



# Operating Procedure

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<b>Amended</b> 4/8/16, 6/11/16, 7/1/16, 7/25/16, 11/10/16, 12/27/16, 2/7/17, 4/3/17-Eff. 5/15/17, 7/25/17, 9/1/18, 7/1/19, 8/1/19	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 861.1 (1/1/16)	
<b>Authority</b> COV §53.1-25; §53.1-26; §53.1-32.01, §53.1-39; §53.1-188; §53.1-189; §53.1-202.4; §18.2-371.2; §18.2-390; §18.2-391	
<b>ACA/PREA Standards</b> 4-4226 through 4-4248, 4-4320; 2-CO-3C-01; §115.41[g], §115.52[g], §115.72, §115.78	
<b>Subject</b> <b>OFFENDER DISCIPLINE, INSTITUTIONS</b>	<b>Office of Primary Responsibility</b> Offender Discipline Manager
<b>Incarcerated Offender Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>FOIA Exempt</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <b>Attachments</b> Yes <input checked="" type="checkbox"/> #8 No <input type="checkbox"/>

## 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 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, PREA 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** - Intentional, impermissible physical contact by one person upon another

- Simple Assault is physical contact where the victim does not suffer serious injury.
- Aggravated Assault is 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

**Charge Stacking** - Multiple charges with the same date and time which contain essentially the same facts in the *Description of the Offense*

**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 or photographs 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. Video and audio recordings are not considered Documentary Evidence.

**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 or outside vendor for working in a position within DOC or in a position that supervises offenders.

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

**Hearings Officer** - The employee who is the sole fact finder in a Disciplinary Hearing and decides guilt of the accused offender and imposes an appropriate penalty

**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

**Officer-in-Charge (OIC)** - A Unit Manager or designated ranking security officer of a correctional facility; 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.

**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 Master's degree in psychology, social work or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

**Re-Hearing** - A process whereby a *Disciplinary Offense Report* is heard over again due to a procedural error or when it is determined on Appeal that the offender was charged with an incorrect offense code. When a re-hearing is ordered, VACORIS will create a new *Disciplinary Offense Report* to be served on the offender. The new charge shall be submitted by the decision maker for OIC review, and it will be located in VACORIS in the module for new charges awaiting review. All mention of the original conviction will be expunged from the offender's record and the Disciplinary Conviction list in VACORIS in accordance with Operating Procedure 050.1, *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 Hearings Officer and the accused offender about the facts of the offense.

**Vacate** - The process used to change the *Disciplinary Offense Report* to a more appropriate offense code which can be a higher, equivalent, or lesser offense where the offender was charged with an incorrect offense code. This can only occur during the disciplinary hearing before a decision is rendered.

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

#### IV. DISCIPLINARY PROCEDURE

A. The Disciplinary Hearing is an administrative due process proceeding.

1. Although strict rules of evidence do not apply, sufficient evidence must be presented at the hearing to support a finding of guilt.
2. A finding of guilt will only be based on the preponderance of the evidence presented at the Disciplinary Hearing.

B. In accordance with COV §53.1-39 and constitutional law, corporal punishment and inhumane treatment are expressly prohibited. Meals will not be withheld, nor the standard menu varied, as a disciplinary sanction. (4-4320)

C. This operating procedure applies to the discipline of all offenders incarcerated in Virginia Department of Corrections institutions. (4-4227; 2-CO-3C-01)

1. All staff who work with offenders will receive training on the rules of offender conduct, the rationales for the rules, and the sanctions available. (4-4229)
  - a. Each new institutional employee will be given a copy of this operating procedure. (4-4228)
  - b. All DOC employees may access this operating procedure on the Virtual Library. (4-4228)
  - c. A copy of this operating procedure will be made readily available in designated locations for review and use by staff.
2. Each offender in a DOC institution will receive a copy of this operating procedure, and shall sign, verifying receipt.
  - a. The receipt, signed by the offender, (such as [Receipt of Offender Discipline Procedure](#) 861\_F1RH)

shall be uploaded as an external document in the *Facility Notes* section of VACORIS identified as a *Special Entry*. (4-4228)

- b. For institutions operating under the Restrictive Housing Model that have provided offenders with a copy of the current Operating Procedure 861.1, *Offender Discipline, Institutions*, copies of this operating procedure shall be made available in the institutional library, law library, and other designated locations and offenders will be required to sign an [Acknowledgement of Offender Discipline Procedure](#) 861\_F16RH to be uploaded as an external document in the *Facility Notes* section of VACORIS identified as a *Special Entry*.
3. Each institution will provide offenders and staff with a copy of the institutional rules and regulations during orientation.

#### D. Monitoring

The Offender Discipline Unit will monitor the Offender Disciplinary Procedure through institutional 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.

#### E. Temporary Suspension of Time Frames

1. 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.
2. In the event of a widespread institutional 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.

#### F. Forms

1. All forms (other than *Receipt of Offender Discipline Procedure*) associated with this operating procedure will be used as designed and shall not be customized by the institution.
2. All forms available in VACORIS must originate from VACORIS without modification.

#### G. Languages

1. The need to translate the Offender Disciplinary Procedure into other languages will be determined by the Offender Discipline Unit. (4-4228)
2. All documents relating to a disciplinary offense or appeal shall be written in English.

#### H. Hearings Officers

1. Hearings Officers, under the supervision of the Facility Unit Head or designee, shall conduct each Disciplinary Hearing and shall have the following qualifications:
  - a. Appointed by the Facility Unit Head, with approval of the Offender Discipline Manager
  - b. Possess a thorough understanding of the disciplinary process
  - c. Be an objective and impartial decision-maker (4-4240)
  - d. Follow 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 Chief of Corrections Operations
2. Any Hearings Officer who investigates a *Disciplinary Offense Report*, was an eyewitness to the

offense, or has material knowledge of the offense must be recused from conducting the Disciplinary Hearing.

3. Alternate Hearings Officer

- a. Each institution must have one or more Alternate Hearings Officers to conduct Disciplinary Hearings in the absence of the primary Hearings Officer and in cases where the Hearings Officer must be recused.
- b. Each Alternate Hearings Officer must be appointed by the Facility Unit Head and approved by the Offender Discipline Manager.
- c. Alternate Hearings Officers must be Sergeant level or above unless approved by the Chief of Corrections Operations.
- d. An Institutional Ombudsman shall not serve as an Alternate Hearings Officer. The Chief of Corrections Operations must specifically approve any exception to this requirement.
- e. Each Alternate Hearings Officer must be trained the same as the Hearings Officer. The Alternate Hearings Officer must complete all required training prior to conducting a Disciplinary Hearing.

4. Maintaining Certification

- a. All new Hearings Officers and Alternate Hearings Officers, after receiving *Basic Skills for Hearings Officers* training, must complete a mentorship with another experienced Hearings Officer. The mentorship should include training on the following:
  - i. Conducting a Disciplinary Hearing
  - ii. Reviewing and processing *Reporting Officer Response Forms, Witness Request Forms, Witness Statements, and Requests for Documentary Evidence*
  - iii. Issuing a *Notice of Postponement* and a *Notice of Continuance*
  - iv. Recording and uploading the Disciplinary Hearing, to include renaming the file by case number
  - v. Copying, scanning, and uploading external documents to VACORIS
  - vi. Providing an overview of any additional duties required of the Hearings Officer
- b. For major institutions, the Alternate Hearings Officer shall conduct five hearings per quarter to maintain certification.
- c. For field units, the Alternate Hearings Officer should conduct two hearings, if feasible, per quarter to maintain certification. An Alternate Hearings Officer may hold hearings at another institution, if needed. If unable to conduct the required hearings, the Offender Discipline Manager must be contacted and a waiver requested.
- d. If certification lapses, the Alternate Hearings Officer must re-take *Basic Skills for Hearings Officers* prior to serving as a Hearings Officer.
- e. All Hearings Officers and Alternate Hearings Officers are required to attend *In-Service for Hearings Officers* annually.

I. Advisors, Interpreters, and Translators

1. When literacy, language barrier, or other limitation exists, the Hearings Officer 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 (offender and staff) must possess an adequate knowledge of the disciplinary process and all relevant operating procedures accessible to offenders. Serving officers are trained to function as an advisor during the service of the *Disciplinary Offense Report*. Training of advisors should be provided by the Hearings Officer(s)
3. Offender advisors should be established as a paid institutional job assignment in accordance with Operating Procedure 841.2, *Offender Work Programs*, and paid for the hours scheduled by the Hearings Officer or OIC to assist offenders as provided in this operating procedure.
4. Advisors, interpreters, and translators shall not 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](#) 861\_F4, [Witness Request Form](#) 861\_F5, or [Request for Documentary Evidence](#) 861\_F6, or preparing an appeal.
6. When the offender requests an advisor to assist in the preparation of the *Reporting Officer Response Form*, *Witness Request Form*, or *Request for Documentary Evidence*, the Hearings Officer or OIC must ensure that a staff or offender advisor is provided.
7. The accused offender may not choose a specific offender advisor. The Hearings Officer or OIC will assign an approved advisor.
8. Staff Advisors (4-4243)
  - a. 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 Hearings Officer will assign an offender advisor.
  - b. Staff advisors may be utilized in lieu of offender advisors at any institution during a lockdown or when an offender advisor is unavailable.
  - c. In Security Level 5 or above prisons or a Restrictive Housing Unit at any institution, the Hearings Officer may appoint a staff advisor in lieu of an offender advisor or when a requested employee is not available.
  - d. The appointed staff advisor must 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.
9. Attorney representation is not permitted in the disciplinary process at any time.
10. The Hearings Officer and the advisor are expected to ensure the offender receives a fair hearing.
11. The primary function of the advisor is to assist the offender to prepare a defense and to ensure that the due process rights have not been violated.
12. The Hearings Officer will monitor the advisor to ensure the offender receives an appropriate level of assistance.

## V. CODE OF OFFENSES (4-4226)

### A. Category I Offenses

100. Killing or attempting to kill any person  
**Mandatory Penalty** - *Loss of all accumulated good time. A lesser penalty cannot be offered during the penalty offer process.*  
*Where criminal charges are pending, the Disciplinary Hearing should be postponed until after the criminal proceedings are concluded.*
101. a. Escape or attempted escape  
**Mandatory Penalty** - *Loss of all accumulated good time. A lesser penalty cannot be offered during the penalty offer process.*  
*Upon return of an escaped offender to custody, the institution from which the offender escaped will be responsible for the Disciplinary Offense Report and for conducting a Disciplinary Hearing for this offense.*  
*Where criminal charges are pending, the Disciplinary Hearing may be postponed until after the criminal proceedings are concluded.*
  - 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, rioting, or acting in a manner that disrupts the orderly operation of the institution
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  
*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 definitions for 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])  
*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 Hearings Officer, a conviction of Offenses 233a and 233b may also warrant referral. (§115.41[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 a Corrections Officer's or other corrections employee's uniform or parts thereof
111. a. Intentionally destroying, altering, damaging, or defacing state or any person's property  
b. Stealing state or any person's property
112. Demanding or receiving anything of value under threat of any kind, including by extortion or blackmail  
*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)  
**Mandatory Penalty** - Loss of 90 days accumulated good time. A lesser penalty cannot be offered during the penalty offer process.  
b. Refusal to provide sample for DNA analysis (Second refusal)  
**Mandatory Penalty** - Loss of 180 days accumulated good time. A lesser penalty cannot be offered during the penalty offer process.  
c. Refusal to provide sample for DNA analysis (Third and subsequent refusals)  
**Mandatory Penalty** - Loss of all accumulated good time. A lesser penalty cannot be offered during the penalty offer process.  
*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.*
119. Refusal to participate in testing, classification, or reentry preparation

*An offender shall be charged only once during a continued period of refusal of the same requirement.*

- 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, or removal from a reentry program  
*Includes such actions as refusal to obtain birth certificate (unless no birth certificate exists), refusal to obtain 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  
*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  
*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.*

- f. Refusal to participate in the restrictive housing unit assignment

**Mandatory Penalty (119a-119f)** - *Loss of 90 days accumulated good time. A lesser penalty cannot be offered during the penalty offer process.*

- 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

*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

*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 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 any 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. (§115.52[g], §115.78[f])*

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  
*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. See Operating Procedure 841.5, Offender Alcohol and Other Drug Testing and Treatment Services, for further guidance.*
- g. Transfer of funds in relation to drug activity
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  
*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 or use 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.
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 the offender seeks to obtain by coercion, persuasion, intimidation, or influence, the enticement of any staff into an unlawful act and/or violation of DOC policy or procedure.*



*A Disciplinary Offense Report for this offense code should be written only after the completion of a third party investigation.*

*If a Disciplinary Offense Report is appropriate, the employee investigating the incident will serve as the Reporting Officer.*

*An inappropriate relationship between staff and offender must be reported to the PREA Coordinator, and the offender cannot be charged under this offense code.*

136. a. Threats or intimidation of public officials

*An offender commits the offense when they communicate to a public official (i.e. Judge or elected official); resulting in the fear of death, injury, terrorism, or intimidation.*

*Such communication may be verbal, physical, or written.*

b. Threats or intimidation of a member of the general public or violation of any court ordered prohibition of contact with any individual

*An offender commits the offense when they communicate to a member of the general public resulting in the fear of death, injury, terrorism, or intimidation, or when they communicate with any individual with whom contact is prohibited due to a court order, either directly or through an intermediary. Such communication may be verbal, physical, or written.*

*A Disciplinary Offense Report, for this offense code, will be written after completion of a third party investigation only and should describe the specific nature of the communication that occurred.*

137. a. Lewd or obscene acts directed toward or in the presence of another

b. Indecent exposure

*Indecent exposure is any nudity in public or intentional exposure of intimate parts when such exposure of flesh 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

*This offense should only be served when a QMHP has established that the offender can be held accountable for their behavior as documented on an [Offender Mental Health Assessment 861\\_F2RH](#).*

140. a. Possession 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*

c. Smoking tobacco or any other substance (not illegal substance/drug) or using e-cigarettes

141. False claim of medical emergency resulting in unnecessary off-site testing or treatment

*A Disciplinary Offense Report for this offense code must be based on definitive medical proof that the claim is false.*

142. Possession of Personal Information

*Personal information concerning former or 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*

197. Gang activity related to any of the offenses in Category I

*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 after 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

*To identify behavior related to any of the above (a-d), place offense code 198 (a-d) after the appropriate Category I offense code.*

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

*This charge should be written by the Hearings Officer when they discover that the offender violated a conditional suspended penalty. 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

**NOTE:** Designated Category II Offenses should be considered for an *Informal Resolution*, if the offender is eligible. A notation will appear after those selected 200 series offense codes - "***Eligible offenders may be offered an Informal Resolution***"

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. a. Disobeying an order (***Eligible offenders may be offered an Informal Resolution***)
- b. Disobeying an order to move to general population (*this charge should only be written once*)
205. Intentionally delaying, hindering, or interfering with an employee in the performance of duties. (***Eligible offenders may be offered an Informal Resolution***)
206. Lying or giving false information to an employee  
*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. (§115.52[g], §115.78[f])*
207. Manufacture, possession, or transfer of forged documents
208. Possession of stolen property
209. Engaging in sexual acts with others by consent  
*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  
*When a Disciplinary Offense Report for this offense code is written, the Reporting Officer should quote the threatening language or describe the gestures, actions, 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. (***Eligible offenders may be offered an Informal Resolution***)
218. Fighting with any person
219. Hiding in any area

222. Vulgar or insolent language, gestures, or actions directed toward an employee, or directed toward, or in the presence of, persons who are not offenders or not employed by DOC (general public, volunteers, and visitors). (***Eligible offenders may be offered an Informal Resolution***) *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. This charge should not be written if the offender is using vulgar or insolent language as part of a conversation and not directed towards an employee.*
223. Charging or accepting any compensation for legal assistance or for other services (***Eligible offenders may be offered an Informal Resolution***)
224. Possession of contraband  
*Possession of sexually explicit materials by any offender under the age of 18 constitutes a violation of Offense Code 224. Additionally, offenders are not permitted to possess material that emphasizes explicit or graphic depictions or descriptions of sexual acts or contains nudity.*
226. Gambling, possession of gambling equipment or paraphernalia, or operating a gambling pool (***Eligible offenders may be offered an Informal Resolution***)
227. Unauthorized sale or transfer of personal property (***Eligible offenders may be offered an Informal Resolution***)
228. Unauthorized use or abuse of mail or telephone (***Eligible offenders may be offered an Informal Resolution***)  
*This offense code includes, but is not limited to, use of another offender's Personal Identification Number (PIN) to access the 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.  
*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 (***Eligible offenders may be offered an Informal Resolution***)

- 244. Unauthorized use of facility supplies, tools, equipment, or machinery
- 245. Leaving area of confinement without permission
- 246.
  - a. Possession and/or use of another offender's identification card
  - b. Unauthorized use of personal identification card (i.e. to get an extra meal tray)
- 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  
*The Description of Offense should be specific to support the charge.*
- 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
- 251. Unauthorized transfer of funds
- 252. The intentional provocation of canines working in DOC facilities or other animals under DOC care
- 297. Gang Activity related to any of the offenses in Category II  
*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 after 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*The reviewing staff member may consider an Informal Resolution when the underlying offense code is attached to a Disciplinary Offense Report that is approved for an Informal Resolution. To identify behavior related to any of the above (a-d), place offense code 298 (a-d) after the appropriate Category II offense code*
- 299. Violation of conditional suspension (probation) of a Disciplinary Hearing penalty for any offense in Category II  
*This charge should be written by the Hearings Officer when they discover that the offender violated a conditional suspended penalty. 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

- A. 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 9. (4-4226)
  - 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
    - f. Kiosk for music and non-music audio file downloads

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
    - f. Kiosk for music and non-music audio file downloads
  4. A fine of up to \$15.00 to be placed in the commissary fund or loss of pay for a maximum of 60 hours of work
  5. Cell or quarters restriction for a maximum of 30 calendar days
  6. Loss of good time of up to 180 days good conduct allowance or equivalent earned sentence credits
  7. Loss of good time up to all accumulated good conduct allowance or earned sentence credits
  8. 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 institution-owned or institution-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.
- B. The following enhanced sanctions will be imposed for convictions of the same Category I offense code within one year
1. These sanctions will be given to the offender at the time of the hearing or upon acceptance of the Penalty Offer. Offenders who are in possession of drugs or who have tested positive for drug use will be subject to specific visiting restrictions established for these offenses. All other enhanced sanctions will apply.
    - a. Second Conviction
      - i. No access to telephone calls for six months
      - ii. Non-contact visits from immediate family only for six months
      - iii. Good Time Class Level IV for one year
      - iv. Review for possibility of security level increase
    - b. Third Conviction
      - i. No access to telephone calls for one year
      - ii. Non-contact visits from immediate family only for one year
      - iii. Good Time Class Level IV for two years
      - iv. Review for possibility of security level increase
    - c. Additional Convictions
      - i. No access to telephone calls for two years
      - ii. Non-contact visits from immediate family only for two years
      - iii. Good Time Class Level IV for four years
      - iv. Review for possibility of security level increase
  2. In addition to enhanced sanctions, the following visiting restrictions will be imposed for offenders ~~who~~ are convicted at the disciplinary hearing or by acceptance of the penalty offer of a singular offense or multiple offenses within 10 years of a 122a, 122b, 122c, 122d, 122e, 122f, or a 198 a, 198b, 198c to these offenses. Visiting restrictions will run concurrently with enhanced sanctions.
    - a. First Conviction: Non-contact visits with immediate family only for six months
    - b. Second Conviction: Non-contact visits with immediate family only for one year
    - c. Third Conviction: Non-contact visits with immediate family only for two years

- d. Fourth Conviction and any additional convictions: Non-contact visits with immediate family only for 5 years
3. If an additional conviction occurs while the offender is still under enhanced sanctions and/ or visiting restriction for a previous conviction, the appropriate enhanced sanctions/restriction will be imposed from the date of the latest conviction. The offender will not be required to complete the previous enhanced sanctions/ restriction before the new one is imposed.
4. The Hearings Officer should calculate the time frame that the sanctions/ restriction will be in place and document such on the DOR, as well as making the appropriate notifications to suspend telephone and visitation privileges.
5. The Hearings Officer shall maintain a record of all offenders subject to enhanced sanctions and visiting restrictions. When an offender transfers, the Hearings Officer must notify the receiving facility of the offender's status.
6. It will be the responsibility of the offender to notify their counselor when sanctions/ restriction will be satisfied in order to have privileges restored.

## VII. DETERMINING THE PENALTY

- A. Only one penalty within the penalty range specified may be imposed for each violation, except for restitution (Penalty 8).
- B. The term MANDATORY requires the imposition of the penalty as indicated (no lesser penalty can be imposed).
- C. Mandatory penalties and penalties accepted under the Informal Resolution Process CANNOT BE SUSPENDED.
- D. 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 Chief of Corrections Operations.
- E. Penalty Range for Category I Offenses:
  - Offense codes that have a penalty range of 1-7 and 8, if applicable are as follows: 102, 110, 111a/b, 112, 120a/b/c, 121, 123, 124, 128, 129, 130, 131, 132, 134, 137a/b, 138, 139, 140a/b, 141, and 142.
  - Offense codes that have a penalty range of 6-7 are as follows: 125, 126, 127 and 197.
  - Offense codes that have a penalty range of 1-6 and 8 if applicable are as follows: 101b, 103, 104, 105a/b, 106a/b, 108a/b, 122a/b/c/d/e/f, 135, 136a, 136b.
- F. Penalty Range for Category II Offenses:
  - Penalties 1-5 may be imposed for Category II offenses.
  - Penalty 8 may be imposed for 218 and 236.
  - Penalties 1-4 are the only authorized penalties for *Informal Resolutions* – 200 Series Offense Codes.
- 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. *Disciplinary Offense Reports* for possession - Offenses 102, 110, 120 a/c, 122 a/b, 131, 132, 140 a/b, 142, 207, 208, 217, 224, 226, 236, 241a/b, 246a, 247 and similar offenses. An offender may be charged with a "possession..." infraction when the item they are charged with having in their possession is either found on their person or physically within their control or is found in an area to which they can reasonably control the access of other offenders.
  1. **Double Cell** - Each offender assigned to a double cell is individually responsible for anything found on their person or in their 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. **Dormitory** - 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 easily 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.
- B. Forfeiture of contraband or property - Offenses 102, 110, 120 a/c, 122 a/b, 131, 132, 140 a/b, 142, 207, 208, 217, 224, 226, 236, 241 a/b, 246a, 247, and similar offenses:
1. Items recovered that result in conviction of possession will be permanently confiscated from the convicted offender. If another offender is an accomplice of the convicted offender, the property will not be returned to that offender, if they transferred the property. Property can also 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, *Offender Property*, 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\*](#) 802\_F5, if appropriate. A *Notification of Confiscation of Property* will not be issued for items not authorized for the offender. Additionally, the *Description of Offense* can suffice as notification, when contraband is listed in that section.
- C. Unauthorized sale or transfer of personal property - Offense 227
- An additional sanction may be imposed for conviction of this offense, allowing the property to be permanently confiscated and disposed of in accordance with Operating Procedure 802.1, *Offender Property*, at completion of the disciplinary appeal process.
- D. Letters and documents for sex-related offense codes
- When a *Disciplinary Offense Report* is written on an offender for sex related offense codes (such as 106a-198, 106b-198, 233a, or 233b) based on a letter or other document written by the offender, the letter or other document shall be attached to the *Disciplinary Offense Report*.
- E. Failure to follow posted facility rules and regulations - Offense 243
- An additional sanction may be imposed as specified below:
1. Offenders who fail to use personal electronic equipment in accordance with posted institutional 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, *Offender Property*. The offender will not be permitted to purchase a replacement for a period of 6 months from the date of conviction.
- F. 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 Hearings Officer 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 Hearings Officer should also document the conditional suspension in the comment section on page 2 of the *Disciplinary Offense Report*.
- G. Loss of Privileges:

1. Commissary
  - a. When a penalty of loss of commissary privileges is imposed, the offender should be restricted from commissary purchases during the specified period.
  - b. 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*).
  - c. 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. Recreation and/or Extracurricular Activities
  - a. This penalty may not be used to deny an offender assigned to Restrictive Housing out-of-cell exercise as required by Operating Procedure 841.4, *Restrictive Housing*.
  - b. Offenders assessed this penalty will not be allowed to participate in recreational activities in their living unit or outside the living unit (gym, recreation yard, etc.).
3. Personal Electronic Devices

Offenders may have personal electronic devices removed and stored for the period specified by the penalty.
4. Telephone

This penalty does not apply to verified legal phone calls.
5. Visiting
  - a. This penalty shall not be used to deny attorney visits.
  - b. 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.
  - c. Calendar days are to be used when calculating the number of days on restriction.
6. Kiosk for Music and Non-music Audio File Downloads

This penalty shall not be used to deny offenders access to secure messages as required in Operating Procedure 803.1, *Offender Correspondence*.
7. Fine or Loss of Pay:
  - a. A fine of up to \$15.00 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 Hearings Officer should notify the Business Office of this penalty using [Notice of Restitution/Loss of Pay/Deduction of Fine](#) 861\_F3.
  - b. 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.
  - c. 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 their account.
  - d. When an offender refuses to work following imposition of this penalty, the offender should be charged with offense code 200, *Refusing to Work*, in accordance with this operating 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.



8. Cell/Quarters Restriction

- a. Offenders assigned to this status are confined to their individual cells/rooms/sleeping areas, with access to a sink and toilet.
- b. Offenders will only be allowed to leave their cell/sleeping area for meals, showers, visitation, mandated programming, work, educational classes, or scheduled religious services, after which they will return to their assigned cell/bed.
- c. Offenders will not be allowed to leave their cell/sleeping area for phone access, commissary, leisure time activities, recreation, kiosk privileges, etc. Cell/Quarters Restriction will continue until the offender's restriction time is completed.

9. Loss of Good Time

- a. 30 days of Good Conduct Time allowance is equivalent to 4.5 days of Earned Sentence Credits.
- b. The loss of good time should be imposed in increments of Good Conduct Time allowance.
- c. This will automatically be computed as loss of Good Conduct Time allowance or the equivalent Earned Sentence Credits as appropriate.
- d. Except for Offense 116a, 116b, 116c, and 119a, an offender cannot request restoration of Good Time.
  - i. 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.
  - ii. 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.
  - iii. The Regional Administrator shall review the Facility Unit Head recommendation and forward it to the Director of Offender Management Services.
  - iv. The offender shall be notified by the responsible office when Good Time is restored or if the restoration is disapproved.
  - v. An offender not satisfied with the Good Time restoration should address the concern through the Offender Grievance Procedure.

10. Restitution

- a. Costs to replace or repair institution-owned or institution-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.
- b. Fee amount - The assessed restitution will be the actual cost to repair or replace damaged or destroyed property (see Attachment 8, *State Property Replacement Cost - Sample*) and/or actual cost of medical treatment of the bodily injury.
- c. Payment Procedure:
  - i. Costs to be included
    - (a) Upon conviction of offenses 104, 110, 111a/b, 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.
    - (b) 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.

d. To determine restitution

- i. For property damage, the Hearings Officer will contact the Business Office to determine the actual repair or replacement cost. When this amount is unknown, the Hearings Officer will adjourn the hearing and reconvene as soon as the amount of restitution has been determined. The cost of restitution should not include labor costs when the institution makes the repairs. Any additional penalty may be imposed upon conviction for the offense.
- ii. For bodily injury, the Hearings Officer will contact the Business Office to determine the actual cost of treatment (outside vendors, institutional 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, the Hearings Officer will adjourn the hearing and reconvene as soon as the amount of restitution has been determined. The cost of restitution should not include labor costs for treatment provided by the institution. Any additional penalty may be imposed upon conviction for the offense.

e. The Hearings Officer 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 this *Notice* will be attached to all copies of the *Disciplinary Offense Report*.

f. The fee imposed will be charged to the offender's spend account. When there are insufficient funds to cover the imposed restitution, it 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 in accordance with Operating Procedure 802.2, *Offender Finances*.

#### H. Referrals for Criminal Prosecution

1. The offender disciplinary process, as described in this procedure, is an administrative process that is separate and independent from the criminal judicial system. 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 Hearings Officer or other staff involved in the disciplinary process shall 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.

#### I. Transferred Offenders

1. If the offender has been transferred to another institution before the Disciplinary Hearing, the institution where the offense occurred shall be responsible for conducting the hearing and completing the disciplinary process.
2. The accused offender will be offered the opportunity to be present at the hearing via speakerphone or video conferencing, unless the offender waived this right or refused to appear as documented on a [Refusal to Appear 861\\_F7](#).

3. The Hearings Officer at the institution housing the accused offender shall provide the offender with an advisor, if requested.
4. The Hearings Officers at both institutions shall coordinate to provide the accused offender with access to and processing of the *Reporting Officer Response Form*, *Witness Request Form*, and *Request for Documentary Evidence* as needed.
5. The Hearings Officers at both institutions shall coordinate the date and time that the hearing will take place.
6. Level I Appeals will be directed to the facility where the charge was generated.

#### IX. REPORTING OFFICER

- 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.
  1. 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 for review by the Officer in Charge (OIC). (4-4232)
  2. This report should be submitted during the shift when evidence supporting the *Disciplinary Offense Report* is discovered, or when the investigation is completed, 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 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. Institution 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 approximate time the offense occurred
  6. Location where the offense occurred
  7. Description of the offense using the recommended formula of 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; therefore, it is imperative*

*that the Reporting Officer write the Disciplinary Offense Report using their VACORIS account.*

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 the dismissal of the *Disciplinary Offense Report* after it has been submitted.
2. Initiate no further contact relative to the *Disciplinary Offense Report* with the accused offender, requested witnesses, the Hearings Officer, or anyone else involved with the disciplinary process before the hearing. This does not apply to contact by a representative of the institutional 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 institution other 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 Hearings Officer 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 Hearings Officer to conduct the Disciplinary Hearing.
3. Appeals of Category I or II offenses shall be directed to the Regional Administrator without the institutional level of appeal.

X. OFFICER-IN-CHARGE (OIC)

A. 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, 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 them. (4-4234)
2. Review the *Disciplinary Offense Report* for completeness and accuracy of the information.
  - a. Edit and correct the *Offense Report* for grammatical and spelling errors that do not change the meaning of the offense description. If the necessary corrections will affect the meaning of the offense, the OIC shall return the report to the Reporting Officer for revision.
  - b. Ensure the offense code title corresponds to the alleged offense description. If a different offense code title is more appropriate, return the *Disciplinary Offense Report* to the Reporting Officer for revision.
3. Before a *Disciplinary Offense Report* is served on an offender assigned to a Mental Health Unit, housed in Restrictive Housing for a mental health reason (e.g. suicide watch), or against an offender with a Mental Health Code of MH-2S, MH-3, or MH-4 or an offender who may be cognitively or mentally impaired in general population, the OIC will contact a QMHP to assess the following: (§115.78[c])
  - a. Clinical impressions related to the disciplinary offense

- b. Likelihood of understanding the acceptance of a *Penalty Offer*
  - c. Likelihood of effectively participating in the hearing
  - d. Potential impact of Restrictive Housing on offender's cognitive/ mental condition
  - e. Provide relevant comments and/ or recommendations
  - f. The OIC will ensure that an [Offender Mental Health Assessment](#) 861\_F2RH is completed and forwarded to the Hearings Officer along with the *Disciplinary Offense Report*.
4. Enter the Scheduled Hearing date in VACORIS
  5. Authorized Actions by OIC
    - a. Following review of the *Disciplinary Offense Report*, the Officer-in-Charge may take one or more of the following actions:
      - i. Not process the *Disciplinary Offense Report* due to lack of evidence or other irregularities and inform the offender. Document the explanation in the comment section in VACORIS.
      - ii. Prepare an *Informal Resolution* (see sample, Attachment 2), if appropriate, or prepare a *Penalty Offer* (see sample, Attachment 3) and arrange to serve the *Disciplinary Offense Report* on the offender.
      - iii. 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 when referral for criminal prosecution is warranted. (4-4231)
    - b. The OIC should not process the *Disciplinary Offense Report*, to include the *Penalty Offer* or *Informal Resolution*, if they are a witness to the offense.
    - c. The OIC who reviewed and approved the *Disciplinary Offense Report* shall not serve the *Offense Report* on the accused offender.
    - d. The OIC must not be the Institutional Reviewer.
- B. Informal Resolution (4-4230)
1. The offer of an *Informal Resolution* is not mandatory. The OIC may offer an *Informal Resolution* when the offender has been charge free and has not received an *Informal Resolution* for an offense for the past 12 months.
  2. The *Code of Offenses* specifically identifies the Category II Offenses eligible for an *Informal Resolution*. Eligible offenses are limited to Offense Codes 201, 205, 217, 222, 223, 226, 227, 228, and 243.
  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* in VACORIS utilizing *Disciplinary Penalties* for the authorized penalty range (1-4). The OIC will ensure that the offer of an *Informal Resolution* is 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. During the course of the Disciplinary Hearing process, if the Hearings Officer determines the accused offender qualifies for an *Informal Resolution*, the Hearings Officer can offer the *Informal Resolution* and determine the appropriate penalty within the authorized penalty range.
  6. 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*.
  7. 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 not be processed.
8. Any *Informal Resolution Agreement* accepted by an offender will be retained by the Hearings Officer 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 be uploaded to VACORIS.
9. An offender's refusal to accept an *Informal Resolution* will be documented on the *Informal Resolution Agreement, Part II*.
  - a. 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.
  - b. A copy of the declined *Informal Resolution Agreement* should be attached to the offense report to document the delay in service.

#### C. Penalty Offer

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* 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. Provide an interpreter/translator/advisor 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/advisor is not available at the institution, the OIC should contact the Hearings Officer for assistance.

#### D. Waiver of Hearing/Penalty Offer Process

1. An offender may waive the right to a Disciplinary Hearing by documenting acceptance of a *Penalty Offer*. (4-4237)
  - a. The offer of a penalty is mandatory but acceptance by the offender is voluntary.
  - b. 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.
3. The *Penalty Offer* will be served on the offender with the *Disciplinary Offense Report*, and the Serving Officer shall return the original *Penalty Offer* to the OIC, who will document the service of the *Penalty Offer* in VACORIS and forward it to the Hearings Officer.
4. The offender will be offered three choices during the *Penalty Offer* phase:
  - a. **Accept** - The offender may accept the offer, enter a guilty plea, and waive the right to a hearing.
  - b. **Decline** - The offender may decline the offer and will be scheduled for a disciplinary hearing.
  - c. **24 hours to decide** - The *Penalty Offer* is valid for only 24 hours from the time the charge is served.
    - i. If the offender opts to consider accepting the *Penalty Offer* within 24 hours, the Serving Officer should instruct the offender that any staff member can witness their decision at the bottom of the form and forward the signed copy immediately to the Hearings Officer.
    - ii. If the offender fails to make a decision in 24 hours, the offer will become void, and the offender will be scheduled for a disciplinary hearing.
    - iii. The offender will not have the option to accept the *Penalty Offer* prior to the start of the disciplinary hearing.
5. The offender's consideration of a *Penalty Offer* is not an admission of guilt, and the Hearings Officer shall not consider it when determining the offender's guilt or innocence, nor in the imposition of any

- penalty.
6. If the Penalty Offer exceeds the authorized penalty range, or if the penalty is found to be excessive, the Hearings Officer may reduce the penalty and document this on page 2 of the *Disciplinary Offense Report*. The Hearings Officer will provide the offender a copy of the revised *Penalty Offer* and the *Disciplinary Offense Report*, after the institutional review is completed.
  7. When the offender has documented acceptance and the Penalty Offer complies with procedure, the Hearings Officer shall:
    - a. Indicate voluntary acceptance of the *Penalty Offer* on page 2 of the *Disciplinary Offense Report* and write “**Accepted Penalty Offer**” in the *Reason for Decision* section.
    - b. Enter the penalty and any modification to the offense code on the *Disciplinary Offense Report* and in VACORIS
    - c. Sign the *Disciplinary Offense Report*
    - d. VACORIS will electronically forward the *Disciplinary Offense Report* for institutional review (4-4237)
  8. 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.
  9. A *Penalty Offer* accepted by the offender is not valid until reviewed and approved by the Hearings Officer.
  10. The OIC and Hearings Officer will not negotiate to reduce a disciplinary offense or offer a lesser penalty prior to the Disciplinary Hearing.

## XI. SERVING OFFICER

### 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* shall not occur between midnight and 6:00 AM or when the offender is in in-cell restraints, suicide watch, or stripped cell. The *Disciplinary Offense Report* should be served as soon as practicable after the offender is removed from restraints, watch, or stripped cell, but no later than midnight of the following working day. (4-4236)
2. An additional day is permitted before service if the offender is offered and does not accept an *Informal Resolution*.
3. The Hearings Officer, subject to review by the Facility Unit Head, must 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 institutional 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 will designate a trained security staff member (Corrections Officer Senior or above) to act as the Serving Officer for *Disciplinary Offense Reports* including:
  - a. Advising the offenders of their rights in the disciplinary process
  - b. Obtaining offenders’ signatures on the necessary forms
  - c. Witnessing that the *Disciplinary Offense Report* has been properly served
  - d. Returning the signed/witnessed documents to the OIC
2. Prior to serving *Disciplinary Offense Reports*, the Serving Officer must complete the required training,

usually conducted by the Hearings Officer. The Hearings Officer will ensure that the Serving Officer has a working knowledge of each of the offender's rights and is trained properly.

3. The Serving Officer shall meet with the offender (in some area of privacy, if possible) and verify the offender's identification card against the information on the *Disciplinary Offense Report*. The Serving Officer will read to the offender all the information on the *Disciplinary Offense Report*.
4. Access to an advisor during service of the charge
  - a. When an offender advisor is requested, the accused offender will not have a choice in the selection of an advisor. Each institution should maintain a list of offenders who are approved to serve as advisors.
  - b. When the accused offender desires a staff advisor, 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. The accused offender shall not be denied the assistance of an advisor, if one is requested.
  - c. Staff advisors may be utilized in lieu of offender advisors at any institution during a lockdown or when an offender advisor is unavailable.
  - d. Offenders housed in Security Level 5 prisons, or assigned to a Restrictive Housing Unit at any institution, 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.
5. 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. **Advisor** - The right to an offender or a staff advisor to assist the offender at the Disciplinary Hearing
2. **Witnesses** - The right to request witnesses and to request assistance from an advisor with completing the *Witness Request Form*
3. **Documentary Evidence** - The right to request Documentary Evidence and to request assistance from an advisor with completing the *Request for Documentary Evidence*
4. **Waiver of 24-Hour Notice** - 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. (4-4236)
5. **Appear at Hearing** - 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. **Question Reporting Officer** - The right to question the Reporting Officer either in person (including by speakerphone or video conferencing if not at the institution where the hearing is held) for a Category I offense or by submitting a *Reporting Officer Response Form* for a Category II offense. Reporting Officer's should not be contacted to testify via speakerphone, when off duty.
7. **Penalty Offer** - 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 on the *Penalty Offer Form*.
8. **Remain Silent** - The right to make a statement or the right to remain silent. Silence does not constitute an admission of guilt.
9. **Vacated** - The *Disciplinary Report* may be vacated to a higher, equivalent, or lesser offense code.
10. **Lesser Included Offenses** - You may be found guilty of a *Lesser-Included Offense*.



6. The Serving Officer shall request that the offender sign the *Disciplinary Offense Report* and witness the offender's signature.
  - a. Refusal to sign the *Disciplinary Offense Report* does not constitute a waiver of any of the offender's rights.
  - b. When the offender refuses to sign the *Disciplinary Offense Report*, the Serving Officer shall be required to sign twice, once to witness and verify that the rights were read to the accused offender and again in the designated area provided to document that the offender refused to sign.
7. 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 the Restrictive Housing Unit at the time the *Disciplinary Offense Report* is served, the Serving Officer will provide these forms to the offender, if requested.
8. When the offender requests the services of an advisor to assist in preparing the *Reporting Officer Response Form*, *Witness Request Form*, or the *Request for Documentary Evidence*, the Serving Officer/OIC must ensure that a staff or offender advisor is provided within 48 hours and document the name of the advisor for input into VACORIS.
9. The Serving Officer shall read the *Penalty Offer* to the offender and explain the offender's rights in accepting or refusing the *Penalty Offer*.
  - a. The *Penalty Offer* must be served after the *Disciplinary Offense Report*
  - b. The Serving Officer shall read all of the conditions provided in the *Penalty Offer* to the accused offender.
  - c. The offender shall indicate their decision regarding the *Penalty Offer*. The Serving Officer and the offender shall sign and date to acknowledge receipt of the *Penalty Offer*.
  - d. If the offender refuses to sign the *Penalty Offer*, the Serving Officer will document in designated area provided that the offender refused to sign.
  - e. The Serving Officer shall ensure that the *Penalty Offer* is delivered to the OIC.
10. The Serving Officer shall provide to the offender a copy of the *Disciplinary Offense Report* and the *Penalty Offer*.
11. The Serving Officer shall return the original *Disciplinary Offense Report* and *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 completed *Disciplinary Offense Report* and *Penalty Offer* to the Hearings Officer
12. The Serving Officer shall not serve the *Disciplinary Offense Report*, to include the *Penalty Offer*, if they are a witness to the offense. The OIC must be notified, and another trained security staff member will be designated as the Serving Officer.

## XII. 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 Hearings Officer or OIC shall appoint an advisor to assist the offender.
2. When the offender requests an advisor to assist preparing the *Reporting Officer Response Form*, *Witness Request Form*, or *Request for Documentary Evidence*, the Hearings Officer or OIC must ensure that a staff or offender advisor is provided within the required 48 hour time frame.

### B. Submit the *Reporting Officer Response Form*, *Witness Request Form*, and/or *Request for Documentary Evidence*, if needed, within 48 hours of the charge being served.

1. 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 Hearings Officer at the hearing

without submitting a *Request for Documentary Evidence*. The Hearings Officer will rule on authenticity and relevancy of the information provided by the offender.

2. Except for good cause shown, failure to submit the proper, completed *Requests* to the Hearings Officer within the time limit is a waiver of the offender's right to request reporting officer response, witnesses, or documentary evidence.

### XIII. TIME LIMITS RELATED TO DISCIPLINARY HEARING

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

1. The disciplinary 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. Institutions should ensure that if an offender receives a *Disciplinary Offense Report*, the hearing is held no sooner than midnight of the second working day and scheduled no later than seven working days after service of the *Disciplinary Offense Report*. Note: ACA Standard 4-4238 is not mandatory for institutions that are unable to comply. (4-4238)
3. 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*. Notice will be satisfied with documented hearing date on the *Disciplinary Offense Report*. (4-4238)
4. When a hearing must be rescheduled and the new date is within the authorized time limit, a *Notice of Postponement* (see sample, Attachment 4) must be given to the offender at least 24 hours prior to the rescheduled hearing date.
5. When the offender receives more than one *Disciplinary Offense Report*, the Hearings Officer will hear each *Disciplinary Offense Report* individually.
6. After a Disciplinary Hearing has started, the Hearings Officer may temporarily adjourn if necessary and reconvene the hearing at a later time or date.
  - a. Reconvening the hearing does not require 24-hour notice.
  - b. When the hearing does not reconvene on the same day, the offender will be notified at least one hour before the hearing reconvenes.

#### B. Authorized Continuances (4-4239)

1. An Authorized Continuance is required for a hearing not completed within 30 calendar days after the initial service of the *Disciplinary Offense Report*. The Hearings Officer shall notify the offender of the continuance by using *Notice of Continuance* (see sample, Attachment 5).
2. Authorized continuances are:
  - a. Reporting Officer, voluntary staff advisor, or witnesses are off duty or away from the institution on the date of the hearing
  - b. 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
  - c. The institution is awaiting determination of restitution amounts or results of blood or other laboratory tests
  - d. Unavailability of staff due to escape, disturbance, or natural disaster
  - e. Prolonged absence of Reporting Officer due to illness, temporary leave of absence, mandatory training or military leave
  - f. Escape of the accused offender
  - g. Awaiting the outcome of criminal charges as a result of this offense
  - h. To obtain an appropriate interpreter/translator/advisor to assist the offender
3. The Hearings Officer should hold the hearing within five working days after determining the continuance is no longer justified.

4. The Hearings Officer must obtain permission from the Manager of the Offender Discipline Unit to hold a Disciplinary Hearing after the 30 calendar day deadline for any reason other than an Authorized Continuance or suspension of this operating procedure due to an institutional emergency. The Hearings Officer must request permission for the continuance within three working days after the deadline for the hearing.

#### XIV. HEARINGS OFFICER PRIOR TO HEARING

##### A. For all offenses, the Hearings Officer shall:

1. Review any [Witness Request Form](#) 861\_F5 submitted by the accused offender. (4-4242)
  - a. The accused offender will complete the *Witness Request Form* and submit it to the Hearings Officer.
  - b. The Hearings Officer will:
    - i. Review and determine relevancy for each witness listed on the *Witness Request Form*, if deemed relevant a [Witness Statement](#) 861\_F15 will be forwarded to the witness
    - ii. Enter the scheduled hearing date and deadline for returning the *Witness Statement* to the Hearings Officer.
    - iii. Determine if the request was submitted within 48 hours to the Hearings Officer
    - iv. Determine if the request was incomplete and will not be processed
  - c. The Witness will write their statement, *on the Witness Statement* signing and dating the form before submitting to the Hearings Officer.
  - d. The Hearings Officer will review the returned *Witness Statement* and will have ~~four~~ two decision choices:
    - i. Statement is relevant to the offense, and the statement will be addressed in the Disciplinary Hearing.
    - ii. Statement is NOT relevant to the offense, and the statement will NOT be addressed in the Disciplinary Hearing.
  - e. Employees may not refuse to submit a *Witness Statement* when requested by the Hearings Officer.
  - f. If an offender witness refuses to be a witness for the accused offender, the offender will indicate their decision in the designated box on the *Witness Statement* and return the form to the Hearings Officer.
  - g. 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 Hearings Officer.
    - i. 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 institutional staff, the Hearings Officer should obtain the address and request a written statement from the witness.
    - ii. If necessary to mail *Witness Statements*, postage shall be at institutional expense. (changed 4/8/16)
    - iii. Witnesses who are visitors, volunteers, etc. may decline to submit a statement; failure to provide a statement by the deadline constitutes a waiver to testify at the hearing.
2. Review any [Request for Documentary Evidence](#) 861\_F6 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 Hearings Officer 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 Hearings Officer 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. Review questions submitted by the offender on the [Reporting Officer Response Form](#) 861\_F4. Make an appropriate ruling regarding relevancy and initial decision before forwarding to the Reporting Officer.
- B. For Category I offenses:
1. If a statement is relevant and non-repetitive, the Hearings Officer should ensure that the witness testifies in person at the hearing.
  2. The Hearings Officer will review multiple witness statements for repetitiveness. When witness statements are found repetitive, only one of the requested witnesses will be called to the hearing. If the Hearing Officer determines that a witness does not possess relevant knowledge of the *Disciplinary Offense Report*, the Hearings Officer will not call the witness to the hearing nor require a written statement.
  3. Staff may not decline to testify as witnesses, unless the Hearings Officer determines their testimony to be repetitive or not relevant.
  4. 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 in Restrictive Housing Units where the statement from an offender witness is sufficient.
  5. Offenders and non-DOC employees are not required to testify as witnesses against their will.
  6. When the witness is not available at the institution where the hearing is being conducted, the witness should testify by speakerphone, video conferencing, or submit a written statement to the Hearings Officer.
  7. Witnesses, who are considered a visitor, volunteer, etc., and whose testimony is relevant and non-repetitive, should testify voluntarily by speakerphone, or video conferencing unless there are valid security considerations. If such witness is unavailable at the scheduled hearing time, the witness' verbal testimony shall be waived and any written statement submitted by the witness should be entered into the record.
  8. For Category I offenses, the Reporting Officer shall testify in person. If the Reporting Officer is not assigned to the institution where the *Disciplinary Offense Report* is being heard, the testimony may be via speakerphone or video conferencing.
- C. For Category II offenses:
1. Requested witnesses (i.e. offenders, staff, or other witnesses) should provide a written statement on the *Witness Statement*. The witness' personal appearance at the hearing is not required. The Hearings Officer should read all witness statements into the record.
  2. Offenders and non-DOC employees should not be compelled to provide statements against their will.
  3. The Hearings Officer 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 Hearings Officer, may result in a dismissal of the *Disciplinary Offense Report*.
- D. At least one half hour prior to the hearing, the Hearings Officer should make available for review by the offender a copy of all *Requests for Documentary Evidence*, *Witness Request Forms*, *Witness Statements* with the exception of confidential witness statements, and the *Reporting Officer Response Form* including all *Requests* the Hearings Officer deemed not relevant. After reviewing the statements, the offender's

advisor should be permitted to confer with the accused offender 30 minutes prior to the offender's Disciplinary Hearing. *NOTE: The 30 minute 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.* (changed 4/8/16)

## XV. HEARINGS OFFICER

- A. The Hearings Officer shall ensure that the hearing is recorded. (4-4240)
1. The Hearings Officer should avoid any communication with the offender regarding details of the offense until the recording device is activated to ensure that all communications with the offender regarding the charge are recorded.
  2. If at any time the recorder is turned off during the hearing, the Hearings Officer should indicate this in the hearing and state the reason.
  3. When the recorder is re-activated, the Hearings Officer will state the time and should summarize the events that were not recorded, including the duration of time the recorder was off.
- B. When an offender waives the right or refuses to appear at a Disciplinary Hearing, the Hearings Officer should verify the reasons the offender is not present. (4-4241)
1. 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.
  2. When the offender refuses to appear at the hearing, the Hearings Officer shall do the following:
    - a. Have an employee with knowledge of the offender's refusal complete a [Refusal to Appear](#) 861\_F7. *NOTE: The Hearings Officer may serve as the employee receiving the offender's refusal, and the Hearings Officer may serve as the employee witnessing the offender's refusal. The offender will be asked to sign to acknowledge that they are refusing to participate in the Disciplinary Hearing. If the offender refuses to sign the Refusal to Appear form, the employee will check the designated block to document their refusal.*
    - b. Conduct a Disciplinary Hearing in the offender's absence
    - c. Read the *Disciplinary Offense Report* into the record
    - d. Not require the Reporting Officer to be present at the Disciplinary Hearing
    - e. Consider the offender's refusal to appear as an admission of guilt
- C. The Hearings Officer should conduct the hearing in four stages in accordance with the *Format for Disciplinary Hearings* (see Attachment 6).
1. The Hearings Officer will document the presence of the accused offender by asking the offender to state their name and number for the record. If the accused offender is not present at the Disciplinary Hearing, the Hearings Officer will document the reason for the offender's absence in the hearing recording and in VACORIS.
  2. If the offender requests the review of video/audio recording and/or physical evidence, the need to review such recordings or evidence is determined by the Hearings Officer.
    - a. The Hearings Officer may temporarily adjourn the hearing to review the video/audio recording and/or physical evidence, this review shall not occur prior to the Disciplinary Hearing.
    - b. When the hearing reconvenes, the Hearings Officer will summarize the relevant observations for the record.
    - c. Offenders may not request the presence of physical evidence (weapons, drugs, contraband, etc.) at the hearing and they will not have access to or be allowed to review video and audio recordings.
  3. During the course of the Disciplinary Hearing, if the Hearings Officer determines the accused offender qualifies for an *Informal Resolution*, the Hearings Officer can offer the *Informal Resolution* and determine the appropriate penalty within the authorized penalty range.
  4. The Hearings Officer may question the Reporting Officer, offender, and each witness as necessary to

- clarify facts surrounding the alleged offense.
5. The Hearings Officer shall remain objective and render a fair decision based solely on the facts presented at the hearing
  6. The Hearings Officer 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.
  7. The Hearings Officer must ensure orderly proceedings, including the removal of anyone attempting to disrupt the hearing.
    - a. If the accused offender is removed, the hearing shall continue in his/her absence.
    - b. The Hearings Officer must state in the hearing the reasons for the removal of any person from the hearing.
  8. The Hearings Officer may adjourn the hearing to allow the correction of a minor technical error
    - a. If, in the judgment of the Hearings Officer, 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.
    - b. If the error impaired the offender's ability to prepare a defense, the hearing should be adjourned for at least 48-hours to let the offender prepare a defense, including the opportunity to submit *Witness Request Forms, Request for Documentary Evidence* or *Reporting Officer Response Form*.
    - c. The offender may waive (on record) the adjournment, allowing the hearing to proceed with the revised *Disciplinary Offense Report*, noting the technical errors that were noted.
  9. The Hearings Officer may determine that the offender was charged with an incorrect offense and vacate the *Disciplinary Offense Report* to a more appropriate offense code which can be 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 Offense Report* may only be vacated before an actual decision is rendered.
    - c. The Hearings Officer will adjourn the Disciplinary Hearing and provide the offender with a copy of the *Disciplinary Offense Report* and any *Witness Request Forms, Request for Documentary Evidence* and the *Reporting Officer Response Form*.
    - d. The accused offender will be allowed five calendar days to consult with an advisor, if needed, and prepare a defense to include the opportunity to submit additional *Witness Request Forms* and *Request for Documentary Evidence*.
    - e. The offender may waive their right to additional preparation time and allow the Hearings Officer to amend the report and proceed with the hearing.
  10. The Hearings Officer may temporarily adjourn the hearing to summon a witness or to secure a document, if necessary. The summoned witness should personally appear at the hearing or testify by speakerphone.
  11. 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.
  12. The Hearings Officer 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 their version of the offense. (4-4242)
  13. The Hearings Officer shall make a fair decision.
    - a. The decision shall be based solely on information obtained in the hearing process, including staff reports/ testimony, the statements of the accused offender, and evidence derived from witnesses and documents. (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 and documented in the *Reason for Decision* section of the *Disciplinary Offense Report*.
14. The Hearings Officer will record all information required on the *Disciplinary Offense Report*, to include a clear summary of the evidence upon which a finding of guilt and subsequent penalty were based. (4-4245)
15. The Hearings Officer shall impose a penalty within the range authorized for each offense. The Hearings Officer has the authority to suspend any penalty imposed, with the exception of mandatory penalties.
16. At the conclusion of the hearing, the Hearings Officer must inform the offender of the right to appeal to the Facility Unit Head any finding of guilt or the penalty imposed and shall provide the offender with a copy of Attachment 7, *Disciplinary Appeal Instructions*.
17. The Hearings Officer 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*)
18. The Hearings Officer 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

#### D. Confidential Witnesses

1. The Hearings Officer must ensure that any offender or other person who may be subject to possible retaliation submits confidential testimony in the form of a statement with their identity protected throughout the disciplinary hearing process.
2. 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 Hearings Officer 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 Hearings Officer will excuse the offender, the offender's advisor, and all witnesses from the hearing so that the Reporting Officer, who is usually the Investigator, can read the confidential statement(s) into the record. (4-4241)
    - i. The Hearings Officer should state the reasons for the offender being excused from the hearing and document this explanation on the recording.
    - ii. When the offender returns to the hearing, the Reporting Officer or the Hearings Officer will summarize the statement(s) received to the extent that it will not reveal the identity of the informant(s).
    - iii. The Investigator's Office will maintain the original confidential statements for at least 4 years. The Hearings Officer will have access to the statements upon request but should not maintain a copy in their files. The confidential statements will not be uploaded to VACORIS.
  - d. 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).
  - e. 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 Hearings Officer 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.

#### XVI. INSTITUTIONAL REVIEW

- A. VACORIS will forward all *Disciplinary Offense Reports* to the Facility Unit Head, designee, or Unit Manager (if applicable), who shall complete the Institutional Review within 10 working days after completion of the hearing.
- B. The purpose of the review is to determine if proper procedures were followed and to ensure that the appropriate penalty was assessed. (4-4247)
- C. The reviewer shall have the same authority as listed under *Appeal to Facility Unit Head*.

#### XVII. COPY TO OFFENDER

- A. Within 15 working days after the Institutional Review is completed, the Hearings Officer or designee must provide to the offender a copy of any *Witness Request Forms*, *Witness Statements*, *Requests for Documentary Evidence*, the *Reporting Officer Response Form*, and the *Notice of Restitution/Loss of Pay/Deduction of Fine*, along with a 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. (4-4245)
- B. The offender shall sign the [Disciplinary Offense Report Receipt Log](#) 861\_F14, or other facility receipt document/ log book to confirm receipt of the completed copies.
  - 1. The Hearings Officer or designee shall witness receipt by the offender.
  - 2. When an offender has been transferred to a different facility, the Hearings Officer where the offense occurred shall forward the completed copies to the Hearings Officer at the institution housing the offender.
  - 3. The Hearings Officer or designee at the offender's assigned institution will ensure the *Disciplinary Offense Report Receipt Log* is signed by the offender prior to receiving their copies and forward the *Log* to the originating institution in a timely manner.
  - 4. The Hearings Officer must retain the original *Disciplinary Offense Report Receipt Log* for three years.
  - 5. The time period for appeal shall begin immediately upon documented receipt of copies by the offender.

#### XVIII. APPEAL PROCESS

- A. An offender has the right to appeal any finding of guilt, and/or degree of punishment imposed, to the Facility Unit Head where the offense occurred via the [Disciplinary Appeal](#) 861\_F8.
  - 1. Appeals shall comply with all specified time limits.
  - 2. An offender has the right to seek the assistance of an advisor in preparing a *Disciplinary Appeal*.
  - 3. When an offender has been transferred, the Hearings Officer at the offender's current institution will forward the offender's *Disciplinary Appeal* to the institution where the offense occurred for processing.
- 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 was a serious procedural error prior to an offender's admission of guilt or acceptance of the *Penalty Offer* or an error in the imposition of the penalty
- C. When the offender has accepted an *Informal Resolution*, no appeal is available.
- D. All appeals and supporting documents must be written in English; the Hearings Officer will provide interpreter assistance if needed.



E. Level I Appeal - Facility Unit Head

1. No appeal may be filed until the accused offender receives a copy of the completed *Disciplinary Offense Report* to include the review and approval of the Institutional Reviewer.
2. Appeals must be submitted on the [Disciplinary Appeal](#) 861\_F8 and the [Disciplinary Appeal Continuation](#) 861\_F17, if needed.
  - a. Appeals not submitted on the [Disciplinary Appeal](#) 861\_F8 or the [Disciplinary Appeal Continuation](#) 861\_F17 will be rejected and returned to the offender for resubmission.
  - b. Contentions/ issues must be factual and are limited to the space provided on the Appeal forms for each contention raised, appeals that do not comply with this restriction will be returned to the offender for resubmission.
3. Appeals must be submitted to the Facility Unit Head (Contract Liaison at any private correctional institution) within 15 calendar days following the offender's receipt of the copy after the completion of the institutional review. (4-4248)
4. 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.
5. The offender shall not attach any additional documents to the *Disciplinary Appeal* other than the *Disciplinary Appeal Continuation*. The completed *Disciplinary Offense Report*, *Witness Request Forms*, *Witness Statements*, the *Reporting Officer Response Form*, and the *Request for Documentary Evidence* are available for review in VACORIS.
6. Within 2 working days of receiving a *Disciplinary Appeal*, the office of the Facility Unit Head will sign and document the date received on the *Appeal* and in VACORIS. A copy of the receipted *Disciplinary Appeal* will be returned to the offender to confirm receipt.
7. The Facility Unit Head shall respond in writing to the offender within 30 working days of receipt of the offender's *Appeal*. The response shall address each issue or contention raised in the appeal. The disposition of the *Appeal* shall be entered in VACORIS and the *Appeal* response uploaded as an external document to the corresponding *Disciplinary Offense Report*. (4-4248)
8. The Facility Unit Head shall have the authority to:
  - a. **Approve** - Approve the action of the Hearings Officer
  - b. **Reduce Penalty** - 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 they respond to the offender's *Appeal*)
  - c. **Suspend Penalty** - 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.
  - d. **Re-Hearing** - 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 any 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 Hearings Officer.
  - e. **Order Re-Hearing to Higher, Equivalent or Lesser Offense** - 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.
  - f. **Reduce to a Lesser-Included Offense** - Reduce the *Disciplinary Offense Report* to a lesser-included offense, in accordance with *Lesser-included Offenses* section of this operating procedure.
  - g. **Refer to OIC for Informal Resolution** - Refer the *Disciplinary Offense Report* back to the OIC

for an *Informal Resolution*, if deemed appropriate.

- h. **Disapprove** - Disapprove the action of the Hearings Officer. This includes the authority to dismiss the charge against the accused offender.
9. 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, or restitution, the Facility Unit Head should notify the Business Office using the [Reimbursement of Fine/Pay/Restitution](#) 861\_F9.
  - a. If the *Disciplinary Offense Report* is dismissed, any funds deducted from the offender's account as a result of the penalty must be reimbursed and unpaid work hours paid to their account.
  - b. If the *Disciplinary Offense Report* is upheld but the penalty reduced or suspended, deductions from or reimbursements to the offender's account must be made in accordance with the penalty reduction.
  - c. 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 their account pending outcome of the rehearing.
10. The office of the Facility Unit Head shall enter the disposition of the *Disciplinary Appeal* and upload the *Appeal* response in VACORIS.

#### F. Level II Appeal - Regional Administrator

1. 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. The offender shall not attach any additional documents to the *Disciplinary Appeal* other than the [Disciplinary Appeal Continuation](#) 861\_F17.
  - a. Appeals not submitted on the [Disciplinary Appeal](#) 861\_F8 or the [Disciplinary Appeal Continuation](#) 861\_F17 will be rejected and returned to the offender for resubmission.
  - b. Contentions/ issues must be factual and are limited to the space provided on the Appeal forms for each contention raised, appeals that do not comply with this restriction will be returned to the offender for resubmission.
2. *Category II* convictions cannot be appealed to the Regional Administrator unless at least one of the following applies:
  - a. 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.
  - b. The Facility Unit Head has exceeded the time frame to respond to the offender's *Appeal*.
  - c. 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 in the Level II Appeal. 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.
  - d. The conviction is for offense codes 218 or 236 if the penalty imposed includes restitution (Penalty 8).
  - e. The Facility Unit Head is the Reporting Officer; the Regional Administrator is the first level of appeal.
3. New appeal issues will NOT be considered at this level.
  - a. 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.
  - b. 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.

4. Within 60 working days following receipt of an offender's *Appeal* the Regional Administrator must 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.
5. If the Regional Administrator dismisses, reduces, or suspends the penalty, or orders a re-hearing for an offense where a fine/loss of pay, or restitution 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.
6. Disciplinary Appeals Unit staff shall enter the disposition of the *Disciplinary Appeal* and upload the *Appeal* response into VACORIS.
7. Each Regional Office will be responsible for the completion of the appeal process in VACORIS by uploading the signed response and finalizing the action in VACORIS.

#### XIX. AFTER THE DISCIPLINARY HEARING

- A. The original *Disciplinary Offense Report*, and any *Penalty Offer*, *Witness Request Forms*, *Witness Statements*, *Request for Documentary Evidence*, *Notice of Continuance*, *Notice of Restitution/Loss of Pay/Deduction of Fine*, and/or *Disciplinary Appeal* or other relevant materials, to include the Disciplinary Hearing Recording, shall be maintained by the Hearings Officer for 3 years. (4-4240, 4-4245)
  1. All digital Disciplinary Hearing Recordings shall be entered into the Offender Disciplinary Unit shared folder database in a timely manner.
  2. All voice recordings will be labeled with the case number generated by VACORIS, no other labeling shall be used.
  3. Recorded hearings needed in any investigation, criminal proceeding, or other matters known to be under litigation, shall be saved to the digital storage folder in accordance with Operating Procedure 030.1, *Evidence Collection and Preservation*.
- B. Where the offender is found guilty, the *Disciplinary Offense Report* and all related documents shall be uploaded as external documents and attached to the corresponding *Disciplinary Offense Report* in VACORIS, after the Institutional Review. VACORIS will serve as the official offender disciplinary record. (4-4245)
- C. Where the offender is found not guilty or the offense is dismissed, the *Disciplinary Offense Report* shall NOT be uploaded into VACORIS. The *Disciplinary Offense Report* and all related documents shall be filed in the Hearings Office. (4-4246)
- D. If a *Disciplinary Offense Report* is disapproved, ordered reheard or changed to an *Informal Resolution* on review or appeal, all mention of the original conviction in the offender's record shall be removed by submitting an [Expungement of Offender Record Material](#) 050\_F13 in accordance with Operating Procedure 050.1, *Offender Records Management*. The conviction shall be removed by Court & Legal from the *Disciplinary Offense List* in VACORIS using the "overturned" function. (4-4246)
- 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.

#### XX. RE-HEARING OF DISCIPLINARY OFFENSE REPORT

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

- A. VACORIS will automatically create a new *Disciplinary Offense Report* whenever a re-hearing is ordered. The *Disciplinary Offense Report* must be reviewed and approved by the OIC (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 Hearings Officer.
  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 Hearings Officer 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 any 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.

XXI. 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 there is insufficient evidence 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 Hearings Officer, 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 Hearings Officer 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. The Facility Unit Head or designee shall have the authority to reduce an offense code where warranted during the institutional review of the *Disciplinary Offense Report* or on appeal. 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 institution, and to the Court and Legal Unit in the form of a memorandum.
- F. This authority does not prohibit the Hearings Officer from vacating the *Disciplinary Offense Report* to a more appropriate offense code which may be 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	111a, 111b, 238
105a - Aggravated Assault upon a non-offender	105b, 124, 239a
105b - Aggravated Assault upon an offender	105a, 124, 218, 239b
106a or 106b - Sexual Assault upon or making forcible sexual advances	106a, 106b, 137a, 137b, 209, 233a, 233b
108a or 108b - Seizing or holding hostage or in any manner unlawfully detaining	105a or 105b, 108a, 108b, 239a, 239b
110 - Possession of Corrections Officer's or other corrections employee's uniform or parts thereof	208, 224
111a - Intentionally destroying, altering, damaging, or defacing state or any person's property	120b, 237a, 237b
111b - Stealing state or any person's property	120a/c, 208, 217, 224, 227
112 - Demanding or receiving anything of value under threat of any kind, including extortion or blackmail	123, 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	111a, 111b, 120a, 120b, 120c, 224
122a - Possession of unauthorized or un-prescribed drugs 122b - Possession of paraphernalia for administration of drugs	111b, 122a, 122b, 224
123 - Commission of fraud, bribery, or other illegal activity by any means of communication	227, 228
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	111b, 224, 208
132 - Possession/Construction of a device designed to deceive Staff, to include, but not limited to, the Fabrication of a Dummy	102, 111a, 111b, 208, 224
136a - Threats or Intimidation of Public Officials	136b, 212
136b - Threats or intimidation of a member of the general public	136a, 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	140a, 140b, 224
201a - Disobeying an order 201b - Disobeying an order to move to general population	201b 201a
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
233a - Making sexual advances, either physical, verbal in nature, or in writing toward a non-offender 233b - Making sexual advances, either physical, verbal in nature, or in writing toward an offender	222
239a - Simple Assault upon a non-offender 239b - Simple Assault upon an offender	218, 239a, 239b

XXII. REFERENCES

- Operating Procedure 030.1, *Evidence Collection and Preservation*
- Operating Procedure 050.1, *Offender Records Management*
- Operating Procedure 802.1, *Offender Property*
- Operating Procedure 802.2, *Offender Finances*
- Operating Procedure 803.1, *Offender Correspondence*
- Operating Procedure 830.1, *Facility Classification Management*
- Operating Procedure 841.2, *Offender Work Programs*
- Operating Procedure 841.4, *Restrictive Housing*
- Operating Procedure 841.5, *Offender Alcohol and Other Drug Testing and Treatment Services*
- Operating Procedure 851.1, *Visiting Privileges*
- Operating Procedure 864.1, *Offender Grooming and Hygiene*

XXIII. FORM CITATIONS

- [Expungement of Offender Record Material](#) 050\_F13
- [Notification of Confiscation of Property](#) 802\_F5
- [Receipt of Offender Discipline Procedure](#) 861\_F1RH
- [Offender Mental Health Assessment](#) 861\_F2RH
- [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

[Disciplinary Offense Report Receipt Log](#) 861\_F14

[Witness Statement](#) 861\_F15

[Acknowledgement of Offender Discipline Procedure](#) 861\_F16RH

[Disciplinary Appeal Continuation](#) 861\_F17

XXIV. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in April 2017 and no changes are needed at this time.*

*The office of primary responsibility reviewed this operating procedure in April 2018 and necessary changes are being drafted.*

*Signature Copy on File*

**3/30/16**

A. David Robinson, Chief of Corrections Operations

Date