



# Operating Procedure

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<b>Amended</b> 8/9/13, 9/5/13	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 861.2 (1/1/10)	
<b>Authority</b> COV §53.1-25; §53.1-39; §53.1-188	
<b>ACA/ PREA Standards</b> 4-ACRS-3A-01, 4-ACRS-3A-02, 4-ACRS-3A-03, 4-ACRS-3A-04, 4-ACRS-5A-06, 4-ACRS-6A-03, 4-ACRS-6C-01, 4-ACRS-6C-02, 4-ACRS-6C-03, 4-ACRS-6C-04, §115.241, §115.252, §115.272, §115.278 (added 8/9/13)	
<b>Incarcerated Offender Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>FOIA Exempt Attachments</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Office of Primary Responsibility</b> Chief of Corrections Operations	

**Subject**  
**OFFENDER DISCIPLINE, COMMUNITY CORRECTIONS FACILITIES**

## I. PURPOSE

This operating procedure establishes the general rules of behavior, offender disciplinary infractions, authorized disciplinary penalties, and the disciplinary process for offenders at Community Corrections facilities operated by the Department of Corrections. (4-ACRS-6C-03)

## II. COMPLIANCE

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

## III. DEFINITIONS

**Administrative Duty Officer** - A member of the senior management team of a facility who is assigned on a rotating basis to provide continuous managerial coverage at times other than the normal workday

**Case File** - A confidential computer and/or written record regarding the offender which includes documentation of all action which has occurred in the case.

**Community Corrections Facility** - A residential facility operated by the Department of Corrections to provide the Detention Center Incarceration program in accordance with COV §53.1-67.8 or the Diversion Center Incarceration Program in accordance with COV §53.1-67.7.

**Facility Review Committee (FRC)** - A treatment team of at least three facility staff members; as designated by the Facility Unit Head to review and evaluate the overall progress of an offender; referral to the FRC may be made by the Hearings Officer or any staff member in direct contact with the offender, who feels the offender's behavior requires an intervention. The FRC may recommend sanctions in addition to the disciplinary action imposed by the Hearings Officer. Recommendations shall be forwarded to the Facility Unit Head for review and final approval/disapproval. Under normal circumstances, the Senior Probation Officer should serve as Chair of the Committee. The Chief of Security may also sit on the Facility Review Committee.

**Fighting** - Any attempt to strike or engage another person in a combative manner and includes, but is not limited to an attempt to strike another person whether or not there is contact or any attempt to instigate a fight by committing an act that causes another person to retaliate by fighting.

**Gang** - A group of individuals who: (a) possess common characteristics that distinguish them from other offenders or groups of offenders and who, as an entity, pose a threat to the safety and security of staff, the facility, other offenders or the community; (b) have a common distinctive goal, symbolism or philosophy; (c) possess identifiable skills or resources, or engage in unauthorized/illegal activities. Criminal street gangs, hate groups, and cults that meet these conditions are considered gangs.

**Officer-in-Charge (OIC)** - The designated ranking security officer of a correctional facility, normally the Shift Commander, or the Assistant Shift Commander

**Reporting Officer** - Any employee of the Commonwealth of Virginia who observes or who receives reliable information indicating a violation of facility rules and files a written offender disciplinary report.

**Temporary Bust-Back** - The removal of a offender from his/her original platoon of assignment to a transition platoon for a period of re-training due to continued inappropriate or unsatisfactory behavior such as, but not limited to: poor drilling techniques, failure to know offender general orders, failure to maintain military bearing and poor hygiene. (Detention)

**Unit Hearings Officer** - A staff member designated by the Facility Unit Head to conduct disciplinary hearings for major rule infractions (Category 1 and 2).

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

#### IV. PROCEDURE

##### A. General Procedures

1. Each facility shall ensure that all program rules and regulations pertaining to offenders are conspicuously posted or included in a handbook that is accessible to all offenders and staff. (4-ACRS-3A-03)
2. At the time of admission (within five working days), staff will discuss with each offender rules governing conduct and program rules. Documentation that the orientation has been completed shall be signed and dated by staff and the offender and placed in the offender Case File. (4-ACRS-3A-04)
3. Offender General Rules of Behavior (Diversion) - The following are basic precepts under which the behavior of offenders is to be monitored. Each offender is responsible to conform to these basic principles during the offender's stay in a Diversion Center. All facility staff is to monitor offender behavior to ensure compliance.
  - The offender shall at all times be truthful, show respect and courtesy to others.
  - The offender shall be required to maintain employment during their stay. Loss of employment due to unsatisfactory performance, poor or uncooperative attitude, or inadequate attendance is considered as grounds for removal from the program.
  - The offender shall conduct himself at all times in such a way as to promote learning and to focus on self-improvement.
  - The offender shall be required to maintain regular attendance at all assigned program activities for the duration of their stay. Failure to participate in assigned program activities is considered as grounds for removal from the program.
  - The offender shall ensure that he/she does not cause harm to others.
  - The offender shall obey all orders quickly, willingly, and without question. All orders will be carried out to the best of the offender's ability. All offenders will be required to participate in daily work activities as directed by security and other facility staff. This includes general housekeeping, grounds and facility maintenance, food service activities, and approved community service activities.
  - The offender shall maintain personal hygiene and appearance to program standards.
  - The offender shall refrain from using vulgar language at all times.
  - The offender shall address all staff members and visitors as "Sir" or "Ma'am"
  - The offender shall obey all posted program rules and regulations at all times.
4. Offender General Rules of Behavior (Detention) - The General Orders and Articles will be as follows:

##### General Order I

There shall be honor among all detainees and this detainee at all times will be truthful, show respect and courtesy to others, and possess and use only property belonging to or issued to him.

*Article 1* - This detainee shall conduct himself in such a manner as to be truthful at all times.

*Article 2* - This detainee shall conduct himself in such a manner as to show respect and courtesy to others at all times.

*Article 3* - This detainee shall conduct himself in such a manner as to possess and use only the property belonging or issued to him.

#### General Order II

Silence is commanded so that this detainee will maintain attention, learn during all training, and focus on self-improvement during all extra duty.

*Article 1* - This detainee shall remain silent to maintain attention.

*Article 2* - This detainee shall remain silent during all training in order to learn.

*Article 3* - This detainee shall remain silent during extra duty time in order to focus on self-improvement.

#### General Order III

Team excellence will be each detainee's goal, and this detainee's platoon is his team; he will at all times help all members of his platoon and ensure that he causes no harm to any person.

*Article 1* - This detainee's platoon is his team.

*Article 2* - This detainee shall help members of his team at all times.

*Article 3* - This detainee shall ensure that his actions cause no harm to any person.

#### General Order IV

All orders will be obeyed quickly, willingly, and without question because all orders have a purpose, must be followed to succeed, and this detainee will carry out all orders.

*Article 1* - This detainee understands that all orders have a purpose.

*Article 2* - This detainee understands that all orders must be followed to succeed.

*Article 3* - This detainee will carry out all orders.

#### General Order V

Military bearing will be maintained at all times and this detainee will work, act, and dress in a military manner, be proud of himself and his platoon, and his behavior will reflect commitment towards self-improvement.

*Article 1* - This detainee will work, act, and dress in a military manner at all times.

*Article 2* - This detainee will work hard to be proud of himself and his team.

*Article 3* - This detainee's behavior will reflect his physical and mental commitment toward self-improvement at all times.

### B. Offender Disciplinary Infractions

#### 1. Major Rule Infractions - Category 1

100. Assault or attempted assault upon any person

101. Seizing or holding a hostage(s) or detaining any person against their will

102. Fighting or threats of violence towards other offenders, staff, or the general public

103. Possession of any weapon, sharpened instrument, explosive or incendiary device

104. a. Sexual assault upon or making forcible sexual advances toward a non-offender  
(§115.278[e]) (changed 8/9/13)

- b. Sexual assault upon or making forcible sexual advances toward an offender (§115.278[a, g])
  - c. Engaging in sexual acts with others by consent *NOTE: This offense code does not apply to any sexual act involving an employee.* (§115.278[g])
  - d. Making sexual advances, either physical, verbal in nature, or in writing toward an offender or a non-offender (§115.278[e, g]) *NOTE: An offender should not be charged with this offense if it is proven that the employee consented to the activity.*
  - e. Indecent exposure
  - f. Lewd or Obscene Acts directed toward or in the presence of another (added 9/5/13)
- 105. Failure to return to the facility at the scheduled time from an authorized absence (i.e. death bed or funeral visit)
  - 106. Unauthorized absence from facility or approved community site or absconding from program
  - 107. Participating in or inciting others to participate in a work stoppage, riot, or group demonstration
  - 108. Violation of any local, state, or federal law
  - 109. Using or possessing any drugs, intoxicants, or mind/mood altering substances not prescribed to the offender by a licensed physician or the introduction of such substances into the facility, the job, or any community service site; distribution of prescribed medications to another individual.
  - 110. Failure to submit to urinalysis when requested by staff. If the offender cannot submit urine immediately, he will be given two hours to submit
  - 111. Failure to submit to an alcohol test when requested by staff
  - 112. Stealing or obtaining any item by threat or false pretenses
  - 113. Driving a vehicle without written authorization or driving a vehicle other than that authorized
  - 114. Manufacture, possession or transfer of forged documents
  - 115. Joining, recruiting, associating, participating in or possessing any correspondence, documents, drawings, symbols or property of any type that contains or indicates Gang identifiers, language or information; intimidation of any person in the furtherance of Gang activities.
  - 116. Repeated violations of Category 2 rules
  - 117. 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 report for this offense code should be written only after the findings of a third party investigation. If a disciplinary report is appropriate, the employee investigating the incident will serve as the Reporting Officer.*
  - 118.
    - a. Possession of Unauthorized Communication Devices, to include but not limited to; telephone calling cards, cell phones, pagers, Palm Pilots, 2-way Communication Devices, and any enabling components such as chargers, power cords, batteries, connectors/adapters, etc.
    - b. Unauthorized use of the internet including email, social media (Facebook, My Space, Twitter, etc.) or other applications
  - 119. Gathering around or approaching any person in a threatening or intimidating manner
  - 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

2. Major Rule Infractions - Category 2

201. Failure to show respect to staff at all times - *Includes being insubordinate, unduly familiar, fraternizing, or attempts at financial transactions, or business agreements*
202. Making false statements, lying or giving false information  
*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. (§115.278[f]) (§115.252[g]) (added 8/9/13)*
203. Failure to follow all instructions given by any staff member or community employer; posted or written facility rules and regulations including those listed in the Facility Handbook.
204. Delaying, hindering, or interfering with an employee in the performance of their duties
205. Horseplay
206. Use of vulgar, abusive, insolent, sexually suggestive, or other inappropriate language
207. Intentional defacing (including graffiti), damaging, destroying, or pilfering facility property
208. Possession of contraband (i.e., any item not specifically issued to/authorized for the offender)
209. Being outside of the facility perimeter unless to complete assigned work tasks or on other specific instruction from staff
210. Selling, trading, borrowing, lending or giving away personal property
211. Unauthorized use of mail or telephone. Offenders shall not use the mail or telephones to commit fraud
212. Gambling - This includes, but is not limited to, all aspects of the Virginia Lottery and lottery-sponsored games
213. Feigning illness
214. Any unauthorized visits or contact while on community placements
215. Failure to keep the Security Staff advised of offender whereabouts at all times when out of the facility or failure to proceed directly to the community work site (Diversion)
216. Possession of security equipment
217. Refusing to work an assigned facility task
218. Failure to follow facility count procedures
219. Unauthorized possession of US Currency (Detention)
220. Unauthorized possession of US Currency in excess of allowable limits (Diversion)
221. Failure to report to work on time (Community Assignments) or refusing to work (Diversion)
222. Leaving community work assignment early without the permission of facility staff (Diversion)
223. Loss of community employment due to unsatisfactory work performance or poor or uncooperative attitude (Diversion)
224. Riding or visiting in a non-State vehicle without prior written approval (Diversion)
225. Directly receiving paychecks from community employer (Diversion)
226. Maintaining an unauthorized bank account
227. Leaving the facility or place of community assignment under false pretenses
228. Disobeying a direct order
229. Violation of General Orders (Detention)
230. a. Possession of 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*
- 231. Repeated violations of Category 3 rules
- 232. Being in an unauthorized area
- 233. Failure to be on time for all scheduled activities (work, treatment programs, Probation Officer/Counselor appointments, and doctor) or failure to participate in an assigned treatment program.
- 234. Talking or yelling out of a window of a transportation vehicle
- 235. Deleted
- 236. Receiving any item from a community service employer or other non-facility person
- 237. Possession of a camera or participating in unauthorized photographs
- 238. 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.*
- 239. Bullying - *The use of force or coercion to abuse or intimidate others.*
- 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
- 3. Minor Rule Infractions - Category 3
  - 301. Failure to be out of bed by scheduled times, showered, shaved, and fully clothed or failure to have personal bed area ready for inspection at the scheduled times (Diversion)
  - 302. Failure to be in assigned bed area, with personal hygiene completed, at the scheduled times (Diversion)
  - 303. Failure to properly store personal property when not in use. Personal items shall not be left unattended in the day room, toilet area, dorms, or other areas and may be confiscated and discarded.
  - 304. Taping or otherwise adhering any item to any surface
  - 305. Failure to maintain state-issued property. Compensation will be required for lost or damaged items
  - 306. Eating or drinking on transportation vehicles (Diversion)
  - 307. Excessive noise - This includes, but is not limited to, voices, table games, card playing, and/or Walkman
  - 308. Playing "Walkman" radio/tape player without headphones (Diversion)
  - 309. Failure to maintain bed area at all times when not in use. Sheets and blankets are to be tucked in on both sides. No clothing is to be hung from any part of the beds or lockers unless authorized by staff.
  - 310. Failure to follow all posted laundry rules - Soiled laundry will be properly stored (Diversion)
  - 311. Failure to be fully dressed upon leaving the dorms or the facility (Diversion)
  - 312. Failure to complete assigned cleaning duties on a daily basis (Diversion)
  - 313. Abusing any recreational equipment
  - 314. Failure to provide full cooperation during any facility or personal shakedown inspection for contraband

315. Failure to enter or exit through the main entrance of the facility, except in the case of fire or other similar emergencies
316. Failure to provide full participation during fire or emergency evacuation drills
317. Entering a dorm to which the offender is not assigned
318. Violation of General Orders (Detention)
398.
  - a. Conspiracy or making plans to commit any of the offenses in Category III
  - b. Attempting to commit any of the offenses in Category III
  - c. Aiding and abetting another to commit any of the offenses in Category III

C. Authorized Disciplinary Penalties (4-ACRS-3A-01)

1. Offenders are not subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. (4-ACRS-6A-03)
2. Major Rule Infractions Category 1 - Range of Penalties
  - Recommendation for Program Removal (see Operating Procedure 861.3, *Special Housing*)
  - Program Extension
  - Hold in from work and facility work assignment (Administrative Hold)
  - Referral to Facility Review Committee and/or referral to Facility Unit Head for disposition
  - All penalties listed for Category 2 or Category 3 offenses.
  - Fine- not to exceed \$20.00 (to be placed in the Facility Commissary Fund) (If there are insufficient funds to cover the fine, the offender's account will be debited when funds are deposited into the offender's account, from whatever source (Diversion Centers Only).
3. Major Rule Infractions Category 2 – Range of Penalties
  - Program Removal (see Operating Procedure 861.3, *Special Housing*)
  - Program Extension
  - Temporary Bust Back (Detention)
  - Hold in from work and facility work assignment (Administrative Hold)
  - Extension of Orientation Phase
  - Fine - not to exceed \$15.00 (to be placed in the Facility Commissary Fund) (If there are insufficient funds to cover the fine, the offender's account will be debited when funds are deposited into the offender's account, from whatever source (Diversion Centers Only).
  - Written Reprimand (Conviction of the infraction is the written reprimand)
  - Extra facility work assignment (not to exceed 30 hours)
  - Dorm Restriction (not to exceed 30 days)
  - Television Restriction (Diversion Centers Only – not to exceed 30 days)
  - Canteen Restriction (not to exceed 30 days)
  - Phone Restriction (not to exceed 30 days)
  - Recreation Restriction (not to exceed 30 days)
  - Loss of “Walkman” Radio/CD Player (Diversion - not to exceed 30 days)
  - Visiting Restriction (not to exceed 30 days)
  - Loss of Money Draw Privilege (Diversion – not to exceed 30 days)
  - All penalties listed for Category 3 offenses
4. Minor Rule Infractions Category 3 – Range of Penalties
  - Fine- not to exceed \$5.00 (to be placed in the Facility Commissary Fund)
  - Verbal Reprimand
  - Extra facility work assignment (not to exceed 10 hours)

- Dorm Restriction (Diversion Centers Only – not to exceed 7 days)
- Television Restriction (Diversion Centers Only – not to exceed 7 days)
- Canteen Restriction (not to exceed 7 days)
- Phone Restriction (not to exceed 7 days)
- Recreation Restriction (Diversion Centers Only – not to exceed 7 days)
- Loss of “Walkman” radio/tape player for a period not to exceed 30 days (Diversion)
- Visiting Restriction (not to exceed 7 days)
- Written or reading assignment

#### D. Offender Disciplinary Process

##### 1. Offender Conduct Reports:

- a. Any facility staff member may utilize an *Offender Conduct Report* 861\_F10 to document and address offender behavior outside the formal disciplinary process.
- b. The *Offender Conduct Report* provides an informal process where minor violations are handled with “on the spot corrections”. These minor violations must be documented so that staff can detect patterns of repeated violations.
- c. Staff shall submit completed *Offender Conduct Reports* to the Officer in Charge (OIC) before the end of the shift in which the offense was discovered.
- d. The OIC shall log the *Offender Conduct Report*; have the original placed in the offender’s Case File and have copies provided to the Assistant Facility Unit Head and to the offender.

##### 2. Filing of Disciplinary Report:

- a. If a staff member (Reporting Officer) believes an offense cannot properly be handled by an *Offender Conduct Report*, they should file an *Offender Infraction Report* 861\_F11 with the Officer-in-Charge (OIC), providing the following information:
  - Specific offense violated
  - Date and time offense occurred
  - Name and number of offender charged
  - Facility where offense occurred
  - Accused offender's living area assignment
  - Location within or without the facility where the offense occurred
  - Description of the offense - use formula who, what, when, where, and how to provide summary of pertinent details, to include disposition of any evidence involved
  - Names of witnesses (employees or offenders) to the incident, if any
  - Signature of the reporting officer
  - Date and time report is made
- b. Following a criminal finding of guilt of sexual abuse or an administrative finding that an offender engaged in sexual abuse towards a non-offender or an offender, an *Offender Infraction Report* for a 104a or 104b infraction shall be filed. (§115.278[a]) (added 8/9/13)
- c. The Reporting Officer should file the *Offender Infraction Report* during the shift when the evidence supporting the charge is discovered. The report must be prepared in time to allow the OIC, or designee, to have the *Report* served on the offender by midnight of the next working day after discovery of the alleged infraction.

##### 3. Review and Investigation by Officer-in-Charge - Upon receipt of a disciplinary report alleging commission of an offense, the OIC will:

- a. Review the report for completeness and accuracy of information provided
- b. Ensure that the offense title corresponds to the description of the alleged offense



- c. Request additional information, if necessary
  - d. Determine if sufficient information exists to notify the offender that a charge is being brought against them
4. Decision by Officer-in-Charge
- a. After reviewing the Offender Infraction Report, the OIC may:
    - i. Choose not to issue the charge due to lack of evidence or other irregularities (offender to be informed)
    - ii. Dispose of the charge informally by discussing it with the offender (4-ACRS-6C-01)
    - iii. Refer the report to the Hearings Officer for a hearing.
  - b. The OIC should consult the Hearings Officer who should check the offender's record to determine if the alleged offense qualifies as a repeated violation of Category 2 or Category 3 rules. If the alleged offense is determined to be a repeat violation, the OIC should instruct the reporting staff member to file an additional *Offender Infraction Report* for the infraction number 116 or 231 charge. (4-ACRS-6C-04)
  - c. The OIC shall have the *Offender Infraction Report* served on the offender by midnight of the next working day after discovery of the alleged infraction. The offender will be advised of the following rights in the disciplinary process:
    - i. The right to be present at the hearing
    - ii. The right to remain silent or make a statement
    - iii. The right to present written or oral testimony from witnesses
    - iv. The right to a 24 hour minimum preparation time
    - v. The right to waive the 24 hour minimum
    - vi. The right to a [Community Reporting Officer Response Form](#) 861\_F12 to submit questions to the Reporting Officer if the Reporting Officer will not be present at the hearing
    - vii. The right to waive the appearance at the Hearing - waiver of appearance will be considered an admission of guilt and the Hearing will be conducted in the offender's absence.
    - viii. Offenders will not be afforded an attorney to represent them in Disciplinary Hearings.
  - d. The offender should sign to acknowledge that the *Offender Infraction Report* was served and the offender was given the advisement of rights. If the offender refuses to sign, the serving officer must sign the *Report* to document that the *Offender Infraction Report* was served on the offender.
  - e. The offender will receive a copy of the *Offender Infraction Report*. (4-ACRS-6C-02)
  - f. If the Reporting Officer will not be present at the hearing and the offender wishes to question the Reporting Officer, they must submit a [Community Reporting Officer Response Form](#) 861\_F12 to the Hearings Officer within 24 hours of the service of the *Offender Infraction Report*.
5. Disciplinary Hearing for Offenses
- a. Hearings Officer
    - i. The designated Unit Hearings Officer should conduct disciplinary hearings for all Major Offenses (Category 1 and 2).
    - ii. The on duty Shift Commander may act as the Hearings Officer for any Category 3 infraction.
    - iii. The Shift Commander or Assistant Unit Head may act as the Hearings Officer in those cases where the designated Unit Hearings Officer has direct knowledge of the event.
  - b. Hearings will generally be held no earlier than 24 hours after the service of the charge and generally not later than seven working days after the charge has been served. If the reporting officer is off duty, the charge should be heard within two working days of the employee's return to duty.
  - c. The Hearings Officer shall conduct a private, informal hearing in the presence of the accused offender, and any staff or offender witnesses (except confidential witnesses).
    - i. If the Reporting Officer will not be present at the hearing, the written *Offender Infraction Report* and responses on any *Community Reporting Officer Response Form* will stand as the

- testimony of the Reporting Officer. The Hearings Officer will determine if the Reporting Officer will be present at the hearing.
- ii. The hearing need not be recorded.
  - iii. The Hearings Officer may call witnesses into the hearing to provide their testimony and then excuse them from the hearing.
  - iv. The offender's counselor, probation officer, or other staff member may appear to assist the offender and stay throughout the hearing.
  - v. The reporting officer and any witnesses should be excused from the hearing before the Hearings Officer renders a decision.
- d. Testimony from Confidential Witness
- i. A confidential witness is an offender or other person whose identity must be protected and withheld for that individual's personal safety.
  - ii. The Hearings Officer is responsible for assessing the reliability of the information received.
  - iii. All confidential information presented to the Hearings Officer will be in writing, stating the facts and manner in which the individual came to know these facts. The statement shall be signed by the witness or the employee who took the statement.
  - iv. At the Hearing, the Hearings Officer is to present the information in such a manner that will not disclose the identity of the confidential witness. The offender will be given the opportunity to challenge the content; but will not have the opportunity to confront or know the identity of the confidential witness.
- e. The Hearings Officer should consider the testimony of the reporting officer, the accused offender, and any witnesses.
- i. Based only upon facts presented concerning the alleged offense, the Hearings Officer shall make a fair decision of innocence or guilt and will document the reason for the decision on page 2 of the *Offender Infraction Report*.
  - ii. 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 a finding of guilt. No standard higher than a preponderance of the evidence shall be imposed to determine innocence or guilt. (§115.272) (added 8/9/13)
  - iii. The penalty assessed should be noted on the *Offender Infraction Report*. (added 8/9/13)
    - (a) 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. (§115.278[b])
    - (b) Consider whether a mental disability or mental illness contributed to the offender's behavior when determining what type of penalty, if any, should be imposed. (§115.278[c])
- f. Sexual Assault - Offenses 104a and 104b - An offender convicted of sexual assault and any offender victims will be referred to their Counselor for reassessment of the offender's risk of sexual victimization or abusiveness and . At the discretion of the Hearings Officer, a conviction of Offense 104d may also warrant referral. (§115.241[g]) (added 8/9/13)
- g. Offenders convicted of Offenses 104a and 104b shall be referred to the FRC for review and removal from the program. At the discretion of the Hearings Officer, a conviction of offense 104d may also warrant referral. (added 8/9/13)
6. Review of *Offender Infraction Reports* - Upon a finding of guilt, the *Report* should be reviewed by the Facility Unit Head or Assistant Unit Head within three working days following disposition by the Hearings Officer for appropriateness of penalty assessed and adherence to specified procedures.
7. Appeals of Disciplinary Hearing Decisions
- a. The offender, if found guilty, may appeal any decision of the Hearings Officer. Appeals shall be submitted in writing by the offender completing the appeal section of the *Offender Infraction Report* and submitting it to the Facility Unit Head, (or the Assistant Facility Unit Head in the

absence of the Facility Unit Head), within two working days after the Hearing.

- b. The Facility Unit Head should respond in writing to the offender's appeal within five working days of receipt of the offender's appeal. The Facility Unit Head may take the following actions:
  - i. Approve the action of the Hearings Officer
  - ii. Reduce the recommended penalty if it is felt to be excessive
  - iii. Suspend any penalty, or portion thereof, at any time before its expiration
  - iv. 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 charge should be served on the offender within five working days following receipt of the re-hearing order by the Hearings Officer.
  - v. Order a re-hearing to a higher, equivalent, or lesser offense code, if the offender was charged with an incorrect offense. The offense report will be revised to the proper offense and the charge reheard.
  - vi. Reduce the charge to a lesser offense
  - vii. Refer the charge back to the OIC for disposition of the charge informally by discussing it with the offender
- c. The decision of the Facility Unit Head is final and no further appeals are available.

#### E. Record Keeping

1. The original copies of all *Offender Conduct Reports* and *Offender Infraction Reports* where the offender is found guilty should be maintained in the offender Case File.
2. If the offender is found not guilty, the Hearings Officer may retain the *Offender Infraction Report* in a secure file, but the report shall not be placed in the Case File.

#### F. Facility Review Committee

1. When an offender's pattern of behavior reflects additional review and input may be necessary, the Hearings Officer, after a finding of guilt, may refer the disposition of any Category 1 or 2 infraction to the Facility Review Committee (FRC).
2. The FRC will meet with the offender and review the offender's overall behavior record in the Program.
3. The FRC will forward to the Facility Unit Head its recommendation; which may include a multiplicity of penalties and/or sanctions, including the *Authorized Disciplinary Penalties* listed in this operating procedure and treatment plan revision to motivate and/or correct deficiencies in order to allow the offender an opportunity to complete the Program.

#### G. Notification of Facility Removals

1. Authorization will be secured from the Unit Head or the Chief of Security in the absence of the Unit Head, prior to an offender being removed from the Facility. (4-ACRS-5A-06)
2. A facility representative should notify the referring P&P Office or Parole Release Unit immediately upon determination that an offender will be removed from the Program.
3. When an offender is removed, the following staff should be notified immediately:
  - a. Chief of Security
  - b. Senior Probation Officer
  - c. The offender's assigned Probation Officer - for issuance of PB-15
  - d. Shift Commander
  - e. Property Officer
  - f. Medical Authority- to insure that all necessary medications and medical information accompany the offender

g. Fiscal Technician/Office Services Specialist (notify the next working day if removal is not during working hours)

V. REFERENCES

Operating Procedure 861.3, *Special Housing*

VI. FORM CITATIONS

[Offender Conduct Report](#) 861\_F10

[Offender Infraction Report](#) 861\_F11

[Community Reporting Officer Response Form](#) 861\_F12

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than March 1, 2016.

*Signature Copy on File*

*1/8/13*

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A. David Robinson, Chief of Corrections Operations

Date