, or lesser offense code, if the offender was charged with an incorrect offense. The *Disciplinary Offense Report* will be revised to the proper offense and the *Disciplinary Offense Report* reheard.
 - 6. Reduce the *Disciplinary Offense Report* to a lesser-included offense, in accordance with *Lesser-included Offenses*
 - 7. Refer the *Disciplinary Offense Report* back to the OIC for an Informal Resolution, if deemed appropriate.

8. Disapprove the action of the IHO. This includes the authority to dismiss the charge against the accused offender.

F. When there is a dismissal, reduction or suspension of penalty, or a re-hearing ordered for a *Disciplinary Offense Report* with a penalty involving a fine/loss of pay (Penalty 5), or restitution (Penalty 12), the Facility Unit Head should notify the Business Office using the [Reimbursement of Fine/Pay/Restitution](#) (861_F9).

1. If the *Disciplinary Offense Report* is dismissed, any funds deducted from the offender's account as a result of the penalty should be reimbursed and unpaid work hours paid to his account.
2. If the *Disciplinary Offense Report* is upheld but the penalty reduced or suspended, deductions from or reimbursements to the offender's account should be made in accordance with the penalty reduction.
3. If the offense is ordered reheard, any funds deducted from the offender's account as a result of the penalty should be held and unpaid work hours should not be paid to his account pending outcome of the rehearing.

G. The office of the Facility Unit Head shall enter the disposition of the *Disciplinary Appeal* in VACORIS.

XXI. APPEAL TO REGIONAL ADMINISTRATOR

A. Within 15 calendar days after receipt of the Facility Unit Head's response to an appeal, the offender may submit a *Disciplinary Appeal* to the Regional Administrator. Appeals to this level shall be mailed directly to Offender Discipline Unit, Post Office Box 26963, Richmond, Virginia 23261. The offender shall attach to the appeal a copy of the completed *Disciplinary Offense Report* (pages 1 and 2) and any relevant documents necessary to review the appeal.

B. *Category II* convictions cannot be appealed to the Regional Administrator unless at least one of the following applies:

1. The Facility Unit Head has declined to respond to the offender's appeal due to the offender failing to submit the appeal within the specified time limit.
2. The Facility Unit Head has exceeded the time frame to respond to the offender's appeal.
3. The Facility Unit Head has failed to address each issue raised in the offender's appeal. Only those issues not addressed by the Facility Unit Head will be considered by the Regional Administrator. If the Facility Unit Head has failed to address each issue raised in the offender's appeal, the Regional Administrator may return the appeal to the Facility Unit Head for an amended response to the offender within 20 working days.
4. The conviction is for offense codes 218 or 236 if the penalty imposed includes restitution (Penalty 12).
5. The Facility Unit Head is the Reporting Officer; Regional Administrator is the first level of appeal.

C. New appeal issues will NOT be considered at this level. The Regional Administrator will consider only issues raised by the offender in the appeal to the Facility Unit Head, or issues raised in the Facility Unit Head's response. If the Facility Unit Head failed to address the issues in the offender's appeal, the Regional Administrator will return the appeal to the Facility Unit Head for further review and for an amended response to the offender within 20 working days and, if the offender chooses to appeal the amended response, the offender must resubmit the appeal to the Regional Administrator within 15 calendar days.

D. Within 60 working days following receipt of an offender's appeal and all relevant background material, the Regional Administrator should review the case and render a decision. The Regional Administrator has the same options as the Facility Unit Head on appeal. The offender will be informed of the

decision in writing. The decision of the Regional Administrator is final and no further appeals are available to the offender.

- E. If the Regional Administrator dismisses, reduces, or suspends the penalty, or orders a re-hearing for an offense where a fine/loss of pay (Penalty 5), or restitution (Penalty 12) was imposed, the Facility Unit Head, upon receipt of the Regional Administrator's decision, will notify the Business Office using the [Reimbursement of Fine/Pay/Restitution](#) (861_F9).
- F. Disciplinary Appeals Unit staff shall enter the disposition of the *Disciplinary Appeal* into VACORIS.

XXII. ROUTING OF DISCIPLINARY OFFENSE REPORTS

- A. All approved Disciplinary Offense Reports should be held at the facility until:
 - 1. The Facility Unit Head has acted on the offender's appeal and any action directed by the appeal response has been completed.
 - 2. The original *Disciplinary Offense Report*, and any *Penalty Offer*, Pre-Hearing Detention authorization, *Witness Request Forms*, *Request for Documentary Evidence*, continuance forms, *Notice of Restitution/Loss of Pay/Deduction of Fine*, and/or *Disciplinary Appeal* or other relevant materials should be forwarded to Central Criminal Records when the appeal is complete, not to exceed 60 calendar days from the hearing.
- B. Where the offender is found not guilty, the Disciplinary Offense Report shall NOT be forwarded to Central Criminal Records nor placed in the offender's Institutional Criminal Record. (4-4246)
- C. If a *Disciplinary Offense Report* is disapproved, ordered reheard or sent back to the Officer-in-Charge for an informal resolution on review or appeal, all mention of the original conviction in the offender's Central Criminal Record or Institutional Criminal Record shall be removed by submitting an *Expungement of Offender Record Material* in accordance with Operating Procedure 050.1, *Incarcerated Offender Records Management*. In addition, the conviction shall be removed by Court & Legal from the *Disciplinary Offense List* in VACORIS using the "overturned" function.
- D. For all *Disciplinary Offense Reports*, the IHO will maintain a copy of the original *Disciplinary Offense Report*, and all relevant materials, to include the Disciplinary Hearing Recording (tape recording), for 4 years. All digital Disciplinary Hearing Recordings (including compact discs) shall be entered into the Offender Disciplinary Unit shared folder database. Recorded hearings needed in any investigation, criminal proceeding, or other matters known to be under litigation, shall be retained until no longer necessary.
- E. For offenders who are in "parole granted status" and found guilty of a disciplinary offense, the Facility Unit Head will notify the manager of the Community Release Unit in a timely manner. If the finding of guilt is subsequently overturned during the appeal process, the Facility Unit Head should notify the Community Release Unit accordingly.

XXIII. RE-HEARING OF DISCIPLINARY OFFENSE REPORT

Only two re-hearings are allowed for each offense in accordance with the following procedures:

- A. VACORIS will create a new *Disciplinary Offense Report* whenever a re-hearing is ordered. The Reporting Officer must resubmit the *Disciplinary Offense Report* for the OIC to review (the description of the offense cannot be modified).
- B. Service of *Disciplinary Offense Report* for re-hearing
 - 1. When a re-hearing has been ordered by the Facility Unit Head, a copy of the *Disciplinary Offense Report* should be served on the offender within five working days following receipt of the re-hearing order by the IHO.

2. When a re-hearing is ordered by the Regional Administrator, a copy of the *Disciplinary Offense Report* should be served on the offender within five working days following submission of the re-hearing order in VACORIS by the Offender Discipline Unit.
3. When the *Disciplinary Offense Report* is served, the same offender rights, and time limits specified in this operating procedure for the original hearing apply to the re-hearing, including *Authorized Continuances*.
- C. The same steps in the disciplinary process will be followed as though the *Disciplinary Offense Report* was being referred by the Reporting Officer. The same IHO may re-hear the *Disciplinary Offense Report* unless good cause is shown.
- D. No greater penalty may be imposed than the penalty imposed at the original hearing, with the exception of mandatory penalties.
- E. When ordering a re-hearing, the Facility Unit Head should discontinue any penalty underway. The penalty already served shall be credited to the penalty resulting from the re-hearing.
- F. Where the *Disciplinary Offense Report* is dismissed, or the offender is found not guilty of the offense, the *Disciplinary Offense Report* cannot be reheard.

XXIV. TEMPORARY SUSPENSION OF TIME FRAMES

- A. If the VACORIS system is not functioning adequately to process a *Disciplinary Offense Report*, time limits for affected offenses may be extended by the period that VACORIS is unavailable.
- B. In the event of a widespread facility disruption, natural disaster or other unusual occurrence that requires emergency action, the Facility Unit Head may temporarily suspend any or all portions of this operating procedure.
- C. Offenders involved in the emergency may be detained without being served a *Disciplinary Offense Report*, or conducting a Disciplinary or ICA Hearing throughout the course of the emergency.
- D. Upon restoration of facility order, all detained offenders shall be subject to disciplinary procedures and Institutional Classification Authority reviews in accordance with this operating procedure, Operating Procedure 830.1, *Facility Classification Management* and Operating Procedure 861.3, *Special Housing*.

XXV. MONITORING – OFFENDER DISCIPLINARY PROCEDURE

The Offender Discipline Unit will monitor the Offender Disciplinary Procedure through facility visits, regular review of *Disciplinary Offense Reports*, and the VACORIS discipline module. If found necessary during the monitoring process, the Regional Administrator may order a *Disciplinary Offense Report* reheard or expunged from the offender's record.

XXVI. LESSER-INCLUDED OFFENSES

- A. An offense code may be reduced to a lesser-included offense in accordance with the chart below. Such reductions may occur where all elements of the lesser offense are found; while proof is lacking that would justify the original offense as charged. When a reduction occurs, the *Disciplinary Offense Report* will be corrected to reflect the new offense code and title.
- B. The OIC shall have the authority to reduce an offense code during the penalty offer process by noting a lesser-included offense on the *Penalty Offer*. If the offender accepts the Penalty Offer, the *Disciplinary Offense Report* and *Penalty Offer* should be forwarded to the IHO, who should line through the offense title and code number on the original *Disciplinary Offense Report* and record the new title and code number above with the note "Offense Code reduced in accordance with Penalty Offer."

- C. The IHO shall have the authority to return a decision of "Guilty of a lesser-included offense." On the original *Disciplinary Offense Report*, the offense title and code number should be lined through with the new title and code number recorded above with the note "Offense Code reduced by Hearings Officer."
- D. Upon facility review of the *Disciplinary Offense Report* or upon review of the appeal, the Facility Unit Head or designee shall have the authority to reduce an offense code where warranted. On the original *Disciplinary Offense Report*, the offense title and code number should be lined through with the new title and code number recorded above with the note "Offense Code reduced by Facility Unit Head." The offender will also be notified by copy of the modified report.
- E. The Regional Administrator shall have the authority to reduce an offense code on appeal where warranted. Notification of such decision will go to the offender, the facility, and to the Court and Legal Unit in the form of a memorandum.
- F. This authority does not prohibit the IHO from vacating the *Disciplinary Offense Report* to a higher or equivalent offense code. After the offense has been reduced to a lesser included offense, no offense can be raised to a higher offense at either level of appeal.

Any Category I offense	198a, 198b, 198c, or 198d
Any Category II offense	298a, 298b, 298c, or 298d
Any 198a, 198b, 198c, or 198d	198a, 198b, 198c, or 198d
Any 298a, 298b, 298c, or 298d	298a, 298b, 298c, or 298d
101a - Escape or Attempted Escape	101b, 219, 229, 245
102 - Possession or Use of a weapon, or sharpened instrument	224
103 - Inciting to Riot or Rioting	128, 205, 212, 213
104 - Setting a fire resulting in actual damage or injury to persons or property	111, 238
105a - Aggravated Assault upon a non-offender	124, 239a, 105b
105b - Aggravated Assault upon an offender	124, 218, 239b, 105a
106a or 106b - Sexual Assault upon or making forcible sexual advances	137a, 137b, 209, 233a, 233b, 106a, 106b
108a or 108b - Seizing or holding hostage or in any manner unlawfully detaining	105a or 105b, 239a, 239b, 108a, 108b
110 - Possession of Corrections Officer's or other corrections employee's uniform or parts thereof	224, 208
111 - Stealing, intentionally destroying, altering, or damaging state or any person's property	208, 217, 224, 227, 237a, 237b, 120a/b/c
112 - Demanding or receiving anything of value under threat of any kind, including extortion or blackmail	123, 203, 208, 217, 223, 224, 228, 232
120a - Possession of security materials, devices, or equipment 120b - Tampering with security materials, devices, or equipment 120c - Possession of tools or implements with which to disable, alter, tamper, or interfere with security materials, devices, or equipment	224, 111, 120a, 120b, 120c
122a - Possession of unauthorized or un-prescribed drugs 122b - Possession of paraphernalia for administration of drugs	224, 111, 122a, 122b
123 - Commission of fraud, bribery, or other illegal activity by any means of communication	203, 227, 228, 251

128 - Participating in, or encouraging others to participate in a work stoppage, or a group demonstration	200, 201, 205, 212, 222
129 - Gathering around, or approaching, any person in a threatening or intimidating manner	212, 222
131 - Possession of Unauthorized Communication Devices, to include, but not limited to, cell phones, pagers, Palm Pilots, 2-way Communication Devices	111, 224, 208
132 - Possession/Construction of a device designed to deceive Staff, to include, but not limited to, the Fabrication of a Dummy	102, 111, 208, 224
136 - Threats or Intimidation of Public Officials	212
137a - Lewd or obscene acts directed toward or in the presence of another	137b
137b - Indecent exposure	137a
138 - Breach or attempting to breach the security perimeter with contraband	140a, 140b, 217, 224, 241a, 241b
139 - Self-mutilation or other intentionally inflicted self-injury	205, 236
140a - Possession or use of tobacco products 140b - Possession of tobacco related paraphernalia	224, 140a, 140b
207 - Manufacture, possession, or transfer of forged documents 208 - Possession of stolen property 236 - Tattooing, piercing or branding of self or others, or the possession or use of tattooing, piercing or branding equipment or paraphernalia 244 - Unauthorized use of institutional supplies, tools, equipment, or machinery. 246 - Unauthorized possession and/or use of offender identification cards	224
212 - Threatening bodily harm to any person verbally, by gesture, or in writing	222
239a - Simple Assault upon a non-offender 239b - Simple Assault upon an offender	218, 239a, 239b

XXVII. REFERENCES

Operating Procedure 050.1, *Incarcerated Offender Records Management*

Operating Procedure 802.1, *Offender Property*

Operating Procedure 802.2, *Offender Finances*

Operating Procedure 830.1, *Facility Classification Management*

Operating Procedure 841.5, *Offender Alcohol and Other Drug Testing and Treatment Services*

Operating Procedure 851.1, *Visiting Privileges*

Operating Procedure 861.3, *Special Housing*

Operating Procedure 864.1, *Offender Grooming and Hygiene*

XXVIII. FORM CITATIONS

[Receipt of Offender Discipline Procedure](#) 861_F1

[Offender Mental Health Assessment](#) 861_F2

[Notice of Restitution/Loss of Pay/Deduction of Fine](#) 861_F3

[Reporting Officer Response Form](#) 861_F4

[Witness Request Form](#) 861_F5

[Request for Documentary Evidence](#) 861_F6

[Refusal to Appear](#) 861_F7

[Disciplinary Appeal](#) 861_F8

[Reimbursement of Fine/Pay/Restitution](#) 861_F9

XXIX. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than September 1, 2014.

The office of primary responsibility reviewed this operating procedure in September 2012 and necessary changes have been made.

Signature Copy on File

John M. Jabe, Deputy Director of Operations