



# Operating Procedure

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| <b>Effective Date</b><br>June 1, 2011  | <b>Number</b><br>830.1             |
| <b>Amended</b><br>6/16/11  | <b>Operating Level</b><br>Division |
| <b>Supersedes</b><br>Operating Procedure 830.1 (1/1/09)                                      |                                    |
| <b>Authority</b><br>COV §53.1-32.1<br>BOC 6VAC15-31-340                                      |                                    |
| <b>ACA Standards</b><br>4-4254, 4-4300, 4-4301, 4-4302, 4-4303                               |                                    |
| <b>Office of Primary Responsibility</b><br>Chief of Operations, Offender Management Services |                                    |

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| <b>Subject</b><br><b>FACILITY CLASSIFICATION MANAGEMENT</b>  |   |
| <b>Incarcerated Offender Access</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | <b>FOIA Exempt</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/><br><b>Attachments</b> Yes <input checked="" type="checkbox"/> #1 No <input type="checkbox"/> |

## I. PURPOSE

This operating procedure provides for the organization, function, and management of offender classification in Department of Corrections, Division of Operations facilities.

## II. COMPLIANCE

This operating procedure applies to all facilities operated by the Department of Corrections (DOC), Division of Operations. 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

**Annual Review** - A uniform yearly review of an offender's classification, needs, and objectives which utilizes the Initial Classification Date (ICD) (previously Custody Responsibility Date) to establish the review ~~date month~~. The review is all encompassing and should address all aspects of the offender's institutional life. (changed 6/16/11)

**Classification** – A process for determining the needs and requirements of offenders. This is an ongoing process that attempts to utilize all relevant information concerning the offender to identify and analyze individual strengths and weaknesses, address individual needs, and encourage proper adjustment to the prison setting and ultimately free society.

**Central Classification Services (CCS)** - Staff members from the Offender Management Services Unit who review certain recommendations made by the Institutional Classification Authority, and render a final decision regarding offender status and assignments.

**Formal Due Process Hearing** - A classification hearing that requires a prior formal notification to the offender indicating the reason for, purpose of, and possible results of the classification hearing, the offender's right to be present at the hearing, and notice of the results of the hearing and the reason for the decision. A formal due process hearing is required when an offender is considered for removal from general population, or faces the possibility of increase in security level or reduction in good time earning level outside the Annual Review Cycle (ARC).

**Formal Notification** - The facility is required to provide, at a minimum, 48 hour written notification to the offender of a scheduled formal due process hearing using the *Institutional Classification Authority Hearing Notification* generated in VACORIS.

**Informal Hearing** - A classification hearing which does not require advance notification to the offender of the hearing except for involuntary removals from a job or program assignment

**Initial Classification Date (ICD)** – The date on which the offender was initially assigned to a Security Level

**Institutional Classification Authority (ICA)** - The facility staff person designated to conduct offender case review hearings.

**ICA Hearing** – An offender case review conducted by the Institutional Classification Authority. These hearings may be either formal due process, or informal hearings depending on the purpose of the review.

**Program Assignment Reviewer (PAR)** - The facility staff person designated to conduct informal offender case review hearings such as outside work classification, job assignments/removals, academic/vocational assignments/removals, and assignments/removals from treatment programs.

**VACORIS** – The computer-based Virginia Department of Corrections offender information management system

#### IV. PROCEDURE

A. Institutional Classification Authority (ICA) and Program Assignment Reviewer (PAR) hearing actions and administrative reviews shall be documented in VACORIS with paper documents generated only as needed for offender signatures and to provide notice or copies to offenders of classification actions.

#### B. Institutional Classification Authority (ICA) Hearings

1. An ICA hearing is required for the below listed actions and may be either a formal due process hearing or an informal hearing depending on the purpose of the hearing. A formal due process hearing is required for administrative and interim reviews whenever there is the opportunity for the offender to be removed from general population status, a reduction in good time earning level, increase in security level, or a loss of liberty is involved. The offender's needs (i.e., security, programs, etc) should be addressed during the hearing.

#### 2. Types of hearings:

a. Annual Reviews will be conducted utilizing the Initial Classification Date (ICD) to establish the review ~~date month~~ for offenders received on or after February 1, 2006. Offenders received into the DOC for their current incarceration prior to February 1, 2006 will receive annual reviews based on the Date Received into Corrections (DRC). (4-4300) (changed 6/16/11)

i. The annual review should be conducted within 30 days after the anniversary of the ICD or DRC. (added 6/16/11)

ii. The review requires an updated Home Plan and complete assessment of each component of the offender's facility status.

iii. Due to the routine nature of annual reviews, due process is not required, but the offender should be allowed to be present and have input in the process.

iv. Factors to be addressed:

- Security Level (see Operating Procedure 830.2, *Security Level Classification*)
- Facility Assignment
- GCA/ESC Class Level (see Operating Procedure 830.3, *Good Time Awards*)
- Any other decisions affecting the offender

b. Formal Due Process Hearings require the use of the *Institutional Classification Authority Hearing Notification* with actions documented on an *Institutional Classification Authority Hearing* report.

- Transfer for security reasons; transfers to a permanent protective custody unit
- Decrease in GCA/ESC earning level (Interim Review)
- Security Level Increase (Interim Review)
- Pre-Hearing Detention Assignment
- Segregation Assignment, review and release (4-4254)
- Segregation reviews resulting in no status change
- Permanent Common Fare diet removals

- Work Release removals
  - Assignments and removals from Substance Abuse Therapeutic Communities (see Operating Procedure 830.5, *Transfers, Institutional Reassignments*)
  - Therapeutic Community Programs
- c. Informal Hearing actions are documented on an *Institutional Classification Authority Hearing* report
- Offender requested transfer during ARC
  - EGT awards
  - Assignments to Work Release Program
  - Offender requested assignment to Common Fare - (Note: Offender must be present at ICA review) (see Food Service Manual, Chapter 4, *Religious Diets/Common Fare Meals*)
  - “Keep Separate” designation (see Operating Procedure 830.6, *Offender Keep Separate Management*)
3. Referrals for ICA hearings may be made by any of the following persons:
- Facility Unit Head, Assistant Facility Unit Head or designee
  - Officer-In-Charge, Unit Managers, Chiefs of Security
  - Hearings Officer (when based on disciplinary reports)
  - Institutional Program Managers, Counselors, Medical or Mental Health Staff
  - Director
  - Deputy Director, Division of Operations
  - Regional Director
  - Chief of Operations, Offender Management Services or designee
  - Central Classification Services
- C. Appointment of the Institutional Classification Authority (ICA):
1. The ICA is a facility employee who has contact with the offender, but who is impartial to the offender being presented for review.
  2. The ICA is an experienced senior staff member who will be appointed by the Facility Unit Head. This person must be in Pay Band 4 or above, preferably functioning in a supervisory status. A facility may choose to utilize a committee for ICA hearings. If a committee is used, the chairperson must meet the criteria above.
- D. Responsibilities of the Institutional Classification Authority and the other participants during the ICA Hearing:
1. Institutional Classification Authority
    - a. Ensures that there is a docketing procedure that provides for all cases being heard within applicable time limits
    - b. Ensures that all cases heard are documented in VACORIS
    - c. Ensures that the ICA hearing is conducted properly and in compliance with all established policies and procedures
    - d. Moderates questions and comments at the hearing to ensure that all persons, including offenders, have an opportunity to be heard and guides the process to reach a decision
    - e. Determines whether witnesses have relevant testimony
    - f. Ensures the hearing is orderly, and may have anyone who attempts to disrupt the hearing removed
    - g. Makes a recommendation based only on the facts presented at the hearing and review of the offender's Institutional Criminal Record, and ensures that the decision is fair and impartial.

2. Reporting Officer (Formal due process hearing, if required) - Becomes familiar with all facts relevant to the case prior to the hearing, presents all the facts and responds to questions relevant to the case during the hearing and in the presence of the offender.
3. Counselor
  - a. Ensures the offender understands the reasons for, purpose of, and possible results of the hearing
  - b. Ensures the offender is eligible for the type of review scheduled
  - c. Ensures that the offender understands the procedure of the ICA hearing (i.e. organization, procedural requirements, etc.)
  - d. Be present for ICA hearings to present to the ICA additional, relevant facts, alternative solutions, or courses of action.
4. Witnesses - (Formal due process hearing, if required)
  - a. Responsible for presenting relevant facts pertinent to the case
  - b. Answers questions from the ICA and offender relative to the given testimony
  - c. Any witness for the offender who does not wish to testify should submit a written statement to that effect.
  - d. Confidential offender witnesses shall not be required to appear before the ICA.
    - i. Testimony may be presented to the ICA by a reporting officer in the presence of the offender.
    - ii. The confidentiality of the names of those offenders providing testimony may be maintained for security reasons.
    - iii. Information received from confidential sources should be written either by the informant or the officer who presents the information.
    - iv. Information received from a specific informant should be verified and the reliability of the informant established.
  - e. Offender witnesses appearing before the ICA are doing so on a strictly voluntary basis, and cannot be forced to present any information. The ICA may determine whether the information presented by the offender is relevant to the hearing.
  - f. The ICA may choose not to call witnesses to appear at the hearing if their testimony is irrelevant or repetitious.
  - g. Employees requested as offender witnesses must state, in writing, what testimony they could give at the ICA hearing and submit their statements to the ICA. If the ICA determines their testimony is relevant, the statement may be used for hearing or the employee presence may be required at the hearing as deemed appropriate by the ICA.

#### V. INSTITUTIONAL CLASSIFICATION AUTHORITY HEARING PROCEDURAL REQUIREMENTS:

##### A. Formal Due Process Hearings

1. The *Institutional Classification Authority Hearing Notification* generated in VACORIS will be used for all formal ICA hearings to ensure that the offender receives due process.
2. Referral and Prior Notification - The *Notification* will be served on the offender at least 48 hours in advance of the scheduled hearing; the offender may waive the 48-hour notice in writing. (4-4302)
3. The offender will be advised that he/she will be permitted to:
  - Be present at the hearing
  - Remain silent
  - Have a counselor or other employee present to advise

- Hear the testimony or statement of the reporting officer (a signed, notarized statement from the reporting officer will suffice if the person is legitimately unable to attend the hearing)
  - Call and question witnesses
  - Be advised verbally at the hearing and in writing within five working days of the ICA's recommendation and reason for the decision
  - Receive a copy of action of the final approving authority
  - Access the Offender Grievance Procedure to appeal all classification decisions
4. The rights to hear the reporting officer's statement and to call and question witnesses do not apply in the following cases:
    - Pre-hearing detention when a disciplinary charge has been served
    - Hearings based on a documented disciplinary conviction
    - Hearings based on criminal convictions
    - Initial review of an offender's detention status based on his/her claim of an enemy, pending outcome of the enemy investigation
  5. Interim reviews of on-going segregation assignments do not require the presence of a reporting officer or the right to call witnesses.
  6. The person serving the *Notification* will record the names of any requested witnesses, indicate if the offender has waived the 48 hour notice, have the offender sign, witness the offender's signature, and provide a copy to the offender. If the offender refuses to sign the notice, the person serving the notice will so note and sign as witness.
  7. At the start of the hearing, the ICA will determine that the offender received advance formal notification or waived such notification in writing and understands the reason for the hearing and all procedural requirements. The ICA will conduct the hearing in accordance with this operating procedure. Upon conclusion of the hearing, the ICA will inform the offender of the ICA's recommendation and reasons.
  8. Designated staff will complete hearing documentation in VACORIS, specifying the statements of the reporting officer, the offender, and any witnesses, the ICA's recommendation, and the reasons for the recommendation. The ICA will escalate the hearing for review as necessary. The offender should receive a copy of the *Institutional Classification Authority Hearing* report within five working days of the hearing.
  9. Upon final action by the appropriate approving authority, a copy of the *Institutional Classification Authority Hearing* report reflecting the ICA's recommendation, and the final decision by the appropriate approving authority will be provided to the offender along with any relevant evaluation reports. If the approving authority disapproves or modifies the ICA decision, such should be noted in VACORIS.

#### B. Informal Hearing Requirements

1. Although prior notification of the offender is not required, it is generally preferable to advise the offender in advance of the nature of the hearing. If the offender desires to be present, the ICA may permit the offender to be present if deemed appropriate and necessary.
2. If the offender is present at the hearing, the ICA should inform the offender of the decision or recommendation at that time. If the offender is not present, he/she should be advised of the decision in writing within five working days using the *Institutional Classification Authority Hearing* report.
3. Upon final action by the appropriate approving authority, a copy of the *Institutional Classification Authority Hearing* report reflecting the ICA's recommendation and the final decision by the approving authority will be provided to the offender.

#### C. Annual Review Hearing Requirements

1. Formal Due Process is not required for an increase in an offender's Security Level or GCA/ESC Class Level during a general population offender's Annual Review. Such reviews are considered routine and afforded every offender; however, the offender should be allowed to be present and permitted input during the review process and receive a copy of the outcome of the review. Each component of the annual review may be appealed through the Offender Grievance Procedure. (4-4301)
2. The Annual Review should be documented in VACORIS.
3. Offenders requesting transfer during their Annual Review Cycle should meet the criteria in Operating Procedure 830.5, *Transfers, Institutional Reassignments*, before being recommended by the facility. Such recommendation does not require due process.
4. CCS may administratively review the offender population for security level reductions to maximize the efficient use of available bed space.
5. Facility Unit Heads may be requested to review the offender population and make recommendations for security level reductions. An interim review will not change the next Annual Review date. The reason for the review should be selected in the Classification Action Type section of VACORIS.

D. Following the ICA hearing, the ICA will escalate the hearing for appropriate review and approvals.

#### VI. REVIEW OF INSTITUTIONAL CLASSIFICATION AUTHORITY RECOMMENDATION:

- A. The Facility Unit Head, or the Assistant Facility Unit Head, will ensure all information is properly entered in VACORIS.
- B. The Facility Unit Head or designee will review each ICA action as required and will indicate approval/disapproval of the ICA's recommendation. Cases may be disapproved and returned to the ICA for additional information.
- C. For segregation reviews for which no status change has been recommended, the Facility Unit Head will indicate no change has been recommended and indicate the decision and any comments.
- D. The Facility Unit Head will indicate specific reasons for the decision in the respective narrative fields.
- E. The levels of final approval/disapproval authority for classification decisions are listed below:
  1. The Facility Unit Head is the final authority for approving/disapproving the following ICA actions:
    - a. All GCA and ESC Class Level change and EGT recommendations
    - b. All Security Level changes except the following:
      - i. Two level overrides.
      - ii. Assignments into and out of Security Level S
    - c. Pre-hearing Detention assignments, removals
    - d. Segregation assignments, reviews and removals
  2. The Regional Director, upon referral from the Facility Unit Head has final authority for approving/disapproving community activities and intra-regional transfers as defined in Operating Procedure 830.5, *Transfers, Facility Reassignments*.
  3. Deputy Director or designee approval is needed for Interstate Compact transfer (see Operating Procedure 020.2, *Compact for Interstate Transfer of Incarcerated Offenders*)
  4. Upon referral by the Regional Director and the Deputy Director, the Director is the final and sole authority for approval of Restoration of Lost Good Time requests.

5. Actions Requiring CCS Approval: Central Classification Services, upon referral by the Facility Unit Head has final authority for approval/disapproval of the following:
  - Two level overrides require the approval of the Chief of Operations, Offender Management Services, or the Manager, Central Classification Services
  - Reclassification assignments to Work Centers
  - Assignments into and out of Security Level S
  - All transfers, except intra-regional, as defined in Operating Procedure 830.5, *Transfers, Facility Reassignment*, including administrative/security, offender request, and assignment to protective custody units
  - All work release recommendations (assignments/removals)
  - Common Fare assignments and removals
  - Keep Separate approvals and removals
  - Any override of mandatory restrictors or offender assignment criteria

F. Distribution:

When the final level of approval has acted on the classification action, the Facility Unit Head, or designee, will ensure that all classification actions are properly documented in VACORIS, and that the offender receives a copy of appropriate classification documents on which the final approval authority's decision has been recorded in accordance with this operating procedure and the appropriate procedure governing the classification action involved.

VII. PROGRAM ASSIGNMENT REVIEWS:

A. Classification actions, which require Program Assignment Reviews only:

1. Outside work classification and reclassification
2. Job assignments and removals, including outside perimeter assignments
3. Treatment Program assignments and removals (except SORT and Therapeutic Community Programs), Academic/Vocational assignments and removals, Re-Entry Case Plan reviews

B. Appointment of the Program Assignment Reviewer - The Facility Unit Head will designate at least one staff member who is impartial regarding the classification matter and the case being reviewed to serve as the Program Assignment Reviewer (PAR). This employee must be Pay Band 4 or above.

C. Responsibilities of the Program Assignment Review Participants:

1. Program Assignment Reviewer (PAR)
  - a. Ensures there is a docketing procedure that provides that all cases are eligible for review and are heard within applicable time limits
  - b. Ensures that a hearing docket is maintained
  - c. Ensures the review is conducted in compliance with established procedures, reviews, and rules on offender requests to attend the review.
  - d. Reviews the offender's Institutional Criminal Record and all documentation submitted for the review, and may ask questions of all persons present during the hearing in order to assist in making a recommendation in the case.
  - e. All recommendations are fair and impartial, and based upon the facts presented.
2. Counselor - Ensures the offender is eligible for the type of review requested and action recommended. The counselor should advise the offender prior to the hearing of the reasons for, purpose of, and possible results of the hearing, and of the offender's opportunity to request to attend the hearing. The counselor presents relevant facts, and may recommend alternative courses of action

at the review.

3. Offender - The offender is not required to attend a Program Assignment Review Hearing. If an offender wishes to attend, he/she should verbally or in writing notify the counselor prior to the scheduled hearing. The decision of whether to allow the offender to attend rests with the PAR.

D. Program Assignment Review Hearing Requirements:

1. Each facility should maintain a Classification Hearing Docket to document cases reviewed as specified in this operating procedure.
  - a. Classification Hearing Docket DOC-11F (830\_F1) is provided as a model, but each facility is encouraged to modify and develop a Classification Hearing Docket form to meet facility needs. Individual offender notification of PAR actions may be accomplished using forms developed by the facility.
  - b. For job assignment actions, the Facility Job Assignment Docket (841\_F6) and the Offender Work Program Job Application (841\_F5) should be used.
2. Program Assignment Review Hearings are informal hearings. The offender should be made aware of the purpose of the hearing, but advance notification is not required. If the offender desires to be present, the PAR may permit the offender to be present.
3. When the review concerns the involuntary removal of the offender from a job, educational, or program assignment, there should be a written or verbal statement from the person requesting the removal that provides the reason for the removal, and the offender should be provided the opportunity to be present and make a statement.
4. If the offender is present at the hearing, the PAR should inform the offender of the decision or recommendation at that time. Offenders that are not present should be advised of the decision either verbally or in writing.
5. Upon final action by the appropriate approving authority, the action should be entered into VACORIS; a copy of the appropriate review form reflecting the PAR's recommendation and the final decision by the appropriate approving authority will be provided to the offender.

E. Approval of Program Assignment Reviews:

1. All PAR hearings are reviewed and acted on by a staff person as designated below, who will approve, disapprove or "no action" the case. No Action cases should be remanded to the Assistant Superintendent/Institutional Program Manager for further review. Comments and reasons for all disapprovals will be documented on the respective forms. The Facility Unit Head will ensure copies of all classification paperwork are distributed.
2. The Facility Unit Head is the sole and final authority for approving/disapproving PAR recommendation for outside work assignments. The Facility Unit Head must personally approve all work assignments outside the perimeter, and may not delegate this authority. (see Operating Procedure 425.1, *Supervision of Offender Highway Labor and Outside Work Assignments*)
3. The Facility Unit Head may designate one or more supervisory staff to be the final authority for approving/disapproving all PAR recommendations except outside work assignments. This designated staff person will not be the same individual who served as the PAR for the case being acted upon.

VIII. OFFENDER INITIATED REVIEW OF PROGRESS

It is the responsibility of the offender to initiate the request for an interim review by completing an offender request identifying exactly why an interim review is warranted. The counselor should make a recommendation and give justification to support their recommendation and forward the request to the ICA



for consideration. The recommendations for an interim review should generally be based on the following criteria: (4-4303)

- Confirmed procedural errors in the previous annual review
- An erroneous calculation of the offender's security level and/or good time award scores
- Status change resulting from an expunged institutional infraction, detainer, or other administrative action
- Completion of programmatic activities of long standing duration (i.e. offender receives GED after repeated attempts)

#### IX. CCS AUTHORITY:

In circumstances in which it is deemed necessary for the well being of the DOC, offenders may be administratively approved for security level changes and/or facility reassignment by the CCS based on appropriate consideration in the absence of a PAR or ICA hearing.

#### X. APPEAL PROCESS:

- A. The Facility Unit Head may appeal CCS decisions to the Chief of Operations, Offender Management Services by submitting an appeal electronically or in writing, including specific, detailed justification as to why CCS's decision should be amended.
- B. All classification decisions may be appealed through the Offender Grievance Procedure. The Chief of Operations, Offender Management Services is the appellate authority for all classification decisions.

#### XI. REFERENCES

Operating Procedure 020.2, *Compact for Interstate Transfer of Incarcerated Offenders*

Operating Procedure 425.1, *Supervision of Offender Highway Labor and Outside Work Assignments*

Operating Procedure 830.2, *Security Level Classification*

Operating Procedures 830.3, *Good Time Awards*

Operating Procedure 830.5, *Transfers, Facility Reassignments*

Operating Procedure 830.6, *Offender Enemy Information Management*

Operating Procedure 841.2, *Offender Work Programs*

#### XII. REVIEW DATE

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

*Signature Copy on File*

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John M. Jabe, Deputy Director of Operations