



Operating Procedure

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Amended		Operating Level	Department
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Subject	STANDARDS OF CONDUCT		
ACA/PREA Standards	4-4048; 4-ACRS-7E-07, 4-ACRS-7E-10; 4-APPFS-3E-02, 4-APPFS-3E-16, 4-APPFS-3E-17; 2-CO-1C-01, 2-CO-1C-04; 1-CTA-1C-01; §115.17, §115.76, §115.217, §115.276		
Incarcerated Offender Access Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Attachments Yes <input checked="" type="checkbox"/> #2 No <input type="checkbox"/>	Office of Primary Responsibility Director of Human Resources

I. PURPOSE

The goal of this operating procedure is to help employees become fully contributing members of the Department of Corrections through application of the Commonwealth's Standards of Conduct and disciplinary process to fairly, consistently, and objectively address unacceptable behavior, conduct, and related employment problems when the conduct impacts an employee's ability to do their job, or influences overall effectiveness of the DOC.

II. COMPLIANCE

This operating procedure applies to all units 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

Correctional Officer Procedural Guarantee Act - A Virginia law that provides that eligible Corrections Officers of all ranks who may be or have been transferred, suspended without pay, demoted, or dismissed for unacceptable behaviors with a process for a review of the disciplinary action. (COV §9.1-508 et seq.)

Corrective Action - Any intervening informal or formal counseling action taken by management to address employment problems, such as unacceptable performance, behavior, or conduct

Counseling - An informal (verbal) or formal (written) intervention that conveys that an employee's conduct or performance was improper and must be corrected. Formal counseling discussions must be documented in a written memorandum. Counseling that is related to work performance may be included in an interim performance evaluation or a Notice of Improvement Needed/ Substandard Performance 145_F5 (see Operating Procedure 145.2, *Employee Performance Management*).

Crime of Domestic Violence - An offense that (i) is a misdemeanor or felony under federal or state law; and (ii) has as an element, the use or attempted use of physical force or the threatened use of a deadly weapon committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

Disciplinary Action - A formal action taken to address unacceptable performance, behavior, or misconduct; disciplinary actions include the issuance of *Written Notices*, which may be accompanied by additional actions, such as transfer to an equivalent position in a different work area; reduced responsibilities within the current role and a disciplinary salary action; transfer with reduced responsibilities and a disciplinary salary action; demotion; and termination.

Disciplinary Demotion - A management initiated assignment of an employee to the same or a different position in the same or lower Pay Band with fewer job responsibilities that must result in a minimum of a 5% reduction in base salary; in no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action.

Disciplinary Review - A process that involves reviewing the facts and circumstances surrounding

misconduct or unacceptable performance in order to determine if disciplinary action is warranted

Disciplinary Salary Action - Employees may be retained in their current positions and have their duties reduced, be demoted, or transferred to positions in the same or lower pay band with less job responsibilities in lieu of termination; the employee's salary in each case must be reduced by at least 5%. In no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action. DOC has the authority to transfer employees to equivalent positions as part of the disciplinary process without a reduction in salary.

Disciplinary Suspension - A disciplinary action that places an employee in a temporary status away from the workplace without pay and duties; for purposes of suspensions without pay, a workday is comprised of 8 hours for non-exempt employees. For exempt employees, a workday is comprised of the assigned hours scheduled to work on a normal day.

Due Process - Prior to any disciplinary actions, employees must be given written notification of an offense, an explanation of the agency's evidence in support of the charge, the disciplinary actions that may be taken, and a reasonable opportunity to respond. The DOC must provide a clear and descriptive explanation of the offense in a manner that ensures that the employee understands the facts presented and will be able to present mitigating factors or denial of the charge.

Eligible Corrections Officer - Duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff of all ranks (Corrections Officer through Lieutenant Colonel) are eligible under the *Correctional Officer Procedural Guarantee Act* (COV §9.1-508 et seq.) for review of a disciplinary action that may result in transfer, suspension without pay, demotion, or termination.

Employee Assistance Program (EAP) - A confidential assessment, referral, and short-term problem-solving service available to eligible employees and family members; enrollment in the EAP is automatic as part of the health plan coverage. See Operating Procedure 150.5, *Employee Assistance Program*.

Good Cause - Adequate or substantial grounds or reason to take a certain action

Interim Evaluation - A performance evaluation completed during the performance cycle to document and assess an employee's progress toward achieving the performance plan using [Interim Employee Evaluation 145_F3](#) (see Operating Procedure 145.2, *Employee Performance Management*); interim Performance Evaluations are not considered "official" documents and are retained in the supervisor's confidential file for use in constructing the annual performance evaluation. Counseling, particularly when related to work performance, may be part of an interim evaluation.

Offender - An inmate, probationer, parolee or post release supervisee or other person placed under the supervision (conditional release) or investigation of the Department of Corrections

Organizational Unit - A DOC unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual headquarters unit (i.e. Human Resources, Offender Management, Internal Audit)

Pre-Disciplinary Leave - Leave with pay to be used when disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent because their continued presence (i) may be harmful to the employee, other employees, clients, or offenders; (ii) makes it impossible for the DOC to conduct business; (iii) may hamper an internal investigation into their alleged misconduct; (iv) may hamper an investigation being conducted by law enforcement; or (v) may constitute negligence in regard to the agency's duties to the public or other employees.

Progressive Discipline - A series of increasingly severe measures or penalties utilized to provide feedback to employees so that they can correct conduct, behavior, or performance problems; it is most successful when provided in a way that helps an employee become a fully contributing member of the organization. Progressive discipline also enables agencies to terminate an employee who is unable or unwilling to improve their workplace conduct or job performance fairly and with reliable documentation.

Reasonable Opportunity to Respond - A time period allowed for an employee to respond to the charges after receiving notification of pre-disciplinary or disciplinary action that should not be based solely on the

quantity of time provided but also on the nature of the offense

Resignation in Lieu of Termination - In certain situations, employees subject to termination may be afforded the opportunity to resign from their position in lieu of termination.

Retaliation - Any adverse, overt or covert action taken by an employer against an employee, or former employee, who has participated in a protected activity, i.e., exercised their rights under anti-discrimination laws, reported or participated in an investigation into violation of the sexual abuse/harassment policies, filed a grievance, or assisted someone in exercising their rights, where there is established a causal connection between the protected activity and the adverse action. Types of retaliation include, but are not limited to employment actions such as termination, refusal to hire, denial of promotion, threats, harassment, intimidation, unjustified negative evaluations, unjustified negative references, increased surveillance, etc.

Sexual Misconduct - Any behavior or act of a sexual nature directed toward an offender or an employee by an employee, volunteer, contractor, visitor, or agency representative; this includes but is not limited to acts or attempts to commit such acts of sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity, and unreasonable invasion of privacy. Sexual misconduct includes but is not limited to conversations or correspondence that suggests a sexual relationship between an offender and any party mentioned above. A violation of Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, relating to Consensual Personal Relationships/Sexual Harassment in the Workplace may also constitute sexual misconduct.

Standards of Conduct - Values, standards, expectations, and rules of work performance and behavior that guide the decisions, procedures, and operations of the DOC in a way that contributes a safe and positive work environment; comply with all applicable laws and regulations; promote the welfare of the Commonwealth, its employees, offenders, and other stakeholders; and respect the rights of all constituents affected by DOC operations

Termination - An involuntary, disciplinary removal action that separates an employee from the DOC

Unacceptable Conduct/Misconduct - Wrongful, improper, or unlawful conduct or unacceptable employee behavior inconsistent with standards of the Commonwealth or DOC for which specific corrective or disciplinary action is warranted

Workweek - A fixed period of seven consecutive 24-hour periods established by the employer for each employee; it may begin on any day of the week and at any hour of the day and it need not coincide with the calendar week. Full-time employees normally work a five-day, 40-hour schedule during a workweek.

Written Notice - Official notice to an employee of formal disciplinary action that briefly describes the nature of the offense and supporting evidence, any disciplinary action(s) taken in addition to issuing the *Written Notice*, and circumstances that support the disciplinary action taken, including mitigating and aggravating factors

IV. STANDARDS OF CONDUCT

A. Applicability, Expectations

1. This operating procedure addressing Standards of Conduct and disciplinary process applies to Virginia Correctional Enterprises (VCE) employees and positions covered by the *Virginia Personnel Act*.
2. All employees should be made aware of this operating procedure in initial orientation and should have access to it through the Virtual Library and/or locations where operating procedure hard copies are maintained in the unit. (4-4048, 4-ACRS-7E-07; 4-APPFS-3E-02; 2-CO-1C-01; 1-CTA-1C-01)
3. All employees must comply with all applicable governmental laws, rules and regulations, Commonwealth policies, DOC operating procedures, and the behaviors and performance expectations outlined herein.
4. The forms and procedures associated with the standards outlined in this procedure should not be used for wage employees, probationary employees, and employees expressly excluded from the *Virginia Personnel Act* (except Virginia Correctional Enterprises (VCE)); however, supervisors may wish to refer to the standards of conduct offenses as guidelines for evaluating these employees' behavior.

5. The standards of conduct outlined in this operating procedure are designed to protect the well-being and rights of all employees, to assure safe, efficient government operations, assure compliance with public law, maintain high standards of work performance and professional conduct, and exemplify the mission and values of the DOC.
6. The purpose of the Standards of Conduct is to: (2-CO-1C-04)
 - a. Establish behaviors and performance expectations to advance the mission, goals, vision, and values of the Department of Corrections
 - b. Establish a fair and objective process for promptly correcting unacceptable conduct or work performance
 - c. Ensure disciplinary actions are founded on the principles of due process
 - d. Distinguish between less serious and more serious actions of misconduct, and provide a range of corrective and disciplinary actions that can be applied based on the nature and history of the misconduct or unacceptable performance
 - e. Help employees become fully contributing members of the DOC
 - f. Enable the DOC to fairly and effectively discipline and/or terminate employees whose conduct and/or performance does not improve or where the misconduct and/or unacceptable performance is of such a serious nature that a first offense warrants termination
7. Personal Conduct - DOC staff members are employed to fulfill certain duties and fulfill expectations that support the mission and values of the DOC and are expected to conduct themselves in a manner deserving of public trust. The following list is not all-inclusive but is intended to illustrate the minimum expectations for acceptable workplace conduct and performance. Employees who contribute to the success of the DOC mission:
 - a. Report to work as scheduled, seek approval from the employee's supervisors in advance for any changes to the established work schedule, including the use of leave and late or early arrivals and departures, and report hours of work and leave accurately
 - b. Devote full effort to job responsibilities during work hours; meet or exceed established job performance expectations
 - c. Obtain approval from supervisor prior to working overtime, if non-exempt from the Fair Labor Standards Act (FLSA)
 - d. Utilize leave and related employee benefits in the manner for which they were intended
 - e. Obtain approval from supervisor prior to accepting outside employment
 - f. Perform assigned duties and responsibilities with the highest degree of public trust
 - g. Maintain the qualifications, certification, licensure, and/or training requirements identified for their positions and take advantage of available resources and learning opportunities and request additional instruction when needed
 - h. Work cooperatively to achieve work unit and agency goals and objectives
 - i. Create and maintain a Healing Environment within the DOC by treating coworkers, supervisors, managers, subordinates, offenders, and other stakeholders with respect, courtesy, dignity, and professionalism; be open to communication and collaboration with colleagues in a manner that generates trust and teamwork
 - j. Avoid conflicts of interest, including having business, financial or personal (non-monetary) interests, relationships, or activities that could conflict with the DOC and our mission, undermine one's ability to perform their job duties, or make objective decisions related to work
 - k. Support efforts that ensure a safe and healthy work environment
 - l. Resolve work-related issues and disputes in a professional and constructive manner and through established business processes
 - m. Conduct themselves at all times in a manner that supports the mission of the DOC and the performance of their duties

- n. Use state equipment, time, and resources judiciously and as authorized
- o. Make work-related decisions and take actions that are in the best interest of the DOC
- p. Comply with the letter and spirit of all state and DOC policies and procedures, the Conflict of Interest Act, and Commonwealth and Federal laws and regulations
- q. Report to management any circumstances or concerns that may affect satisfactory work performance or undermine the public safety mission of the DOC, including any inappropriate (fraudulent, illegal, unethical) activities of other employees

B. General Supervisory Principles

1. Supervisors should assist employees in understanding their work assignments, the Standards of Conduct, and the goals, objectives and performance expectations of their job duties.
2. Supervisors are encouraged to maintain an open door policy, allow employees time to improve unsatisfactory performance, correct minor behavioral issues, and provide effective coaching and frequent feedback (both positive and constructive).
3. Supervisors should be aware of inadequate or unsatisfactory work performance or behavior of employees and attempt to correct the performance or behavior immediately.
4. Supervisors are responsible for coaching, resolving issues, and providing assistance including training for employees with their unit, as well as serving as a link between subordinates and upper management.
5. Corrective and disciplinary actions, whether informal or formal, should be applied consistency while considering the specific circumstances such as the nature, consequences or potential consequences of the employee's conduct or performance, surrounding circumstances, and any mitigating or aggravating factors.
6. Before the need for, or in addition to disciplinary or corrective action, supervisors may refer employees to the Employee Assistance Program (EAP) or other professional assistance program (for employees who do not participate in the state's healthcare plan) as appropriate if an employee's behavior and/or performance may be caused or impacted by problems affecting personal and work life. Referral to the Employee Assistance Program shall not be considered a substitute for any corrective or disciplinary action imposed for the commission of an offense. (See Operating Procedure 150.5, *Employee Assistance Program*).

C. Types of Corrective and Disciplinary Actions (4-APPFS-3E-16)

1. The DOC supports the use of progressive discipline applied fairly and consistently to address employee behavior, conduct, or performance incompatible with the Standards of Conduct, performance expectations, and DOC procedures and training.
2. Supervisors are encouraged to utilize available resources and performance management tools (see Operating Procedure 145.2, *Employee Performance Management*) and provide employees with sufficient time and opportunity to improve unsatisfactory performance and behavior. However, management has the authority to fairly and effectively discipline or terminate employees whose conduct or performance does not improve, or where the misconduct or unacceptable performance is of such a serious nature that a first offense warrants termination.
3. Depending on the severity of the situation, corrective or disciplinary action may be accomplished through informal or formal means.
4. Informal corrective action may take the form of a verbal counseling session or issuance of a counseling memorandum or letter.
5. Formal disciplinary action is accomplished by the issuance of a *Written Notice*.
6. Counseling
 - a. Counseling refers to an informal (verbal) discussion with the employee or formal (written) communication about a work performance or behavior problem that if not corrected, could lead to

disciplinary action.

- b. While minor performance and behavioral problems can be typically resolved through a counseling process as the first level of corrective action, counseling is not a prerequisite to taking formal disciplinary action.
- c. Employees are not permitted to have legal representation in counseling sessions.
- d. A counseling session should:
 - i. Be conducted promptly
 - ii. Be held in private
 - iii. Include a discussion between the supervisor and employee to clarify the source of concern and course of action for improving performance or behavior.
 - iv. Review or establish short-term objectives and long-term goals for the employee's behavior.
 - v. Clarify, to the employee, the supervisor's expectations
 - vi. Direct corrective actions to the employees' behavior and not personality
- e. A counseling session may be followed by a memorandum or letter documenting the contents of the conversation.
- f. Documentation of counseling sessions, both formal and informal, should be maintained in the supervisor's file, not in the employee's official personnel file except as backup to subsequent *Written Notices*.
- g. Formal counseling sessions are documented by letter or memorandum with a copy given to the employee.

7. *Written Notices*

- a. Disciplinary action refers to a formal disciplinary measure based on a violation of established Standards of Conduct that includes discussion of the offense, an explanation of the evidence, due process, and issuance of a [Written Notice](#) 135_F1.
- b. A *Written Notice* may be accompanied by additional actions including a performance improvement plan (see Operating Procedure 145.2, *Employee Performance Management*); transfer to an equivalent position in a different work area; reduced responsibilities within the current role and a disciplinary salary action; transfer with reduced responsibilities and a disciplinary salary action; demotion; and termination.
- c. All *Written Notices* shall include a reference to the employee's right to initiate a grievance and an advisory statement that an active *Written Notice* may affect the employee's overall annual performance evaluation rating.
- d. Eligible Corrections Officers of all ranks who receive a *Written Notice* with transfer, suspension without pay, demotion, or termination shall be given written notification of their right to initiate a grievance or request a hearing under the *Correctional Officer Procedural Guarantee Act (Act)* ([COV](#) §9.1-508 et seq.).
 - i. All duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff of all ranks (Corrections Officer through Lieutenant Colonel) are eligible to request a hearing under the *Act*.
 - ii. A copy of Operating Procedure 145.4, *Employee Grievances*, including instructions on how to proceed to a hearing under the *Act*, shall be provided to Corrections Officers upon their request.

D. Disciplinary Investigations

- 1. Investigations should assemble the following information:
 - a. Summary of reason for investigation; how issue came to attention of supervisor/manager
 - b. Type of incident
 - c. Time, date, and place of the incident
 - d. Individuals involved in the incident
 - e. Witnesses of the incident (both management and employee) and their reports (any additional statements; signed and dated)

- f. Applicable offense or rule violation - How?
 - g. Employee's explanation of the incident (written statement; signed and dated)
 - h. Extenuating circumstances (e.g. unclear orders or instructions)
 - i. What provoked the incident?
 - j. Unit's past action in similar cases (precedent)
 - k. Past record of the employee
2. Employees are expected to cooperate fully during the course of an investigation and respond with truthful and complete answers to all proper questions of official interest and provide the agency representative with any and all information or evidence that may pertain to the specific matter under investigation. Failure to do so could result in disciplinary action up to and including termination.
 3. The Special Investigations Unit will direct any investigation that focuses on criminal matters (see Operating Procedure 030.4, *Special Investigations Unit*).
 4. Interviews of non-criminal allegations should be conducted with the target of the investigation while the employee is in an active work status, unless approved by the Human Resources Director or designee.
 5. Investigations focusing on non-criminal matters that could lead to a Corrections Officer being issued a *Written Notice* with transfer, suspension without pay, demotion, or termination will be conducted in accordance with the *Correctional Officer Procedural Guarantee Act* (COV §9.1-508 et seq.).
 - a. Any questioning shall take place at a reasonable time and place, preferably when the Corrections Officer under investigation is on duty.
 - b. Prior to any questioning, eligible Corrections Officers under investigation shall be presented the [Correctional Officer Procedural Guarantee Investigation Notice](#) 135_F8 or [Internal Audit Unit Notice of Investigation](#) 030_F23 to inform the Officer of the following:
 - i. The name and job title of the investigator
 - ii. The name and job title of any other individual to be present during the questioning
 - iii. The nature of the investigation
- E. Pre-Disciplinary Leave with Pay - Used when an employee is under investigation and/or disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent. There are two categories of Pre-Disciplinary Leave with Pay:
1. Immediate Removal from the Workplace for Disciplinary Reviews or Administrative Investigations
 - a. Management may immediately remove an employee from the workplace without providing advance notification when the employee's continued presence:
 - i. May be harmful to the employee, other employees, clients, offenders, and/or patients
 - ii. Makes it impossible for the agency to conduct business
 - iii. May hamper an internal investigation into the employee's alleged misconduct, may hamper an investigation being conducted by law enforcement
 - iv. May constitute negligence in regard to the agency's duties to the public and/or other employees
 - b. An employee should be immediately advised of the reason for their removal from the workplace.
 - i. As soon as possible after an employee's removal from the work area for reasons stated above, management must provide the employee with written notification of the intended corrective action and a summary or description of the evidence of the offense for which the corrective action is being contemplated, and when applicable, that an administrative investigation of the employee's conduct is underway.
 - ii. Employees must be provided a reasonable opportunity to respond before taking any formal corrective action.
 - c. Employees may be placed on Pre-Disciplinary Leave for up to 15 workdays (maximum of 120 hours for non-exempt employees), during which time a disciplinary review or administrative investigation should be conducted. If the disciplinary review or administrative investigation is not

completed within fifteen workdays the DOC must:

- i. Impose disciplinary action in accordance with this operating procedure
 - ii. Permit the employee to return to work pending the outcome of review or investigation
 - iii. Extend Pre-Disciplinary Leave with Pay for a specified period of time as determined by the Director. This authority has been delegated to the Human Resources Director.
- d. Written notification of Pre-Disciplinary Leave with Pay pending a disciplinary review or agency administrative investigation should be by memorandum, not by the *Written Notice*.
2. Removal from the Workplace for Alleged Criminal Conduct
- a. Management may also immediately remove an employee from the workplace without providing advance notification when they are under investigation for alleged criminal conduct that is related to the nature of their job or to the DOC mission. Management should consider the employee's ability to perform their assigned responsibilities and if the employee's continued presence:
 - i. May constitute negligence in regard to DOC duties to the public or other employees
 - ii. May be harmful to the employee, other employees, clients, offenders, and/or patients
 - iii. Makes it impossible for the agency to conduct business
 - iv. May hamper the investigation by law enforcement
 - b. An employee who is placed on Pre-Disciplinary Leave with Pay because of alleged criminal conduct that impacts the employee's ability to do their job or it is the determination of the Unit Head that the employee may represent a risk to the DOC shall be continued on leave with pay until either:
 - i. The employee is formally charged with a criminal offense by authorities or entities outside of the DOC, such as by arrest or indictment, or
 - ii. The criminal investigation is concluded without any formal charges being made.
 - c. Any employee who is formally charged with a criminal offense (that is related to the nature of their job or to the DOC mission) by outside authorities shall be immediately suspended without pay for a period not to exceed 90 calendar days. (See Attachment 1, *Guidance on Criminal Convictions*) The DOC has the option to allow an employee to charge accrued annual, overtime, compensatory, or family personal leave to this period of suspension.
 - d. If the nature of the charges allow, and at the conclusion of the 90 day period there has been no resolution of the criminal charge, the employee must be placed on or returned to Pre-Disciplinary Leave with Pay (for a maximum of 15 days total for this action unless an extension is approved by the Human Resource Director).
 - i. At the conclusion of the Pre-Disciplinary Leave period, a decision regarding employment status must be made pending resolution of the charge.
 - ii. If employment is maintained and the criminal investigation is concluded without any formal charges being made, the charge is resolved without the employee being convicted, and there is not sufficient evidence to proceed administratively with disciplinary action, the DOC shall normally return the employee to active status. Leave applied to the period of suspension without pay, lost pay, and health benefits or refunds for the State portion of any health insurance premiums paid by the employee to continue coverage during the suspension must be restored.
 - e. Regardless of the status of any criminal investigation or process, the DOC may determine at any time to institute disciplinary charges against the employee under the Standards of Conduct, up to and including termination, based upon the facts or evidence of conduct that prompted the criminal investigation or process.

F. Criminal Charges and Convictions

1. Appropriate disciplinary action for employees who are facing criminal charges or convictions (both felonies and misdemeanors) must be assessed as to the employee's position, level of responsibility, duties and responsibilities, and ability to perform the functions of the position including the ability to carry out all job requirements, the nature of the conviction, the impact the conviction has on the DOC

and its employees, the public, and its perception of the DOC and other mitigating factors including prior discipline, length of service, and performance.

2. In accordance with Operating Procedure 040.1, *Litigation*, employees charged with or convicted of a criminal offense or a moving traffic violation shall inform their Organizational Unit Head immediately if received during normal working hours, or the next work day if received during non-working hours. Notification shall be documented on a [Criminal Offense/Moving Traffic Violation Notification 040_F1](#).
3. Charges or situations that involve crimes against persons are subject to a disciplinary charge that could include termination.
4. A conviction is not necessary to proceed with a disciplinary action. The Unit Head must determine whether the evidence is sufficient to have an impact on the DOC, its employees, and the public and its perception of the DOC.
5. Attachment 1, *Guidance on Criminal Convictions*, provides guidance for disciplinary actions related to driving under the influence and other criminal charges.

G. Due Process (4-APPFS-3E-16)

1. Prior to the issuance of any *Written Notice*, which may be accompanied by a transfer to an equivalent position in a different work area; reduced responsibilities within the current role and a disciplinary salary action; transfer with reduced responsibilities and a disciplinary salary action; demotion; and termination, an employee shall be given advance written notification ([Administration of Employee Discipline: Due Process Notification 135_F9](#)) of discipline and a reasonable opportunity to respond to the charges.
2. The pre-disciplinary notice and reasonable opportunity to respond to the charge(s) do not need to be elaborate, resolve the merits of the discipline, or provide the employee with an opportunity to correct their behavior. It only serves as an initial check to determine whether there are reasonable grounds to believe the charges against the employee are true and support the proposed disciplinary action.
3. Advance Written Notification of Discipline
 - a. Employees shall be given the [Administration of Employee Discipline: Due Process Notification 135_F9](#) prior to the issuance of any formal disciplinary actions (i.e., *Written Notices*), which will include:
 - i. Written notification of the offense(s)/charge(s)
 - ii. An explanation of the DOC's evidence in support of the charge(s)
 - iii. The disciplinary actions that may be taken
 - iv. Eligible Corrections Officers shall also be given written notification of their right to initiate a grievance under the grievance procedure established by the Department of Human Resource Management or request a hearing under the *Correctional Officer Procedural Guarantee Act* (Act) ([COV §9.1-508 through 9.1-512](#))
 - v. A copy of the grievance procedure, as well as instructions on how to proceed to a hearing under the Act, shall be provided to Corrections Officers upon their request.
4. Reasonable Opportunity to Respond
 - a. Employees must be given the option to provide an informed response to the charge(s).
 - b. A 24 hour period is normally a sufficient period of time after receipt of the advance notice of discipline for an employee to respond to the charges. However a "reasonable opportunity to respond" should not be based solely on the quantity of time provided but also the nature of the offense, which may or may not require more or less time to refute or mitigate the charge.
 - c. When an employee is sent away from work during this period between receiving advance notification of discipline and responding to the charges, such action should be reported to the Personnel Management Information System as "Pre-Disciplinary Action Leave."
 - d. In accordance with the *Correctional Officer Procedural Guarantee Act*, when a charge may result

in a *Written Notice* with transfer, suspension without pay, demotion, or termination, Corrections Officers shall be given:

- i. At least three calendar days, to respond to the charges both orally and in writing.
 - ii. The option to be assisted by counsel or a representative at the Officer's own expense.
 - iii. The Corrections Officer's selected counsel or representative may attend the due process proceeding when the Corrections Officer makes a response to the charges and interact with the Corrections Officer in a non-disruptive manner, but may not speak on behalf of the Officer. Examples of appropriate interaction include conferring quietly or exchanging notes.
- e. Other parties, such as witnesses, are not permitted in due process proceedings unless permitted by the Organizational Unit Head or designee.

H. Removals Due to Circumstances That Prevent an Employee from Performing the Job

1. An employee may be removed if they are unable to meet the working conditions of employment due to circumstances such as, but not limited to:
 - a. Loss of driver's license that is required for the job
 - b. Incarceration in excess of one week
 - c. Loss of license or certification, etc. required for the job
 - d. Conviction of a misdemeanor or felony crime of domestic violence for employees whose jobs require (i) carrying a firearm; or (ii) authorization to carry a firearm

NOTE: A "misdemeanor crime of domestic violence" means an offense that: (1) is a misdemeanor under federal or state law; and (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. (See [Title 18, U.S. Code, Section 922\(g\)\(9\)](#)).

2. Such removal, if not a resignation, shall be reported to the Personnel Management Information System (PMIS) as "Remove" with a description of the circumstance written on the transmittal document.
3. Prior to such removal, the appointing authority and Human Resource Officer shall gather full documentation supporting such action and shall notify the employee in writing, of the reasons for such removal, giving the employee a reasonable opportunity to respond to the charges.
 - a. All removals under this section should be reviewed with the work unit's Human Resource Officer.
 - b. Final notification of removal shall be via memorandum or letter, not by *Written Notice*.
4. Copies of such notification and documentation supporting such action shall be sent to the DOC Human Resources Director.

I. Ineligibility for Rehire

1. Employees who are terminated or who resign while disciplinary action is pending or while an investigation is being conducted should be notified in writing at the point of separation that they will be ineligible for rehire.
2. For an employee that resigned while disciplinary action was pending or that resigned while under investigation, the personnel record (both the folder and the Personnel Management Information System), will reflect the nature of the resignation and that the employee is ineligible for rehire.

V. GROUPS OF OFFENSES AND MITIGATING CIRCUMSTANCES

A. General Expectations

1. All employees have the responsibility to use their best professional judgement to conduct themselves in a respectful and ethical manner consistent with applicable policy, procedure, and law.

2. Employees should direct questions concerning appropriate behavior to their supervisors, Unit Heads, or Human Resource Officers.
3. Employees have a duty to promptly report to their supervisors, other management officials, or Human Resource Officer any inappropriate conduct or behavior they are subject to, become aware of, or observe. If an employee's supervisor is the person engaging in the inappropriate behavior or conduct, the employee should report them to any member of management above the supervisor in the chain of command, or directly to Human Resources.
4. The list of offenses and unacceptable behaviors in this operating procedure is illustrative, not all-inclusive. An action or event occurring either during or outside of work hours that, in the judgment of the Director, undermines the effectiveness of the employee or of the DOC may be considered a violation of these *Standards of Conduct* and may result in disciplinary action consistent with this operating procedure based on the severity of the offense.
5. Unacceptable behavior shall be divided into three groups, according to the severity of the behavior, with *Group I* being the least severe and *Group III* being the most severe. See *Group Offense* Sections of this operating procedure and Attachment 2, *Examples of Offenses Grouped by Level*.
6. When issuing an employee a *Written Notice*, management should proceed with due process and issue such *Notice* as soon as practicable.
7. Termination or demotion is permitted only for a good cause and, if requested, subsequent to a formal hearing on specific charges. (4-ACRS-7E-10; 4-APPFS-3E-17) See Operating Procedure 145.4, *Employee Grievances*, for formal hearing processes.
8. Staff who are terminated, or who choose to resign in lieu of termination, for violation of the DOC sexual abuse or sexual harassment policies shall be informed of the DOC's responsibility for reporting the employment action to any relevant licensing bodies and to law enforcement agencies, unless the activity was clearly not criminal. (§115.76[d], §115.276[d])

B. Mitigating or Aggravating Circumstances

1. When in the judgment of the Human Resources professionals, DOC management, or the Unit Head or designee, mitigating circumstances exist; specified corrective action may be reduced or increased beyond the normal level.
 - a. Mitigating circumstances include those conditions related to an offense that would support a reduction of disciplinary or corrective action in the interest of fairness and objectivity.
 - b. Mitigating circumstances may also include consideration of an employee's long service with a history of otherwise satisfactory work performance.
 - c. Mitigating circumstances may support, as an alternative to removal, an employee's transfer to an equivalent position in a different work area with no change in salary; suspension without pay, demotion, or transfer to a position with reduced responsibilities and a disciplinary salary action. Suspension without pay in lieu of removal shall not exceed 30 workdays for a *Group III* Offense or for an accumulation of *Group I* or *Group II* Offenses, which would normally result in removal.
2. Under certain circumstances, an offense typically associated with one offense category may be elevated to a higher level offense due to aggravating circumstances.
 - a. Aggravating circumstances include factors related to an offense, such as seriousness of the misconduct or previous record of the same type of offense, which indicate a higher or more severe level of disciplinary action is appropriate.
 - b. The DOC may consider any unique impact that a particular offense has or could have on the DOC, and the fact that the potential consequences of the performance or misconduct substantially exceeded agency norms.

C. First Group Offenses (Group I)

1. First group offenses include types of behavior less severe in nature, but require correction in the interest

of maintaining a productive and well-managed work force.

2. *Group I* offenses include, but are not limited to:
 - a. Unsatisfactory attendance or excessive tardiness
 - b. Unprofessional or disrespectful conduct (considered a *Group I* offense depending on the nature of the violation)
 - c. Abuse of state time, including for example unauthorized time away from the work area, use of state time for personal business, and abuse of sick leave
 - d. Use of obscene or abusive language (considered a *Group I* depending on the severity, harshness, and impact of the language)
 - e. Inadequate or unsatisfactory job performance
 - f. Disruptive behavior
 - g. Conviction of a moving traffic violation while using a state-owned or other public-use vehicle
 - h. Violation of [DHRM Policy 1.05 Alcohol and Other Drugs](#) or Operating Procedure 135.4, *Alcohol and Other Drug Testing*, (considered a *Group I* offense depending on the nature of the violation) Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
 - i. Violation of [DHRM Policy 2.30 Workplace Harassment](#) or Operating Procedure 145.3, *Equal Employment Opportunity*, (considered a *Group I* offense depending upon the nature of the violation)
 - j. Violation of [DHRM Policy 2.05 Equal Employment Opportunity](#) or Operating Procedure 145.3, *Equal Employment Opportunity* (considered a *Group I* offense, depending upon the nature of the violation)
 - k. Violation of Operating Procedure 040.1, *Litigation*, (considered a *Group I* offense depending upon the nature of the violation)
3. Procedures for Issuing a *Group I* Notice.
 - a. *Group I Written Notices* shall be cumulative in nature.
 - i. There should be no suspension without pay for the first offense.
 - ii. Upon the accumulation of three "active" *Group I* offenses, the employee should normally be suspended without pay but such suspension shall not exceed ten workdays (maximum of 80 hours for non-exempt employees).
 - iii. A fourth active *Written Notice* should normally result in termination, unless there are mitigating circumstances. Mitigating circumstances may support, as an alternative to termination, an employee's transfer to an equivalent position in a different work area with no change in salary; suspension without pay up to 30 workdays; demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.
 - b. Absent mitigating circumstances, a repeat of the same, active *Group I* offense should result in the issuance of a *Group II* offense notice.
 - c. A *Written Notice* for a *Group I* offense shall remain "active" for two years from the date of issuance (see *Active Life* Section of this operating procedure). The active period is finite and may not be extended due to an employee's absence.

D. Second Group Offenses (Group II)

1. These include acts and behavior that are more severe in nature and are such that an accumulation of two *Group II* offenses normally should warrant termination.
2. *Group II* offenses include, but are not limited to:
 - a. Failure to follow a supervisor's instructions, perform assigned work or otherwise comply with applicable established written policy or procedure
 - b. Violating safety rules where there is not a threat of bodily harm

- c. Leaving the work site during working hours without permission
 - d. Failure to report to work as scheduled without proper notice to supervisor
 - e. Unauthorized use or misuse of state property or records
 - f. Failure to remove or cover emblems, images, or other items visible to other persons on vehicles, clothing, or other items owned or controlled by an employee, which would reasonably undermine the public safety mission of the Department, impede the performance of the employee's duties, diminish harmony among coworkers, or negatively affect the public perception of the Department, while the employee is on property owned or leased by the Commonwealth of Virginia or representing the Department
 - g. Refusal to work overtime hours as required
 - h. Violation of Operating Procedure 030.4, *Special Investigations Unit*, (considered a Group II offense, depending upon the nature of the violation and conduct being investigated).
 - i. Violation of [DHRM Policy 1.05 Alcohol and Other Drugs](#) or Operating Procedure 135.4, *Alcohol and Other Drug Testing*, (considered a Group II offense, depending upon the nature of the violation). Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
 - j. Violation of [DHRM Policy 2.30 Workplace Harassment](#) or Operating Procedure 145.3, *Equal Employment Opportunity*, (considered a Group II offense, depending upon the nature of the violation)
 - k. Violation of [DHRM Policy 2.05 Equal Employment Opportunity](#) or Operating Procedure 145.3, *Equal Employment Opportunity* (considered a Group II offense, depending upon the nature of the violation)
 - l. Violation of DOC Operating Procedure 040.1, *Litigation*, (considered a Group II offense depending upon the nature of the violation)
 - m. Conviction of a first driving under the influence (DUI) off the job and in a private vehicle (may be considered a Group III if the facts are egregious)
3. Procedures for Issuing a Group II Notice
- a. When issuing an employee a *Written Notice* for a Group II offense, management should issue such notice as soon as practical. Discipline shall normally take the form of the notice and up to 10 workdays maximum suspension without pay (maximum of 80 hours for non-exempt employees) for the first Group II offense.
 - b. Absent mitigating circumstances, an additional Group II offense should normally result in termination. Further, a single Group II offense coupled with three "active" Group I offenses should normally result in termination.
 - c. If the employee is not terminated due to mitigating circumstances, the employee shall be notified that any subsequent *Written Notice* issued during the "active" life period, regardless of level, may result in termination.
 - d. Mitigating circumstances may support, as an alternative to removal, an employee's transfer to an equivalent position in a different work area with no change in salary; suspension without pay of up to 30 workdays; demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.
 - e. *Written Notices* for Group II offenses shall remain "active" for three years from the date of issuance (see *Active Life* Section of this operating procedure). The active period is finite and may not be extended due to an employee's absence.

E. Third Group Offenses (Group III)

1. These offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination.
2. Group III offenses include, but are not limited to:

- a. Absence in excess of three days without proper authorization or a satisfactory reason
- b. Falsifying any records either by creating a false record, altering a record to make it false, or omitting key information, willfully or by acts of gross negligence including but not limited to all electronic and paper work and administrative related documents generated in the regular and ordinary course of business, such as count sheets, vouchers, reports statements, insurance claims, time records, leave records, or other official state documents
- c. Willfully, or by acts of gross negligence, damaging or defacing state records, state property or property of other persons, including but not limited to employees, supervisors, patients, offenders, visitors, volunteers, contractors, and students
- d. Theft or unauthorized removal of state records, state property or property of other persons, including but not limited to employees, supervisors, patients, offenders, visitors, volunteers, contractors, and students
- e. Gambling on state property during working hours
- f. Acts of physical violence or fighting
- g. Violating safety rules where there is a threat of physical harm
- h. Sleeping during working hours
- i. Participating in any kind of work slowdown, sit-down, or similar concerted interference with state operations
- j. Violation of [DHRM Policy 1.05 Alcohol and Other Drugs](#) or Operating Procedure 135.4, *Alcohol and Other Drug Testing*. Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
- k. Unauthorized possession or use of firearms, dangerous weapons, or explosives
- l. Threatening or coercing persons associated with any state agency, including but not limited to employees, supervisors, volunteers, offenders, visitors, and students
- m. Criminal convictions for conduct occurring on or off the job which are plainly related to job performance or are of such a nature that to continue the employees in their assigned positions could constitute negligence in regard to the agency's duties to the public or to other state employees
- n. Leaving a security post without permission during working hours
- o. Gross negligence on the job that results (or could have resulted) in the escape, death, or serious injury of a ward of the State or the death or serious injury of a State employee
- p. Refusal to obey instructions that could result in a weakening of security
- q. Physical abuse or other abuse, either verbal or mental, which constitutes recognized maltreatment of offenders
- r. Violation of Operating Procedure 030.4, *Special Investigations Unit*, (considered a Group III offense, depending upon the nature of the violation and conduct being investigated).
- s. Violation of [DHRM Policy 2.30 Workplace Harassment](#) or Operating Procedure 145.3, *Equal Employment Opportunity*, (considered a *Group III* offense, depending upon the nature of the violation)
- t. Violation of [DHRM Policy 2.05 Equal Employment Opportunity](#) or Operating Procedure 145.3, *Equal Employment Opportunity*, (considered a *Group III* offense, depending upon the nature of the violation)
- u. Failure of an employee whose job requires carrying a firearm or authorization to carry a firearm to report conviction for a felony or misdemeanor crime of domestic violence or other court or legal action that prohibits the employee from carrying a firearm
- v. Sexual misconduct with offenders - Any behavior of a sexual nature between employees and offenders under the Department of Corrections supervision is prohibited. See Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*.
- w. Violation of any criminal drug law, including sentencing under the first time offender's law

- x. Failure to report a criminal conviction to the employee's supervisor within one workday of the conviction
 - y. Violation of Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*
 - z. Violation of Operating Procedure 040.1 *Litigation*, (considered a Group III offense depending upon the nature of the violation)
 - aa. Criminal charges or criminal convictions (See *Criminal Charges and Convictions* Section of this operating procedure.)
 - bb. Conviction of a DUI in a state vehicle or while on the job traveling as a representative of the DOC in a private vehicle
 - cc. Conviction of a second DUI off the job and in a private vehicle (length of time between convictions should be considered)
 - dd. Charges or situations that involved crimes against a person
 - ee. Fraternalization or non-professional relationships with offenders who are within 180 days of the date following their discharge from DOC custody or termination from supervision, whichever occurs last. Exceptions to this section must be reviewed and approved by the respective Regional Operations Chief or Deputy Director for Administration on a case by case basis. (see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*)
 - ff. An illegal drug violation of Operating Procedure 135.4, *Alcohol and Other Drug Testing*, will result in a Group III offense and termination.
 - gg. Introducing or attempting to introduce contraband into a facility or to an offender, or possession of contraband in the facility.
 - hh. Material omissions regarding convictions or charges of sexual abuse or sexual harassment in an institutional setting, sexual activity by force or coercion (or if the victim could not or did not consent), civil or administrative adjudication for sexual activity by force shall be grounds for termination. (§115.17[g], §115.217[g])
 - ii. Gang membership or association with a gang
 - jj. Violation of Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, relating to Consensual Personal Relationships/Sexual Harassment in the Workplace, including but not limited to failing to report an intimate romantic or sexual relationship with a subordinate
 - kk. Examples of offenses are presented in Attachment 2, *Examples of Offenses Grouped by Level*
3. Procedures for Issuing a *Group III* Notice
- a. Before issuing a *Written Notice* that will result in the termination of an employee, a draft of the *Written Notice* must be sent to the Human Resources' Employee Relations Unit at DOC Headquarters for review and comment.
 - b. When issuing an employee a *Written Notice* for a *Group III* offense, management should issue such notice as soon as practical. Discipline should normally take the form of the *Notice* and removal or *Notice* and up to 30 work days maximum suspension without pay in lieu of removal. (maximum of 240 hours for non-exempt employees)
 - c. Mitigating circumstances for a *Group III* offense may support, as an alternative to termination, an employee's transfer to an equivalent position in a different work area with no change in salary; suspension without pay of up to 30 workdays; demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.
 - d. If the employee is not terminated due to mitigating circumstances, the employee is to be notified that any subsequent *Written Notice* issued during the "active" life period, regardless of level, may result in removal.
 - e. *Written Notices* for *Group III* offenses shall remain "active" for four years from the date of issuance (see *Active Life* Section of this operating procedure). The active period is finite and may not be

extended due to an employee's absence.

F. Use of Grievance Procedure

1. Non-probationary classified employees may use the *State Grievance Procedure* (see Operating Procedure 145.4, *Employee Grievances*) to challenge a disciplinary action under the Standards of Conduct.
2. Eligible Corrections Officers are also entitled to procedure guarantees in accordance with the *Correctional Officers Procedural Guarantee Act (Act)* (COV §9.1-508 et seq.) when issued a *Written Notice* with transfer, suspension without pay, demotion, or termination. NOTE: Eligible Corrections Officers must elect one of the procedures by which they desire to address their complaint. An Officer cannot initiate, either simultaneously or consecutively, both the *Correctional Officers Procedural Guarantee Act* hearing process and the *State Grievance Procedure* for the same complaint.
3. Employees may contact their Human Resource Officer, Human Resources' Employee Relations Unit at DOC Headquarters, or the Office of Equal Employment and Dispute Resolution in the Department of Human Resource Management regarding questions about the grievance procedure.

G. "Active" Life of Notices

1. *Group I Written Notices* shall have a two year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and shall not be extended because of absence.
2. *Group II Written Notices* shall have a three year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and shall not be extended because of absence.
3. *Group III Written Notices* shall have a four year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and shall not be extended because of absence.
4. *Written Notices* shall not be removed from the employee's personnel file, except as noted below.
 - a. A *Written Notices* can be removed if the DOC reduces or vacates its action or, through the grievance procedure, it is determined the *Notice* issued was not justified.
 - b. In such cases, the agency Human Resources Officer shall be responsible for placing the removed *Notice* in a grievance or separate confidential file.
 - c. Under no circumstances should it be destroyed or remain in the employee's personnel file, nor should it be taken into consideration in any future personnel actions.
5. *Written Notices* that are no longer active as stated in the *Active Life* Section of this operating procedure shall not be taken into consideration in the accumulation of *Notices* or the degree of discipline for a new offense.

VI. JOB ACTIONS RELATED TO DISCIPLINARY MATTERS

- A. Delegation of Authority - Power to transfer, suspend, demote, and remove employees is vested in the DOC Director as appointing authority for the Department of Corrections and is hereby delegated as follows:
 1. Chief of Corrections Operations, Deputy Director - Any division employee may be transferred, suspended, demoted, or removed with the written approval of the Chief of Corrections Operations or Deputy Director in charge of the division or unit.
 2. Regional Operations Chiefs, Regional Administrators - Except as otherwise directed by the Chief of Corrections Operations, Deputy Director, or Director, any employee may be transferred, suspended, demoted, or removed within the Region with the written approval of the Regional Operations Chief, Regional Administrator, or Central Office Administrator.
 3. Unit Head - Except as otherwise directed by the Director, Chief of Corrections Operations, Deputy Director, Regional Operations Chief, or Regional Administrator, any employee of an institution or other organizational unit may be transferred, suspended, demoted, or removed within the unit with the written approval of the Organizational Unit Head. Organizational Unit Heads may delegate, in writing,

the authority to issue *Written Notices* and suspensions up to five days to other management and supervisory staff.

4. Human Resource Officers - Human Resource Officers shall be responsible for the review of all corrective actions involving suspension without pay or removal within their agency/facility to determine if mitigating circumstances exist which would otherwise justify modified corrective action and, in appropriate cases, referral to the Employee Assistance Program as available. Thereafter, Human Resource Officers shall be responsible for making appropriate recommendations to the appointing authority.
5. Management - Managerial and supervisory personnel are responsible to assure that corrective and disciplinary actions are timely and consistently applied.

B. Disciplinary Suspensions

1. All disciplinary suspensions are without pay. Employees on suspension without pay normally shall not be allowed on DOC premises, nor shall they be allowed to work except to fulfill previously scheduled Court obligations or to file and process a grievance or Equal Employment Opportunity complaint.
2. Suspensions without pay resulting from a *Written Notice*, or an accumulation of *Notices*, and the maximum periods of suspension for each level of *Written Notice* are described in the *Procedures for Issuing a Group Notice* Sections of this operating procedure, and in Attachment 2, *Examples of Offenses Grouped by Level*.
3. Suspension Without Pay of Employees Exempt from the Fair Labor Standards Act
 - a. Exempt employee's salaries may not be reduced as the result of a suspension except as described in this section. Exempt employees should be reimbursed promptly for any disciplinary salary reductions that are non-compliant.
 - b. Disciplinary suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full workday or workweek. Safety rules of major significance are defined as provisions intended to prevent serious danger to the workplace or to other employees.
 - c. If an exempt employee is suspended without pay for misconduct, the suspension shall be not less than a full workday. Suspensions of more than one workday must be in multiples of full workdays, e.g., a three-day (24 hour) suspension for an employee assigned to 8-hour workdays, or a three-day (30 hour) suspension for an employee assigned to 10-hour workdays. If it becomes necessary to remove an exempt employee from the workplace for a partial workday due to the employee's misconduct, the employee must be paid for that partial day's absence.
 - d. If an exempt employee is suspended without pay for disciplinary reasons related to the employee's unsatisfactory attendance or performance issues (non-conduct related) the suspension shall be not less than a full workweek. Suspensions of more than one workweek will be in multiples of full workweeks, e.g., a three-week (120-hour) suspension. An employee may not be permitted to serve a suspension related to attendance or performance other than in whole workweek segments. Less serious violations in these areas should be addressed by other means of discipline, reserving suspension without pay for the most serious or repeated violations.
 - e. If an exempt employee is suspended pending the outcome of a criminal charge, the employee must be paid for any partial workweek suspensions. Full workweeks of suspension are unpaid.
4. The FLSA rules for suspension without pay apply to both probationary and non-probationary employees.

C. Access to DOC Premises and Work While on Pre-Disciplinary Leave with Pay or Suspension Without Pay

1. Supervisors of employees who are suspended without pay or on pre-disciplinary leave with pay should collect the employee's I.D., badge, keys, weapon, and access card, if applicable, before the employee

leaves the premises.

2. Employees who are suspended without pay or on pre-disciplinary leave with pay normally shall not be allowed on DOC premises, except to participate in due process proceedings or to file and process a grievance. During these circumstances, the employee should be escorted by a staff member designated by the Unit Head and shall not be allowed to work except to fulfill previously scheduled Court obligations.

D. Status of Benefits and Pay for Employee on Pre-Disciplinary Leave with Pay or Suspension Without Pay

1. Compensation - Agencies should update payroll and PMIS records immediately upon suspending employees without pay, and upon subsequent demotions or transfers with disciplinary salary action, discharges, or reinstatements.
 2. Performance increases and annual leave accrual rate
 - a. Employee's eligibility for performance increases may be affected by the time on suspension without pay in accordance with DHRM Policy 1.40, *Performance Planning and Evaluation*.
 - b. Projected date of increase in annual leave accrual rate - Suspensions without pay exceeding 14 calendar days shall affect an employee's length of service for purposes of annual leave accrual.
 3. Annual and traditional sick leave accrual - An employee on suspension without pay shall not accrue annual or traditional sick leave, except that:
 - a. If a suspension extends into a second pay period, accrual of annual and sick leave shall resume in the second pay period unless the period of suspension exceeds 15 calendar days; and
 - b. If a suspension extends into a third pay period, accrual of annual and sick leave shall resume in the third pay period unless the period of suspension exceeds 31 calendar days, and so on.
 4. VSDP (Virginia Sickness and Disability Program) Benefits
 - a. Employees who are suspended for disciplinary reasons may not access their VSDP benefits.
 - b. Employees who are terminated for disciplinary reasons are not eligible to receive VSDP benefits.
 5. Insurance
 - a. Health Insurance
 - i. The health insurance coverage of an employee who has been suspended without pay continues until the end of the month in which the suspension began, except that there shall be no break in coverage if the employee is reinstated or placed in a paid leave status in time to work half of the workdays in the following month.
 - ii. If the length of the period of suspension without pay results in a break in health insurance coverage, the suspended employee may retain their group insurance coverage for 12 months by paying the monthly insurance premiums (both the employee's and state's contribution) in advance. This 12 month extension runs concurrently with the 18 months granted under the extended coverage provisions of the health benefits plan.
 - iii. Reinstatement
 - (a) If an agency reinstates a suspended employee with back pay for any period of the suspension, unless directed otherwise in the Hearing Officer's decision, the agency shall make appropriate refund(s) to the employee for the State portion of any health insurance premiums that they paid to continue coverage during the suspension.
 - (b) If an agency reinstates a suspended employee without back pay, unless otherwise directed in the Hearing Officer's decision, there shall be no reimbursement for any portion of health insurance premiums that they paid to continue coverage.
 - (c) If an agency reinstates a terminated employee with back pay, unless otherwise directed in the Hearing Officer's decision, health benefits must be made effective retroactive to the date of termination.
- NOTE: Suspended without pay and terminated employees may have purchased individual health insurance coverage or acquired coverage through a spouse's health benefits plan. The

DOC should inquire about such coverage when discussing back pay and benefits with these employees. If the Hearing Officer does not grant back benefits because the employee was enrolled in other coverage during the period of suspension or termination, the employee must provide proof of the other coverage.

- b. Life insurance - Life insurance coverage may continue for up to 24 months, with the agency making the full contribution.

E. Status of Employee's Benefits Due To Separation

1. An employee's benefits (accrued leave and health insurance) are regulated by DHRM Policy 1.70, [*Termination/Separation From State Service*](#).
2. An employee's retirement benefits are regulated by VRS Policy.
 - a. Details are available at <http://www.varetire.org/members/index.asp>
 - b. NOTE: The COV §51.1-124.13 allows the DOC to request the forfeiture of retirement benefits in the event the employee's separation is due to a felony conviction.

F. Reinstatement from Removal by a Hearing Officer's Decision

1. Unless otherwise stated in the Hearing Officer's Decision, the DOC is obligated to reinstate employees with full benefits.
2. Where a Hearing Officer directs reinstatement of an employee, the Hearing Officer has the authority to award full, partial, or no back pay for the period of separation as determined to be appropriate based on the circumstances of the case.
3. Unemployment Compensation Benefits - A Hearing Officer's award of back pay shall be offset by any interim earnings that the employee received during the period of separation, including unemployment compensation received from the Virginia Employment Commission.

VII. REFERENCES

[DHRM Policy 1.05 Alcohol and Other Drugs](#)

[DHRM Policy 2.05 Equal Employment Opportunity](#)

[DHRM Policy 2.30 Workplace Harassment](#)

Fair Labor Standards Act

Operating Procedure 030.4, *Special Investigations Unit*

Operating Procedure 040.1, *Litigation*

Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*

Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*

Operating Procedure 135.4, *Alcohol and Other Drug Testing*

Operating Procedure 145.2, *Employee Performance Management*

Operating Procedure 145.3, *Equal Employment Opportunity*

Operating Procedure 145.4, *Employee Grievances*

Operating Procedure 150.5, *Employee Assistance Program*

VIII. FORM CITATIONS

[Internal Audit Unit Notice of Investigation](#) 030_F23

[Criminal Offense/Moving Traffic Violation Notification](#) 040_F1

[Written Notice](#) 135_F1

[Correctional Officer Procedural Guarantee Investigation Notice](#) 135_F8

[Administration of Employee Discipline: Due Process Notification](#) 135_F9

[Interim Employee Evaluation](#) 145_F3

[Notice of Improvement Needed/ Substandard Performance](#) 145_F5

IX. REVIEW DATE

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

Signature Copy on File

6/22/18

N. H. Scott, Deputy Director for Administration

Date