

Chapter 10 Policy and Procedure Manual - Adult  
Section 20.1: Adult Resident Discipline

Summary: This rule governs adult resident discipline pursuant to 34-A M.R.S.A. §3032.

**I. AUTHORITY**

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Sections 1402, 1403, and 3032.

**II. APPLICABILITY**

All Departmental Adult Facilities

**III. POLICY**

It is the policy of the Department of Corrections to designate adult resident disciplinary violations and sanctions for the purpose of maintaining safety, security, and the orderly management of correctional facilities and to promote positive behavior change. Disciplinary action is not to be arbitrary or retaliatory in nature, and fair and impartial sanctions shall be imposed in each case. Sanctions shall be proportionate to the seriousness of the violation, as well as relevant to the harm created by the violation.

**IV. DEFINITIONS**

1. Accessory – a resident is an accessory if they knowingly provide assistance to another resident committing or attempting to commit a violation, whether the assistance was provided before, during, or after the violation or the attempt.
2. Attempt – an attempt is an act which constitutes a substantial step in a course of conduct that would have ended in the commission of a violation if the attempt had been successful.
3. Bodily injury – physical pain, physical illness or any impairment of physical condition.
4. Civic service – refers to the participation of a resident in an activity that benefits the facility.
5. Conspiracy – a conspiracy is an agreement with another resident or any other person to engage in or cause a violation.
6. Counsel substitute – staff, or a resident approved by the facility Chief Administrative Officer, or designee, who voluntarily assists a resident at a review of sanctions or in preparing and presenting their defense at a disciplinary hearing.
7. Directly involved – staff are directly involved in an incident if, for example, they conducted or witnessed the search of a cell/room resulting in the finding of contraband or ordered the search of that cell/room because of suspicion of contraband, but they are not directly involved if they ordered a facility-wide or housing unit search, during which contraband was found in some cells/rooms. They are also not directly involved if they took some action outside the disciplinary process after the incident was over, such as placing the resident on administrative status.
8. Disciplinary restriction – disciplinary restriction is confinement in the resident's own cell/room or in a cell/room in another housing unit other than in restrictive housing.

9. Disciplinary segregation – disciplinary segregation is confinement in a cell in restrictive housing.
10. Harassment – for purposes of this policy, words, gestures, or other behavior that would make a reasonable person feel uncomfortable, humiliated, or mentally stressed.
11. Informal resolution – a process whereby eligible residents accused of a Class B violation or a Class C violation may be offered the choice to resolve the violation informally.
12. Planning – making a plan as evidenced in a writing or a verbal statement of intent which includes, but is not limited to, the following: a diagram, map, list of steps, etc.
13. Possession – means to have physical possession of or otherwise exercise control over an item on the resident's person; in their assigned area, e.g., cell/room, work area, or locker, etc.; or in a common area. A resident is deemed to exercise control over an item if they exercise control over the area in which it is found.
14. Privilege – a benefit to which a resident has no legal right.
15. Restrictive housing – housing that separates a resident from the general population and restricts the resident to their cell for up to twenty-two (22) hours per day for the safe and secure operation of the facility.
16. Sanction – for the purposes of this policy, a disposition imposed on a resident for committing a disciplinary violation. This is referred to in Maine statute as punishment.
17. Serious bodily injury – a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.
18. Sexual act – (1) any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; (2) any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or (3) any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.
19. Sexual contact – any touching of the genitals or anus, directly or through clothing, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.
20. Sexual touching – any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.
21. Solicitation – commanding or otherwise attempting to induce another resident to commit a violation or commanding or otherwise attempting to induce a person who is not a resident to assist any resident to commit a violation.
22. Substance prone to abuse – for purposes of this policy, any substance that a resident drinks, ingests, injects, inhales, sniffs, snorts, smokes, touches, or otherwise takes for the purpose of getting high. This includes, but is not limited to, alcohol; a scheduled drug; a drug, even if not a scheduled drug, that is prone to abuse (such as synthetic

hallucinogenic drugs, synthetic cannabinoids, or their derivatives, etc.); an inhalant; marijuana; or a prescription medication.

23. Trafficking – selling, bartering, trading, exchanging, furnishing, giving, administering, delivering, conveying or otherwise transferring an item to another person or obtaining an item for the purpose of selling, bartering, trading, exchanging, furnishing, giving, administering, delivering, conveying or otherwise transferring an item to another person.

## **V. CONTENTS**

|              |                                                      |
|--------------|------------------------------------------------------|
| Procedure A: | Discipline, General                                  |
| Procedure B: | Informal Resolutions                                 |
| Procedure C: | Formal Resolutions, Initial Procedures               |
| Procedure D: | Rule Violation Investigation                         |
| Procedure E: | Disciplinary Hearing Notification                    |
| Procedure F: | Counsel Substitutes                                  |
| Procedure G: | Review of Sanctions or Disciplinary Hearing, General |
| Procedure H: | Dismissal Decisions                                  |
| Procedure I: | Disciplinary Hearing, Witnesses and Exhibits         |
| Procedure J: | Hearing Decisions as to Guilt or Innocence           |
| Procedure K: | Decisions as to Sanctions                            |
| Procedure L: | Summary of Decisions and Appeals                     |
| Procedure M: | Sanctions                                            |
| Procedure N: | Violations                                           |
| Procedure O: | Other Actions                                        |

## **VI. ATTACHMENTS**

|               |                                                     |
|---------------|-----------------------------------------------------|
| Attachment A: | Informal Resolution of Rule Violation Agreement     |
| Attachment B: | Disciplinary Report                                 |
| Attachment C: | Suspension of Time Frames form                      |
| Attachment D: | Letter of Notification of Disciplinary Hearing      |
| Attachment E: | Notice of Continuation – Disciplinary Hearing       |
| Attachment F: | Review of Sanctions or Disciplinary Hearing Summary |
| Attachment G: | Disciplinary Appeal form                            |
| Attachment H: | Decision on Disciplinary Appeal                     |

## **VII. PROCEDURES**

### **Procedure A: Discipline, General**

1. The constitutional and statutory rights of the individual resident shall be followed in all matters of resident discipline.
2. This policy also applies to residents of the Department who are outside a Departmental facility at the time of the violation, e.g., while on furlough, during community transition release (work release, education release, or public service release), on a work crew, during a transport, while in a hospital, at a community health care provider appointment, in court, or on an off-grounds recreational activity, etc.

3. The facility Chief Administrative Officer, or designee, shall ensure that all:
  - a. residents are provided with a copy of this policy as part of the resident handbook; and
  - b. staff who work with residents receive sufficient training so that staff are thoroughly familiar with resident disciplinary violations and the sanctions available, as well as the informal and formal disciplinary processes.
4. A resident may not be placed or remain on administrative status merely because there is an ongoing investigation or merely because there is a disciplinary report (write-up), disciplinary hearing, or disciplinary appeal pending. However, as a different matter, a resident who poses a continuing threat may be placed and remain on administrative status as provided in Department Policy (AF) 15.1, Administrative Status. This is not punishment and shall not be considered in determining the appropriate sanction for a disciplinary violation.
5. Any written waiver signed by a resident as part of the disciplinary process is final and may not be withdrawn.
6. If a resident is released from imprisonment before the disciplinary process is completed, designated staff shall destroy the disciplinary report and any other disciplinary documents and expunge the disciplinary documentation in the Department's resident and client records management system. Documents, other than disciplinary documents, which describe the incident, such as incident reports, records documenting separation from the general resident population, logbook entries, etc., shall not be destroyed or expunged.

#### **Procedure B: Informal Resolutions**

1. Any facility staff who observes, receives a report of, or otherwise discovers resident conduct that is considered a Class A violation shall not attempt to resolve such violation informally, but the staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
2. If facility staff observes, receives a report of, or otherwise discovers resident conduct that is considered a violation of any rule, and the resident has received an informal resolution three (3) times in the past four (4) months (whether or not successfully completed), the staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
3. If facility staff observes, receives a report of, or otherwise discovers resident conduct that is considered a violation of any rule, and the violation would be a "Multiple Violation," the staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
4. Any facility staff who observes, receives a report of, or otherwise discovers resident conduct that is considered:
  - a. a Class B violation may attempt to resolve such violation informally, except as set out above; or
  - b. a Class C violation shall attempt to resolve such violation informally, except as set out above.

5. To resolve a rule violation informally, the facility staff, with the approval of a Shift Commander, Unit Manager, or other security supervisor may coach, counsel, verbally reprimand, or warn the resident. The coaching, counseling, verbal reprimand, or warning shall be documented by recording an entry into the Department's resident and client records management system. This does not require the agreement of the resident.
6. To resolve a rule violation informally, the facility staff may also propose to the resident to assign extra work or civic service in lieu of recreation; require restitution if property was destroyed, damaged, or stolen; or impose restriction on or suspension of any of the following privileges: recreation, canteen/commissary, electronic entertainment items (e.g., television, radio, and video game player), musical instruments, personal tablets, or entertainment apps (e.g., games, music, movies, and news and sports apps) on state-issued tablets.
7. Any extra work or civic service, restitution, or restrictions on or suspensions of privileges shall:
  - a. be by agreement between the resident and the staff who observed or discovered the conduct (or if observed or discovered by a person who is not facility staff, by agreement between the resident and the facility staff to whom the conduct was reported). The agreement shall be in writing, including the resident's waiver of their right to a formal hearing on the rule violation, and be signed by the resident, the facility staff, and the approving Shift Commander, Unit Manager, or other security supervisor using the Informal Resolution of Rule Violation Agreement (Attachment A); and
  - b. be for no more than five (5) days, which may be consecutive or intermittent (if extra work, civic service, or restrictions or suspensions of privileges).
8. If the resident refuses the proposed informal resolution, the facility staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
9. Any proposed informal resolution of a rule violation that has been agreed to by a resident shall be reported immediately to a Shift Commander, Unit Manager, or other security supervisor for approval, modification, or disapproval. If the security supervisor approves the proposed informal resolution, the security supervisor shall sign the agreement. If the security supervisor does not approve the proposed informal resolution, they may:
  - a. direct the staff to drop the issue if the security supervisor does not agree that there is a rule violation by the resident;
  - b. modify the resolution, but only with the agreement of the resident if the modification results in an increased sanction; or
  - c. direct the staff to proceed formally (if the violation is eligible for a formal resolution).
10. A copy of the signed agreement shall be provided to the resident. The original shall be uploaded by the security supervisor into the Department's resident and client records management system.
11. The Shift Commander, Unit Manager, or other security supervisor who approved the informal resolution shall ensure an approved informal resolution is satisfactorily completed as soon as practicable and documented on the Informal Resolution Rule

Violation Agreement (Attachment A) and in the Department's resident and client records management system. Upon completion of the informal resolution, the security supervisor shall ensure the agreement is uploaded and attached to the disciplinary case in the Department's resident and client records management system.

12. A rule violation that is informally resolved does not constitute a disciplinary violation for the purpose of determining eligibility for participation in any program. However, the conduct leading to an informal resolution may be one factor used in considering whether to actually approve participation in any program.
13. If facility staff observes, receives a report of, or otherwise discovers that a resident is not abiding by or has not abided by the informal resolution, the staff shall complete and submit a disciplinary report in accordance with the formal resolution process for the original rule violation, as well as for a disciplinary rule violation of "Informal or Formal Resolution."
14. When the Informal or Formal Resolution violation is discovered, the staff shall notify the resident and other appropriate staff that the informal resolution agreement is terminated, and the staff shall document the notification in the disciplinary report for that violation.

#### **Procedure C: Formal Resolutions, Initial Procedures**

1. If facility staff observes, receives a report of, or otherwise discovers resident conduct that is considered a Class A rule violation, the staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
2. Any facility staff that observes, receives a report of, or otherwise discovers resident conduct that is considered a Class B or a Class C violation, if it is not resolved informally as set out above, shall resolve such incident formally.
3. Any proposal to proceed with a formal resolution of a rule violation shall be reported immediately to a Shift Commander, Unit Manager, or other security supervisor for approval or disapproval.
4. The security supervisor shall give approval to proceed with a formal resolution of a rule violation if:
  - a. the conduct is considered a Class A violation;
  - b. the violation would be a "Multiple Violation;"
  - c. the resident has received an informal resolution three (3) times in the past four (4) months (whether or not successfully completed);
  - d. the conduct is considered a Class B violation, and the security supervisor agrees that a formal resolution of the violation is necessary to ensure safety, security, or the orderly management of the facility;
  - e. the resident refuses a proposed informal resolution for the violation (if the violation is eligible for an informal resolution); or
  - f. the resident has failed to abide by an agreed informal resolution for the violation.

5. In all other cases, if the security supervisor does not approve proceeding with a formal resolution, they may direct the staff to:
  - a. drop the issue if the security supervisor does not agree that there is a rule violation by the resident;
  - b. coach, counsel, verbally reprimand, or warn the resident (if the violation is eligible for an informal resolution); or
  - c. attempt an agreed upon informal resolution with the resident (if the violation is eligible for an informal resolution).
6. If the security supervisor approves proceeding formally, the following procedures apply.
7. The facility staff shall complete a Disciplinary Report (Attachment B) and submit the report to a Shift Commander, Unit Manager, or other security supervisor by entering the report into the Department's resident and client records management system within seventy-two (72) hours. The disciplinary report shall include the following information:
  - a. the name and class of the violation;
  - b. a description of the incident, including the resident's involvement in the incident;
  - c. the date and time of the incident;
  - d. if the report is submitted more than seventy-two (72) hours after the date and time of the incident, as applicable:
    - 1) the date and time the staff observed, received a report of, or otherwise discovered the resident's conduct;
    - 2) the date and time the staff substantiated the conduct;
    - 3) the date and time the staff resubmitted the report in accordance with instructions from the receiving supervisor; or
    - 4) the fact that the Chief Administrative Officer, or designee, suspended the time frame for submitting the report, in which case the Suspension of Time Frames form (Attachment C) shall be attached to the disciplinary report.
  - e. any staff witnesses;
  - f. any unusual resident behavior;
  - g. any immediate action taken, including the use of force;
  - h. if the resident was eligible for an informal resolution, whether they were offered one and the result of the offer;
  - i. the name of the security supervisor who approved proceeding with a formal resolution;
  - j. any physical evidence and its disposition; and
  - k. the reporting staff's name and date and time of report.
8. If information from a victim provided to the Department's Office of Victim Services is the reason that a resident's conduct was looked into, that fact shall not be revealed in the report.

9. When the staff completing the report relied on an audio or video recording to substantiate the conduct, the report shall include that fact. Note: If the staff personally observed the conduct or otherwise did not rely on the recording to substantiate the conduct, the existence of a recording does not need to be mentioned in the report.
10. When the staff completing the report relied on confidential informant information to substantiate the conduct, the report shall include a summary of the confidential information that does not reveal the identity of the informant. Note: If the staff receiving confidential informant information uses that information to lead to other evidence sufficient to substantiate the conduct, the existence of the informant and the confidential information shall not be mentioned in the report, just the other evidence substantiating the conduct.
11. When the staff completing the report relied on testing a resident for a substance prone to abuse, the report shall include the reason for the test (e.g., random, reasonable suspicion, condition of program, etc.). If the reason is reasonable suspicion, the report shall describe the basis for the reasonable suspicion. The resident's admission form; a printout, photocopy, or photograph of the test results; or a copy of the report of a confirmation test, whichever is applicable, shall be attached to and become part of the disciplinary report.
12. When the staff completing the report relied on testing an object (e.g., testing paper for drugs, testing powder for whether it is gunpowder, etc.), a printout, photocopy, or photograph of the test results, whichever is applicable, shall be attached to and become part of the disciplinary report.
13. The time frame for submission of the disciplinary report begins when the conduct is observed or otherwise discovered by facility staff. If a violation is observed or discovered by any person who is not facility staff and is reported to facility staff, the time frame for submission of the disciplinary report begins after receipt of the report by facility staff.

If the conduct is suspected but not substantiated, the time frame for submission of the disciplinary report begins when the conduct is substantiated.

If the violation involves testing a resident for a substance prone to abuse, the time frame for the submission of the disciplinary report begins after the observation by facility staff of the facility test result or, if applicable, the receipt by facility staff of the confirmation test result, whichever is later.

If the violation involves testing an object, the time frame for the submission of the disciplinary report begins after the observation by facility staff of the test result.

If the disciplinary report is being submitted because a resident is failing or has failed to abide by an agreed to informal resolution, the time frame for submission of the report begins when the failure to abide is observed, reported to, or otherwise discovered by facility staff.
14. The Shift Commander, Unit Manager, or other security supervisor shall review the report without unnecessary delay and shall ensure that the report clearly sets forth the incident and the appropriate violation and that, if applicable, the report includes a summary of confidential information that does not reveal the identity of the informant and includes any other information required by this policy. In determining the appropriate violation, the security supervisor shall review the resident's disciplinary history and, if appropriate, add a violation of "Multiple Violation" to the original violation.

15. If the report is not clear or is missing required information, the violation is not appropriate, or the identity of a confidential informant would be revealed, the security supervisor shall provide the appropriate instructions to the reporting staff. The reporting staff shall resubmit the report within seventy-two (72) hours of receiving the security supervisor's instructions. If the resubmission is outside of the time frame for submitting the report initially, the reason for that shall be noted.
16. The Shift Commander, Unit Manager, or other security supervisor shall approve the report if it complies with this policy and:
  - a. the conduct is considered a Class A violation;
  - b. the violation would be a "Multiple Violation;"
  - c. the resident has received an informal resolution three (3) times in the past four (4) months (whether or not successfully completed);
  - d. the conduct is considered a Class B violation, and the security supervisor agrees that a formal resolution of the violation is necessary to ensure safety, security, or the orderly management of the facility;
  - e. the resident refused a proposed informal resolution for the violation (if the violation is eligible for an informal resolution); or
  - f. the resident failed to abide by an agreed informal resolution for the violation.
17. The violation is considered reported when the disciplinary report is reviewed and approved in the Department's resident and client records management system by the receiving Shift Commander, Unit Manager, or other security supervisor.

**Procedure D: Rule Violation Investigation**

1. Once a disciplinary report has been reviewed and approved by the receiving Shift Commander, Unit Manager, or other security supervisor, that security supervisor shall assign the report to security staff for investigation.
2. The investigator shall be impartial and shall not have been directly involved in the incident. They shall be someone other than the staff who wrote the disciplinary report (write-up), the security supervisor who approved proceeding with a formal resolution, or the security supervisor who reviewed the disciplinary report.
3. The time frame for initiating the investigation begins when the violation is reported (i.e., when the disciplinary report is reviewed and approved by the receiving security supervisor).
4. The investigator shall initiate an investigation into the alleged violation within twenty-four (24) hours and shall complete the investigation as soon as practicable. If there is a delay in either initiating or completing the investigation, the reason(s) shall be noted in the report of the investigation included with the disciplinary report.
5. The investigator shall initiate the investigation by reading the disciplinary report to the resident, describing the possible sanctions should the resident be found guilty, and giving the resident an opportunity to make a statement, which shall be described in the report of the investigation.

6. If the resident refuses to make a statement, the investigator shall document the resident's refusal in the report of the investigation.
7. The resident shall sign and date their statement or their refusal to make a statement on the report of the investigation. If the resident refuses or is unable to sign, the staff shall note that on the report.
8. If the investigator cannot contact the resident within twenty-four (24) hours due to the resident's unavailability (e.g., at court, in the hospital, or on escape), the contact shall take place as soon as possible after the resident becomes available, with the reason for the delay noted in the report of the investigation. In the meantime, the investigator may initiate the investigation by interviewing witnesses or taking other appropriate steps.
9. Once the investigation is completed, the investigator shall sign and date the report of the investigation and forward the disciplinary report including the report of the investigation to staff designated by the facility Chief Administrative Officer, or designee, to process the disciplinary paperwork.
10. The Chief Administrative Officer, or designee, shall refer the matter to the appropriate prosecutor if a facility law enforcement officer determines there is probable cause to believe that a resident has committed:
  - a. murder;
  - b. any Class A, B, or C crime; or
  - c. a Class D crime listed in Title 17-A, Chapters 9 (offenses against the person), 11 (sexual assaults), 12 (sexual exploitation of a minor), or 13 (kidnapping and criminal restraint).
11. The Chief Administrative Officer, or designee, may refer the matter to the appropriate prosecutor if a facility law enforcement officer determines there is probable cause to believe that a resident has committed any other crime.
12. Even when a decision to refer for prosecution is made, the alleged violation shall be processed as a disciplinary matter. If processing the alleged violation as a disciplinary matter within the ordinary time frames might compromise a criminal investigation or prosecution, as determined by a facility law enforcement officer, the time frames for processing the alleged violation as a disciplinary matter may be suspended by the Chief Administrative Officer, or designee, by completing the Suspension of Time Frames form (Attachment C), which shall be attached to the disciplinary report.
13. The Chief Administrative Officer, or designee, may also suspend the time frames using the form if processing the alleged violation as a disciplinary matter within the ordinary time frames would compromise a PREA investigation or another administrative investigation.

#### **Procedure E: Disciplinary Hearing Notification**

1. A resident is entitled to a disciplinary hearing for any rule violation unless:
  - a. they waive that right in writing as set out below;
  - b. their behavior warrants excluding them from the hearing as set out below;

- c. they fail to appear after being duly notified; or
  - d. they plead guilty or no contest at the opening of the hearing.
2. The violation is considered charged when the resident receives the notification.
3. A staff person designated to process disciplinary paperwork shall provide to the resident without unnecessary delay a Letter of Notification of Disciplinary Hearing (Attachment D), to include the name and class of the violation(s) charged and the name of the Disciplinary Hearing Officer (DHO) scheduled; a list of counsel substitutes; copies of the disciplinary report, including the resident's statement, if any, to the investigator and any attachments to the disciplinary report required by this policy; other reports of the incident (unless confidential); and any photographs relating to the incident (unless it would compromise safety or security).
4. If a report contains confidential informant information, the resident shall be provided with a summary of the confidential information that does not reveal the identity of the informant.
5. A resident shall never be provided with a photograph of a victim; personal information relating to a victim (e.g., social security number, personal address, or phone number); an audio or video recording; or an actual exhibit.
6. The notification shall inform the resident that they may choose to plead guilty or no contest to all of the violations listed on the notification and that if they do so, there will be no formal hearing, but just a review of the appropriate sanctions, and that they are accepting the finding of guilt, a finding that they waive their right to appeal. However, the resident shall retain their right to appeal the recommended sanctions.
7. The notification shall inform the resident that they may choose to plead not guilty to one or more of the violations listed on the notification and that if they do so, there will be a formal hearing, at which they will be asked to plead again.
8. The notification shall also inform the resident that, if they wish to request a foreign language interpreter or sign language interpreter or other disability accommodation at the review or hearing, they shall inform the staff person providing the notification of their request at the time the notification is provided. The staff person shall ensure the request is documented on the notification.
9. The notification shall also inform the resident that, if they wish to be represented by counsel substitute at the review or hearing, they shall inform the staff person providing the notification of the counsel substitute they have selected at the time the notification is provided. The staff person shall ensure that the name of the counsel substitute the resident has selected is documented on the notification.
10. The notification shall also inform the resident that, if they have asked for a formal hearing and wish to call witnesses and/or present exhibits at the hearing, they shall inform the staff person providing the notification of the witnesses they wish to call and/or the exhibits they wish to present at the time the notification is provided. The staff person shall ensure that the names of the witnesses the resident wishes to call and descriptions of the exhibits the resident wishes to present are documented on the notification.

11. If the resident refuses to meet with the staff or otherwise participate in the notification process, the staff shall note that on the notification form, and it shall be presumed that the resident is pleading not guilty but is not requesting any accommodations, witnesses, exhibits, or the assistance of a counsel substitute.
12. The resident and the staff shall sign and date the notification form. If the resident refuses or is unable to sign, the staff shall note that on the notification form.
13. A copy of the notification shall be provided to the resident, and the original shall be forwarded to the DHO.
14. A change in the scheduled DHO does not require a new notification to the resident.

#### **Procedure F: Counsel Substitutes**

1. A resident has the right to be assisted at the hearing by a counsel substitute, if the resident has requested a counsel substitute at the time of the letter of notification.
2. Each facility shall have a minimum of one (1) facility staff trained and available to act as a counsel substitute. The training shall be documented in the staff's training file.
3. In addition, the facility Chief Administrative Officer may approve a resident to act as a counsel substitute.
4. No person may act as a counsel substitute unless they have been trained in this policy.
5. A resident may not be approved as a counsel substitute unless they have not been found guilty of a Class A or B disciplinary violation for one (1) year prior to approval. A resident who is found guilty of a disciplinary violation after being approved as a counsel substitute shall be terminated from the counsel substitute position. A resident who agrees to an informal resolution of a disciplinary violation after being approved as a counsel substitute may be terminated from the counsel substitute position.
6. It is the responsibility of the resident to inform their counsel substitute of the date and time of the hearing. Facility staff shall facilitate communication between the resident and the counsel substitute. If the date or time of the hearing is changed, the resident shall receive written notice of the change sufficiently in advance of the hearing to permit the attendance of their counsel substitute, if any.
7. If it is determined at any time during the disciplinary process that a resident is not capable of preparing and presenting their defense effectively, even with the assistance of a resident counsel substitute if they requested one, the Disciplinary Hearing Officer (DHO) shall assign a staff counsel substitute to assist the resident and shall continue the disciplinary hearing, if necessary, to permit the counsel substitute to effectively assist the resident. Whenever a staff counsel substitute is assigned by the DHO, the DHO shall document the reason(s) for the assignment in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
8. If the DHO determines at any time during the disciplinary process that there would be a security risk or a conflict if a requested counsel substitute were to be allowed; the requested counsel substitute is unavailable; or a staff counsel substitute is needed for

any reason set out in this policy, the DHO may assign another counsel substitute and shall continue the disciplinary hearing, if necessary, to permit the counsel substitute to effectively assist the resident. A DHO may not assign a different counsel substitute on the basis that the requested counsel substitute would not provide the resident with the best representation.

9. Whenever a counsel substitute other than the one requested by the resident is assigned by the DHO, the DHO shall document the reason(s) for the assignment in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).

#### **Procedure G: Review of Sanctions or Disciplinary Hearing, General**

1. Each facility Chief Administrative Officer shall designate a facility employee to be the facility Disciplinary Hearing Officer (DHO) and another facility employee to be the acting facility DHO in their absence or in the event they were directly involved in the incident. No employee may act as a DHO unless they have been trained in this policy, which shall be documented in the employee's training record.
2. The DHO conducting a review of disciplinary sanctions or a disciplinary hearing shall be impartial and shall not have been directly involved in the incident. They shall be someone other than the staff who wrote the disciplinary report (write-up), the security supervisor who approved proceeding with a formal resolution, the security supervisor who reviewed the disciplinary report, or the investigator. However, they may be the staff who processed the disciplinary paperwork.
3. A request for a foreign language interpreter or sign language interpreter or other disability accommodation shall not be unreasonably denied. Whenever such a request is denied, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
4. Even if it is not requested, if it is determined at any time during the disciplinary process that a resident requires the assistance of a foreign language interpreter or sign language interpreter or other disability accommodation, the DHO shall provide the accommodation and shall continue the review of sanctions or disciplinary hearing, if necessary, to permit the provision of the accommodation.
5. The DHO shall review the appropriate sanctions with any resident who has pled guilty or no contest without unnecessary delay and may do so as soon as the resident has signed the Letter of Notification.
6. At any time prior to a scheduled hearing, a resident may waive, in writing, their right to a formal hearing by asking for a new Letter of Notification and choosing the option to plead guilty or no contest and submitting it to the DHO prior to the hearing.
7. The DHO shall hold a hearing on the alleged violation for a resident who has pled not guilty without unnecessary delay, provided that the hearing may not be held sooner than twenty-four (24) hours after the resident receives the notification of the hearing, unless the resident waives in writing on the notification letter their right to the twenty-four (24) hour notice.

8. The date and time of the hearing shall not be changed to an earlier date or time than the one originally scheduled, unless the resident agrees to the change in writing on the notification letter. However, the date and time of the hearing may be changed to a later date or time without the resident's agreement.
9. The hearing shall be held no later than seven (7) days, excluding weekends and holidays, after the resident receives the notification of the hearing, unless it is continued for good cause shown. If a hearing cannot take place within the seven (7) days due to the resident's absence from the facility (e.g., court, hospital, escape), it shall be scheduled for as soon as practicable, but no later than seven (7) days, excluding weekends and holidays, after the resident's return to Department custody. The reason(s) for any delay or for any continuance shall be documented.
10. Either before or during the hearing, the DHO may continue the hearing for good cause shown, but in no case may the continuance be for more than thirty (30) additional days unless due to the resident's absence from the facility (e.g., court, hospital, escape), using the Notice of Continuation - Disciplinary Hearing (Attachment E).
11. Any request to the DHO for continuance of a hearing made by the resident shall be in writing and shall be submitted to the DHO prior to the hearing, unless the cause for the continuance arises during the hearing. Unless there are exceptional circumstances, hearings shall not be continued to permit recreation, visits, programs, work, or other similar activities. If a resident requests a continuance and the request is denied, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
12. The resident has a right to be present at the hearing, which right may be waived by the resident in writing.
13. The DHO may, however, conduct the hearing in the absence of the resident charged or counsel substitute, if the resident or counsel substitute fails to appear for the hearing after they have been duly notified or if, immediately prior to or during the hearing, the resident's behavior or counsel substitute's behavior is inconsistent with the hearing process to the extent that the resident or counsel substitute must be excluded or removed from the hearing room. If a hearing is conducted without the resident or counsel substitute being present, the circumstances of the resident's or counsel substitute's absence shall be documented in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
14. At the opening of the hearing, the DHO shall inform the resident of the name and class of the violation charged. The DHO shall then ask the resident if they wish to have an explanation of the violation, document the resident's response in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F), and provide an explanation, if requested.
15. Any report relating to the incident that has been completed after the resident received the Letter of Notification of Disciplinary Hearing (Attachment D) shall also be provided to the resident at this time (unless confidential). If a report contains confidential informant information, the resident shall be provided with a summary of the confidential information that does not reveal the identity of the informant. Note: If the confidential informant information was used to lead to other sufficient evidence to substantiate the conduct, the

existence of the informant and the confidential information shall not be mentioned in any report provided to the resident.

16. If requested by the resident, or their counsel substitute, the hearing shall be continued for at least twenty-four (24) hours to permit the resident to prepare for the hearing in light of the newly provided report, and they shall be permitted to add the name of the staff who wrote the report to their witness list as if they had done so on the Letter of Notification.
17. The resident shall enter a plea to the violation(s). If they plead guilty or no contest, then the DHO shall conduct only a review of sanctions.
18. If they plead not guilty, the resident shall be given an opportunity to reply to the violation(s). The DHO may ask the resident questions. The DHO shall document the resident's reply and responses in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).

#### **Procedure H: Dismissal Decisions**

1. Only a designated Disciplinary Hearing Officer (DHO) or the Chief Administrative Officer, or designee, may dismiss a disciplinary charge as set out below.
2. Unless the resident has pled guilty or no contest, the DHO may dismiss a disciplinary charge either before or during the hearing.
3. Unless the resident has pled guilty or no contest, the Chief Administrative Officer, or designee, may dismiss a disciplinary charge after an appeal. See Procedure L. below.
4. The following shall require dismissal of a disciplinary charge:
  - a. the facts as described in the disciplinary report do not constitute a violation by the resident of either the disciplinary violation with which the resident was charged or a lesser or equal violation of which the resident could be found guilty;
  - b. the applicable time frame for submitting or resubmitting the disciplinary report was not adhered to and the time frame was not suspended in accordance with this policy;
  - c. an audio or video recording was relied on to substantiate the conduct and there was no mention of that fact;
  - d. a confidential informant was relied to substantiate the conduct and there was no summary of the confidential information;
  - e. in the case of a violation involving testing a resident for a substance prone to abuse, the reason for the testing was not included;
  - f. the hearing was held sooner than twenty-four (24) hours after the resident received the notification of the hearing, and the resident did not waive, in writing, their right to the twenty-four (24) hour notice;
  - g. there has been a delay in initiating or completing the investigation and there is no reasonable cause for the delay;
  - h. there has been a delay in holding or completing the hearing and there is no reasonable cause for the delay; or

- i. there appears to have been a violation of the resident's statutory or constitutional rights (e.g., a necessary witness listed by the resident on the notification form is no longer available to testify due to a delay in holding a hearing; a resident who is unable to understand English was denied a foreign language interpreter; the DHO was directly involved in the incident, etc.).
5. Unless there was a delay without reasonable cause, or a delay was prejudicial to the resident and therefore is a violation of the resident's rights, a disciplinary charge shall not be dismissed for any of the following reasons:
  - a. not initiating or completing the investigation within the specified time frame;
  - b. not holding the hearing within the specified time frame; or
  - c. continuing the hearing beyond the specified time frame.
6. A disciplinary charge shall not be dismissed for any other reason.
7. Whenever a charge is dismissed by the DHO before a hearing, the DHO shall document the reason(s) for the dismissal on the Disciplinary Report (Attachment B).
8. Whenever a charge is dismissed by the DHO during a hearing, the DHO shall document the reason(s) for the dismissal in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
9. Instead of dismissing a disciplinary charge, the DHO may take steps to have an error rectified if it would not be prejudicial to the resident and, therefore, would not be a violation of the resident's rights (e.g., if the wrong paperwork was mistakenly provided to the resident, the DHO may continue the hearing for the right paperwork to be provided; if an attachment to a disciplinary report was not included when the resident was given the notification, the DHO may provide the attachment and continue the hearing for the resident to have time to review the attachment; etc., with any continuance being for at least twenty-four (24) hours). The DHO shall document the steps taken in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
10. Before dismissing a charge due to an apparent violation of the resident's rights, the DHO may consult with the Department's legal representative in the Attorney General's Office.
11. If a resident requests a dismissal, and the request is denied, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).

#### **Procedure I: Disciplinary Hearing, Witnesses and Exhibits**

1. The Disciplinary Hearing Officer (DHO) may require a resident to explain in writing prior to the hearing or verbally at the hearing the relevance of any witness or exhibit.
2. The DHO may permit the resident, or their counsel substitute, to call one or more witnesses to testify in person or by a remote means of communication (telephone, video conferencing, etc.). The DHO may permit the resident, or their counsel substitute, to question any witness who testifies at the hearing. The DHO may require that the resident, or the substitute counsel, question any witness indirectly by relaying questions through the DHO.

3. The resident, or their counsel substitute, may be permitted by the DHO to “call” a witness and present their testimony in writing. Unless requested by the resident, or their counsel substitute, testimony from a witness shall not be presented in writing. This does not affect the ability of the DHO to consider and rely on the disciplinary report and other reports of the incident provided to the resident as set out in this policy.
4. A resident shall not be given permission to have a witness from outside the correctional facility physically brought to the disciplinary hearing. However, testimony from an outside witness may be presented by remote means of communication or in writing with the permission of the DHO.
5. Permission to call or question a witness, including a witness testifying by remote means, shall not be unreasonably withheld or restricted. A resident shall not be permitted to call a person as a witness for the sole purpose of attesting to the resident’s good character.
6. Whenever permission to call or question a witness is withheld or restricted, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
7. Whenever permission has been granted to call a witness, the DHO shall take all reasonable steps to ensure the testimony of the witness is presented at the hearing.
8. Whenever permission has been granted to call a witness and the witness does not testify, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
9. The DHO may call one or more witnesses and question any witness who testifies in person or by remote means at the hearing.
10. The DHO may permit the resident, or their counsel substitute, to present or examine exhibits. Permission to present or examine exhibits shall not be unreasonably withheld or restricted.
11. Whenever permission to present or examine exhibits is withheld or restricted, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
12. Whenever permission has been granted to present an exhibit, the DHO shall take all reasonable steps to ensure the exhibit is presented at the hearing.
13. Whenever permission has been granted to present an exhibit and the exhibit is not presented, the DHO shall document the reason(s) in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F).
14. When examination by a resident of an exhibit would compromise security or safety, the DHO may permit the resident to examine a photograph of the exhibit or may permit an examination of the actual exhibit or a photograph of the exhibit by staff acting as counsel substitute. When a resident’s listening to an audio recording or viewing a video recording of an incident would compromise security or safety, the DHO may permit staff acting as counsel substitute to listen to or view the recording.

15. A staff counsel substitute may be assigned by the DHO for the sole purpose of reviewing exhibits even if the resident has requested a resident counsel substitute. The resident counsel substitute shall be allowed to continue to assist the resident in other respects unless one of the other reasons for assigning a staff counsel substitute exists (e.g., there is a conflict between the residents).
16. If a staff counsel substitute reviews an exhibit because it cannot be reviewed by a resident for security or safety reasons, the staff counsel substitute shall write a summary of what they observed or listened to, without revealing any information that would create a risk to security or safety, and this summary shall be provided to the resident prior to or at the hearing. A photograph, an audio recording, or a video recording reviewed by a staff counsel substitute shall be retained in accordance with Department policy but shall not be made part of the disciplinary documentation accessible to the resident.
17. The DHO may present and review exhibits. The DHO may review an exhibit outside the presence of the resident if it cannot be reviewed by a resident for security or safety reasons, provided that it has been reviewed by a staff counsel substitute who has written a summary as set out above.
18. When confidential informant information is necessary to support a finding of guilt, appropriate security staff (facility correctional investigative officer, other facility law enforcement officer, etc.,) shall ensure that the identity of the informant, the detailed statement of the informant, and the reason(s) for relying on the informant or the information is provided to the DHO prior to the hearing, and the DHO shall ensure that this confidential information is not presented at the hearing or otherwise revealed to the resident who is the subject of the hearing, a resident acting as counsel substitute, or any other resident. This confidential information shall be retained in accordance with Department policy but shall not be made part of the disciplinary documentation accessible to the resident.
19. At the closing of the hearing, the resident, or their counsel substitute, may present their verbal and/or written arguments for dismissal, determination of innocence, and/or lesser sanctions. A resident, or their counsel substitute, may also submit written arguments to the DHO prior to the hearing.
20. The DHO shall ensure that the verbal arguments are documented in the Review of Sanctions or Disciplinary Hearing Summary (Attachment F) and the written arguments are included with the summary.

#### **Procedure J:      Hearing Decisions as to Guilt or Innocence**

1. After completion of the hearing, the Disciplinary Hearing Officer (DHO) shall determine guilt or innocence for any violation not dismissed.
2. Except to the extent that confidential informant information or an exhibit that if reviewed by the resident would compromise security or safety is necessary to support a finding of guilt, the finding of guilt or innocence shall rest solely upon evidence produced at the hearing, including, but not limited to, the disciplinary report (including, if applicable, a summary of confidential information); any attachments to the report required by this policy; the resident's statement, if any, to the investigator; the resident's statement, if

any, at the hearing; any exhibits (or, if applicable, a staff counsel substitute summary of an exhibit); and the testimony of any witnesses.

3. Except for confidential informant information or an exhibit that if reviewed by the resident would compromise security or safety, the DHO shall not attempt to obtain any additional evidence outside the presence of the resident.
4. A finding of guilt must be based on a determination that it is more probable than not that the resident committed the violation. However, in the case of a violation for which possession is an element, and more than one resident exercises control over an area in which the item was found, a finding of possession by one or more residents may be based on a determination that there is some evidence that the resident or residents exercised control over the item or the area.
5. In the case of a violation for which trafficking is an element, trafficking may be inferred from the amount of an item or by the number of items a resident possesses or by any other circumstances that indicate the item(s) are not likely intended to be only for personal use.
6. A resident may be found guilty of a violation other than the one charged, provided that the violation is of the same nature as the violation charged and is the same or lesser class as the violation charged.

#### **Procedure K: Decisions as to Sanctions**

1. As the result of the review of sanctions or the disciplinary hearing, as applicable, the Disciplinary Hearing Officer (DHO) shall recommend authorized sanction(s) for each violation of which the resident was found guilty and shall separately specify the recommended sanction(s) for each violation the resident is found guilty of.
2. In a case in which restitution is a recommended sanction, evidence of the actual cost of repairing damage to or replacing property or the cost of medical care, as applicable, shall be presented at the hearing, whether through witness testimony or an exhibit. If the actual cost is unknown at the time of the hearing, the DHO may recommend an amount of restitution based on the minimum cost that will be incurred as shown by witness testimony or an exhibit, e.g., an exhibit showing that a minimum ambulance cost is \$500.00.
3. If a resident who has known mental health needs has been found guilty of a violation, the DHO shall notify, and as appropriate consult with, the facility mental health staff as soon as practicable if the DHO is considering recommending disciplinary segregation.
4. Prior to recommending a sanction of disciplinary segregation, the DHO shall consider whether there are other appropriate sanctions that are available.
5. If the resident is found guilty of "Multiple Violation," the DHO shall recommend separate sanctions for the "Multiple Violation" and the underlying violation. The sanction for the underlying violation shall consist solely of "coaching/counseling/verbal reprimand/warning" (including that there shall be no monetary sanction for the underlying violation), while the recommended sanction for the "Multiple Violation" shall be in

accordance with the sanction(s) allowed for the class of the Multiple Violation (i.e. one class higher than the underlying violation).

6. Except for mandatory minimum monetary sanctions, which must be consecutive, if a resident is found guilty of more than one violation as a result of one review of sanctions or one disciplinary hearing, the DHO may recommend either concurrent or consecutive sanctions, provided that the DHO states a reason for recommending consecutive sanctions.
7. Sanctions recommended must be consecutive to any sanctions received as a result of a prior review of sanctions or prior disciplinary hearing if they have not yet been completed.
8. In any case, the DHO may recommend the imposition of a sanction and the suspension of all or some of its execution, except that there shall not be any recommendation to suspend a mandatory minimum monetary sanction.
9. If the resident commits another violation within one hundred twenty (120) days from the date of suspension of the sanction, the DHO may recommend the suspension be revoked in whole or in part by the Chief Administrative Officer, or designee, after consultation with the resident's Unit Team, upon a finding of guilt of the new violation.

#### **Procedure L: Summary of Decisions and Appeals**

1. If the resident pled not guilty, the resident shall be advised of the decision as to guilt or innocence and the basis for it. If the resident pled guilty or no contest, before or during a hearing, a guilty finding shall be entered based on their plea.
2. The resident shall be advised of the recommended sanction for each guilty finding.
3. The Disciplinary Hearing Officer (DHO) shall prepare a written summary of the evidence presented (if there was a hearing), the decision, a statement of the reason(s) and evidence relied on for the decision (if there was a hearing), and the recommended sanction for each guilty finding by completing the Review of Sanctions or Disciplinary Hearing Summary (Attachment F). The summary shall also contain documentation of any consultation with mental health staff.
4. The summary shall be retained in accordance with the Department's record retention schedule relating to resident records.
5. A copy of this summary shall be provided to the resident as soon as possible following the conclusion of the review of sanctions or disciplinary hearing, as applicable. This summary must be provided within twenty-four (24) hours of the conclusion of the review or hearing, unless the resident has less than forty-eight (48) hours until release, in which case, the summary must be provided immediately following the conclusion of the review or hearing. Upon request, a copy shall be provided to the reporting staff.
6. When the resident is provided the summary, the resident shall be advised by the DHO that they may appeal a finding of guilt (unless the resident pled guilty or no contest) and may appeal any recommended sanction (regardless of their plea) within fifteen (15) days (or other time frame for a resident who has less than fifteen (15) days until release) to

the Chief Administrative Officer, or designee, of the facility where the disciplinary hearing was held.

7. The DHO shall ask the resident whether the resident wishes to waive the right to appeal.
8. If the resident signs the waiver (on the summary) or if a resident who does not sign the waiver does not submit a timely appeal, no appeal shall be considered.
9. If the resident does not sign the waiver, the DHO shall provide to the resident the Disciplinary Appeal form (Attachment G). The appeal may be submitted to the Chief Administrative Officer, or designee, within fifteen (15) days (or other time frame for a resident who has less than fifteen (15) days until release) of the resident's receipt of the summary.
10. The resident shall submit any appeal to the Chief Administrative Officer, or designee, as directed by the DHO. The person deciding the appeal shall not have been directly involved in either the incident or its write-up.
11. The resident has the right to appeal a finding of guilt (unless the resident has pled guilty or no contest) and has the right to appeal the recommended sanction(s) regardless of their plea.
  - a. For a resident who has at least fifteen (15) days until release, then, within fifteen (15) days from the resident's receipt of the Review of Sanctions or Disciplinary Hearing Summary (Attachment F), a resident found guilty may submit to the Chief Administrative Officer, or designee, as set out above, an appeal, with reasons therefore, prepared by the resident or counsel substitute on the Disciplinary Appeal form provided to the resident.
  - b. For a resident who has less than fifteen (15) days until release, no later than twenty-four (24) hours prior to release, a resident found guilty may submit to the Chief Administrative Officer, or designee, as set out above, an appeal, with reasons therefore, prepared by the resident or counsel substitute on the Disciplinary Appeal form provided to the resident.
  - c. A resident may not raise arguments on appeal that were not presented to the DHO prior to, during, or at the closing of the hearing.
12. If a timely appeal is submitted, the Chief Administrative Officer, or designee, shall review and consider the appeal, the decision (unless the resident pled guilty or no contest), and the recommended sanction(s). The timeliness of the appeal is determined by the date and time it is received by the Chief Administrative Officer, or designee.
13. If an appeal is timely, the Chief Administrative Officer, or designee, may:
  - a. affirm the decision and recommended sanction(s) of the DHO;
  - b. reverse the decision (unless the resident pled guilty or no contest) and reverse the recommended sanction(s) of the DHO;
  - c. modify the decision (unless the resident pled guilty or no contest) and/or modify the recommended sanction(s) of the DHO;

- d. dismiss the charge (unless the resident pled guilty or no contest), if and only if one of the reasons ~~that would have allowed dismissal by the DHO~~ listed in Procedure H as requiring dismissal exists; or
  - e. remand the matter for a new disciplinary hearing (unless the resident pled guilty or no contest).
14. If there is a remand, the time frame for holding the new hearing begins when the resident is notified of the decision to remand.
  15. Before dismissing a charge due to an apparent violation of the resident's rights, the Chief Administrative Officer, or designee, may consult with the Department's legal representative in the Attorney General's Office.
  16. The Chief Administrative Officer, or designee, may not reverse or modify a guilty finding or dismiss a disciplinary charge or remand a matter for a new hearing unless the resident has been found guilty of a disciplinary violation to which they pled not guilty.
  17. The Chief Administrative Officer, or designee, may not modify or reverse a mandatory minimum monetary sanction unless the guilty finding is reversed or the disciplinary charge is dismissed.
  18. The Chief Administrative Officer, or designee, may not increase the severity of a sanction recommended, except that the Chief Administrative Officer, or designee, may reverse a recommendation to suspend a sanction.
  19. The resident shall be notified in writing of the decision on the appeal (or that the appeal was not considered because the resident waived their right to appeal or the appeal was untimely) by the Chief Administrative Officer, or designee, using the Decision on Disciplinary Appeal (Attachment H). The Chief Administrative Officer, or designee, shall also ensure the DHO is informed of the decision on the appeal.
  20. Recommended sanction(s) may not be imposed prior to the decision on the appeal, which must be made within thirty (30) days of receipt of the appeal.
  21. The Chief Administrative Officer, or designee, shall forward the appeal and the decision on the appeal to designated staff, keeping copies until the ~~original appeal and the signed decision form is~~ are returned. The staff shall meet with the resident without unnecessary delay and provide them with the appeal and the decision on the appeal, and the resident and the staff shall sign and date the decision form. If the resident refuses or is unable to sign, the staff shall note that on the decision form.
  22. The staff shall return the originals of the appeal and the signed decision forms to the Chief Administrative Officer, or designee, and provide copies to the resident. The Chief Administrative Officer, or designee, shall ensure the appeal and the signed decision on the appeal are uploaded and attached to the disciplinary case in the Department's resident and client records management system.
  23. If a resident is transferred to another Department facility, and a disciplinary appeal is responded to after the transfer, the DHO at the sending facility shall forward the appeal and the decision on appeal to the DHO at the receiving facility, keeping copies until the process is complete. The DHO at the receiving facility shall ensure that there is a

meeting with the resident as set out above and shall then return the appeal and the signed decision form to the DHO at the sending facility. The DHO at the sending facility shall ensure the appeal and the signed decision on the appeal are uploaded and attached to the disciplinary case in the Department's resident and client records management system.

24. If a resident is transferred to a jail, a correctional facility in another jurisdiction, or a state psychiatric hospital or is released from the Department's custody and a disciplinary appeal is responded to after the transfer or release, the DHO shall send the copies of the appeal and the decision on the appeal directly to the (former) resident by certified mail, keeping the originals until the process is complete. The DHO shall ensure the appeal, the decision on the appeal, and the certified mail paperwork are uploaded and attached to the disciplinary case in the Department's resident and client records management system. If and when the return receipt for the certified mail is returned, the DHO shall ensure that is also uploaded and attached to the disciplinary case in the Department's resident and client records management system. The only exception to this is if a transferred resident will be returning within two weeks of the decision on the appeal, in which case designated staff may meet with the resident upon their return as set out above.
25. The Chief Administrative Officer, or designee, is the final authority on an appeal (i.e., there is no further administrative level of appeal).

#### **Procedure M: Sanctions**

1. It is the purpose of this procedure to describe sanctions (punishments) that are proportionate to the seriousness of the violation.
2. A resident given a sanction of disciplinary segregation shall be treated in accordance with Department Policy 15.2 (AF), Disciplinary Segregation Status.
3. A resident given a sanction of disciplinary restriction is:
  - a. restricted to their cell/room, provided the restriction is for fewer than twenty-two (22) hours;
  - b. allowed to leave their cell/room for meals;
  - c. allowed to leave their cell/room for core programs (programs identified by the unit team as necessary to address high risk areas specific to the resident, e.g., substance use disorder treatment, domestic violence program, cognitive-behavior therapy, etc.);
  - d. allowed to leave their cell/room to participate in restorative justice processes, as approved by the facility restorative justice coordinator;
  - e. allowed to leave their cell/room to participate in college education programs using a stationary computer as approved by the facility education program coordinator (unless the computer and/or internet access privilege has been lost under another Department policy), but are not allowed to possess or use a laptop;
  - f. allowed to leave their cell/room for group religious ceremonies for the resident's previously designated faith group;

- g. allowed to leave their cell/room for visits, including video visits (unless the visit or video visit privilege has been lost under this or another Department policy);
- h. allowed to leave their cell/room for medical and mental health care;
- i. allowed to leave their cell/room for showers and exercise in the housing unit;
- j. allowed to make phone calls (unless the phone call privilege has been lost under this or another Department policy);
- k. only allowed access to a state-issued tablet during out of cell/room time;
- l. not allowed entertainment apps (e.g., games, music, movies, and news and sports apps), which are to be suspended on the state-issued tablet;
- m. not allowed to possess or use any personal electronic entertainment items (e.g., television, radio, and video game player), musical instruments, or personal tablets but may retain all other allowable personal property items; and
- n. not allowed to purchase or receive delivery of canteen/commissary items, except those items that they would be allowed to purchase or receive delivery of if they were on disciplinary segregation status.

Note: If a resident is housed in a multiple occupancy cell or room, the other resident(s) is not restricted from possessing or using their laptops, electronic entertainment items, musical instruments, or state-issued or personal tablets, but may not allow the resident on disciplinary restriction to use them.

4. Any loss of computer and/or internet access privileges shall be done through Policy 24.10 (AF), Adult Resident Use of Computers and/or Access to the Internet. The Disciplinary Hearing Officer (~~DHO~~) may recommend to the Department's Director of Education Technology, or designee, that a resident's computer and/or internet access privileges be restricted or suspended, but may not impose loss of computer and/or internet access privileges as a disciplinary sanction.
5. For a resident given a sanction of assigned extra work or civic service in lieu of recreation, staff shall endeavor to assign appropriate extra work or civic service to be performed during the recreation period with the exception of any scheduled exercise time in the housing unit. If appropriate work or civic service is unavailable, the resident shall be restricted to their cell/room during the recreation period with the exception of any scheduled exercise time in the housing unit.
6. A mandatory minimum monetary sanction of \$5.00 shall be imposed upon a finding of guilt of any disciplinary violation (except for the underlying violation where there is a "Multiple Violation"), regardless of any other sanctions imposed, to help defray the cost of holding disciplinary hearings. This sanction may not be suspended.
7. A higher monetary sanction, as set out below, may be recommended by the DHO for Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse.

8. The following are the sanctions that may be imposed upon the finding of guilt of a violation, whether as the result of a guilty plea or a plea of no contest or as a result of a hearing after a not guilty plea.

**Class A Sanctions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of thirty (30) days, except in the case of Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse, in which case disciplinary segregation or disciplinary restriction or both may be up to a total of ninety (90) days.
2. Loss of good time or deductions, up to thirty (30) days, except in the case of Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse, in which case loss of good time or deductions may be up to a total of ninety (90) days.
3. Loss of any of the following privileges: recreation, canteen/commissary, electronic entertainment items (e.g., television, radio, and video game player), musical instruments, and/or personal tablets for no more than thirty (30) days, except in the case of Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse, in which case loss of these privileges may be up to a total of ninety (90) days.
4. Suspension of the following privileges on state-issued tablets: entertainment apps (e.g., games, music, movies, and news and sports apps) for no more than thirty (30) days, except in the case of Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse, in which case suspension of these privileges may be up to a total of ninety (90) days.
5. Loss of a privilege related to the disciplinary violation for no more than thirty (30) days (e.g., loss of mail, text messaging, phone, and/or video visits privileges in the case of a disciplinary violation related to prohibited contact with a victim), except in the case of Trafficking, Substance Prone to Abuse, in which case loss of the related privilege (e.g., loss of visit and/or mail privileges) may be up to a total of ninety (90) days.
6. Assignment of extra work or civic service in lieu of recreation for no more than thirty (30) days.
7. Mandatory Minimum Monetary sanction of \$5.00. This sanction may not be suspended, and if there is more than one guilty finding, these sanctions must be consecutive.
8. Additional Monetary sanction up to \$100.00 for Assault on Staff, Volunteer or Student Intern; Assault on Other Person, Major; Body Fluid on/at Staff, Volunteer or Student Intern; Deadly Instrument; Fighting, Major; Offensive Physical Contact, Staff, Volunteer, or Student Intern; or Trafficking, Substance Prone to Abuse.

9. Restitution (to replace or repair property destroyed, damaged, or stolen or to pay the cost of medical care).
10. Coaching/counseling/verbal reprimand/warning.
11. Any combination of the above.

**Class B Sanctions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of fifteen (15) days.
2. Loss of any of the following privileges: recreation, canteen/commissary, electronic entertainment items (e.g., television, radio, and video game player), musical instruments, and/or personal tablets for up to fifteen (15) days.
3. Suspension of the following privileges on state-issued tablets: entertainment apps (e.g., games, music, movies, and news and sports apps) for no more than fifteen (15) days.
4. Loss of a privilege related to the disciplinary violation for no more than fifteen (15) days (e.g., loss of visit privileges in the case of a disciplinary violation related to visits).
5. Assignment of extra work or civic service in lieu of recreation for no more than fifteen (15) days.
6. Mandatory Minimum Monetary sanction of \$5.00. This sanction may not be suspended, and if there is more than one guilty finding, these sanctions must be consecutive.
7. Restitution (to replace or repair property destroyed, damaged, or stolen or to pay the cost of medical care).
8. Coaching/counseling/verbal reprimand/warning.
9. Any combination of the above.

**Class C Sanctions:**

1. Disciplinary restriction up to seven (7) days.
2. Loss of any of the following privileges: recreation, canteen/commissary, electronic entertainment items (e.g., television, radio, and video game player), musical instruments, and/or personal tablets for up to seven (7) days.
3. Suspension of the following privileges on state-issued tablets: entertainment apps (e.g., games, music, movies, and news and sports apps) for no more than seven (7) days.
4. Loss of a privilege related to the disciplinary violation for no more than seven (7) days (e.g., loss of privilege to participate in an activity in the case of a disciplinary violation related to safety while engaging in that activity).
5. Assignment of extra work or civic service in lieu of recreation for no more than seven (7) days.

6. Mandatory Minimum Monetary sanction of \$5.00. This sanction may not be suspended, and if there is more than one guilty finding, these sanctions must be consecutive.
7. Restitution (to replace or repair property destroyed, damaged, or stolen or to pay the cost of medical care).
8. Coaching/counseling/verbal reprimand/warning.
9. Any combination of the above.

## **Procedure N: Violations**

The purpose of this procedure is to define and grade violations in order to ensure uniform disciplinary practices and to give fair warning to residents of what conduct is prohibited and what the possible consequences of disciplinary violations are.

**NOTE:** If any of the below definitions state “without the written authorization of the Chief Administrative Officer,” then the burden is on the resident to produce a written authorization from the Warden of the facility where the resident was housed at the time of the conduct. A written authorization from any other person is not acceptable.

**Administrative Burden.** Performing any action with the intention to cause or with the knowledge it will cause a waste of the Department of Corrections or another state agency’s staff time after having received a written warning, including an explanation of the prohibited conduct, from the Chief Administrative Officer, or designee. Class B.

**Animal.** Mistreatment of an animal, including abuse, neglect, or harassment. Class A.

**Assault on Staff, Volunteer or Student Intern.** Inflicting bodily injury or any attempt to inflict bodily injury on staff, volunteer or student intern. Class A.

**Assault on Other Person, Major.** Inflicting serious bodily injury on any other person or any attempt to inflict serious bodily injury on any other person. Class A.

**Assault on Other Person, Minor.** Inflicting bodily injury on any other person or any attempt to inflict bodily injury on any other person. Class B.

**Assessment.** Refusing or failing to appropriately participate in a required program screening or assessment, except for a PREA assessment (which is voluntary). Class B.

**Body Fluid on/at Staff, Volunteer or Student Intern.** Spitting, excreting, urinating on/at staff, volunteer or student intern; throwing any body fluid or any fluid appearing to be or stated to be a body fluid on/at staff, volunteer or student intern; or contaminating any item with any body fluid or any fluid appearing to be or stated to be a body fluid. Body fluid includes feces, urine, blood, saliva, vomit, semen, or any other human body fluid. Class A.

**Body Fluid, Other.** Spitting, excreting, urinating on/at another individual; throwing any body fluid or any fluid appearing to be or stated to be a body fluid on/at another individual; or contaminating any item with any body fluid or any fluid appearing to be or stated to be a body fluid. Body fluid includes feces, urine, blood, saliva, vomit, semen, or any other human body fluid. Class A.

**Business or Commerce.** Engaging, directly or indirectly, in any business activity or profession or buying, or selling, renting, or leasing any property, goods, or services without written authorization from the Chief Administrative Officer. This violation does not include

the purchasing of personal property items as allowed by Department Policy (AF) 10.1 and Attachment A to that policy or the purchasing of canteen/commissary items. Class B.

**Canine.** Mistreatment of a Department or other criminal justice agency canine, including inflicting bodily injury on, threatening to strike or otherwise injure, or harassment of a canine, or interference with the canine's performance of its duties, including blocking or hindering its access, substantially restricting its movement, or disguising a scent. Class A.

**Checking Account and Debit Card.** Any violation of a personal checking account and debit card agreement made pursuant to Department Policy, 2.12, Resident Accounts. Class B.

**Community Release Violation.** Any violation of a community release program agreement, e.g., public service release, work release, education release, furlough leave, furlough pass, supervised community confinement. Class A.

**Computer and Internet Violations, Termination Violations.** Using a computer and/or access to the internet for criminal activity or to commit another violation requiring termination of computer use and internet access privileges under Department Policy (AF) 24.10, Adult Resident Use of Computers and/or Access to the Internet. Class A.

**Computer and Internet Violations, Tier I Violations.** Using a computer or accessing the internet to commit a Tier I violation under Department Policy (AF) 24.10, Adult Resident Use of Computers and/or Access to the Internet. Class B.

**Computer and Internet Violations, Tier II Violations.** Using a computer or accessing the internet to commit a Tier II violation under Department Policy (AF) 24.10, Adult Resident Use of Computers and/or Access to the Internet. Class C.

**Count, Interference.** Interfering with count, intentional delay of count, unexcused absence during count, or refusal to cooperate with the taking of a count, whether formal or informal. Class A.

**Count, Other.** Sleeping during a formal count for which it is required that the resident stand, sit, or otherwise respond to staff, or not being where required during a count, whether formal or informal, but still in the housing unit or other area in which the count is being taken (e.g., using the bathroom). Class C.

**Counterfeiting.** Counterfeiting, forging, or reproduction of any document, article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit or ATM card, or resident store card, debit card, or money transfer, or the possession of any counterfeit, forged, or reproduction of the above listed items. Class A.

**Currency, Giving or Receiving.** The giving or receiving, directly or indirectly, including by using a mobile payment application, of cash, check, money order, or any other legal currency, any article of identification, stock or other security, telephone calling card, credit, debit, or ATM card, or resident store card, debit card, or money transfer, bank account number, credit, debit, or ATM card number, telephone PIN number, computer password, or any other PIN number, password, or access code between a resident and another resident, between a resident and a volunteer or student intern, or during visits. The giving or receiving, directly or indirectly, of any of the above between a resident and the family or friend of another resident without written authorization from the Chief Administrative Officer. The giving or receiving, directly or indirectly, of any of the above between a resident and staff except as otherwise provided by a Department policy. This includes making a payment

for the benefit of another person or receiving the benefit of a payment made by another person. Class A.

**Currency, Possession or Use.** Possession or use of any article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit, or ATM card, or resident store card, debit card, or money transfer, bank account number, credit, debit, or ATM card number, telephone PIN number, computer password, or any other PIN number, password, or access code except as otherwise provided by a Department policy, including a debit card approved pursuant to Department Policy, 2.12, Resident Accounts. Class A.

**Deadly Instrument.** Possession of, or the trafficking in, any firearm, knife, sharpened instrument, needles, other sharps, blade removed from a razor, chemical, explosive, ammunition, or other weapon, device, instrument, material, or substance which could be a deadly instrument. Class A.

**Debt.** Incurring any debt, to include but not be limited to, subscribing to a magazine or ordering a book without pre-payment, taking out a loan (except for a credit improvement loan approved pursuant to Department Policy, 2.12, Resident Accounts or another type of loan from a bank, credit union, or other approved financial institution with the written authorization of the Chief Administrative Officer), applying for a credit card, or any other action designed to obtain property, goods, or services prior to paying for them in full. This violation does not include any obligations on the collection priority list (Attachment A) to Department Policy 2.12, Resident Accounts. Class B.

**Deception.** Creating or reinforcing a false impression, including a false impression as to identity, value, knowledge, or intention, for the purpose of depriving another party of money or other property. Class A.

**Demonstration.** Organizing, engaging in, or encouraging any unauthorized group demonstration. Class A.

**Destruction of Property, \$100 or less.** Willful destruction of or damage to any property not the resident's, of which the cost of replacement or repair, including labor, is \$100.00 or less. Class B.

**Destruction of Property, More than \$100.** Willful destruction of or damage to any property not the resident's, of which the cost of replacement or repair, including labor, is in excess of \$100.00. Class A.

**Destruction of Property, Negligent.** Negligent or careless destruction of, damage to, or waste of any property not the resident's. Class C.

**Disorderly Behavior.** Failure to conduct oneself in an orderly manner at all times. Class B.

**Disregard of Orders, Encouraging.** Encouraging others to disregard orders, instructions, rules, or assignments. Class A.

**Disturbance, Major.** Creating a disturbance which results in the need for extra staff to respond. Class A.

**Disturbance, Minor.** Creating a disturbance which does not result in the need for extra staff to respond. Class C.

**Electronic Communication Devices.** Possession of any electronic communication device, including, but not limited to, cell phone, two-way radio, or pager, without written authorization from the Chief Administrative Officer. Class A.

**Equipment.** Using machinery, computers, or other equipment without authorization from the staff in charge of the equipment or using authorized machinery, computers, or other equipment for an unauthorized purpose. This does not cover violations included under Computer and Internet Violations. Class B.

**Escape.** Escape, attempting to escape, or planning an escape. Class A.

**Escape Tool.** Possession of any tool, item, or material which could reasonably be expected to aid in an escape or escape attempt. Class A.

**Evidence.** Willful destruction or concealment of any item that is evidence or appears to be evidence of a disciplinary violation or a crime. Class A.

**Exposure.** Exposing one's private body parts to another person for the purpose of causing affront or alarm to the other person or arousing or gratifying the resident's sexual desire. Class A.

**Extortion.** The demanding and/or receiving anything of value by force, threat of force, or duress, or in return for protection of any kind. Class A.

**False Statement, Crime or PREA Violation.** Making or soliciting a statement or report known to be false, whether verbal or written, regarding a crime or a PREA violation. Class A.

**False Statement, Force or Duress.** Soliciting a statement or report known to be false, whether verbal or written, by any means involving force, threat of force, or duress. Class A.

**False Statement, Other.** Making or soliciting a statement or report known to be false, whether verbal or written, about any other matter. Class B.

**Fighting, Major.** Any physical encounter between two or more persons involving a deadly instrument or creating a substantial risk of serious bodily injury or actually resulting in serious bodily injury. Class A.

**Fighting, Minor.** Any physical encounter between two or more persons not involving a deadly instrument and not creating a substantial risk of serious bodily injury or actually resulting in serious bodily injury, but the object of which is bodily injury. Class B.

**Fire, Intentional.** The intentional setting of any fire, except for an approved purpose, creating an improvised device to generate a fire, sparks, or heat, or tampering with an electrical outlet. Class A.

**Fire, Negligent.** Negligent or careless ignition of combustible materials. Class B.

**Gambling.** Gambling, including participation in legal gambling, such as state sponsored lottery games, or possession of instruments of gambling. Class B.

**Gang or Security Threat Group Activity.** Possessing or displaying any materials, symbols, colors, or pictures of any identified gang or security threat group or engaging in behavior that is uniquely or clearly associated with a gang or security threat group. Class A.

**Giving or Receiving.** The giving or receiving, directly or indirectly, of any item of value between a resident and another resident, between a resident and a volunteer or student intern, or during visits. This does not prohibit the voluntary sharing within the housing unit of small quantities of food or hygiene items or the exchange of greeting cards if allowed by housing unit rules. It also does not prohibit organized gift giving activities involving items of minimal value if approved by the Unit Manager in writing. The giving or receiving, directly or indirectly, of any item of value between a resident and the family or friend of another

resident or between a resident and staff without written authorization from the Chief Administrative Officer. Class C.

**Harassment, General.** Harassment by words, gesture, or other behavior of any person that is not motivated by the person's race, color, ethnicity, national origin, age, religion, creed, gender, sexual orientation, gender identity, or similar circumstance, physical or mental disability, or crime. Class B.

**Harassment, Specific.** Harassment by words, gesture, or other behavior of any person that is motivated by the person's race, color, ethnicity, national origin, age, religion, creed, gender, sexual orientation, gender identity, or similar circumstance, physical or mental disability, or crime. Class A.

**Hoarding.** Possession of an unauthorized number or amount of an authorized item. Class C.

**Horseplay.** Engaging in horseplay and physical encounters not part of an organized recreation program. This violation does not include physical encounters rising to the level of fighting. Class C.

**Hostage Taking.** Taking of or being an accessory to the taking of a hostage or substantially restricting the movement of another person. Class A.

**Housing Unit Rules.** Failure to abide by housing unit rules not specifically covered in this policy but approved for use in the housing unit concerned and conspicuously posted in the housing unit or otherwise provided to the resident. Class C.

**Hygiene.** Failure to maintain personal hygiene and/or failure to maintain assigned living space in a sanitary and safe condition, as described by the housing area rules. Class B.

**Identification.** Tampering with, destruction of or damage to, or failure to display issued identification in the required manner. Class B.

**Inappropriate Relationship.** Attempting to initiate a sexual, romantic, or other unethical relationship with staff, a student intern, or a volunteer. Class A.

**Influencing.** Promising, offering or giving, directly or indirectly, an item, service, favor, money, or anything else of value to staff, a student intern, or a volunteer, threatening, or otherwise attempting to influence the person to engage in conduct detrimental to the Department. Class A.

**Informal or Formal Resolution.** Failing to abide by an informal or formal resolution of a disciplinary violation. Class B.

**Interference.** Interfering or encouraging others to interfere with any staff in the performance of their duties, to include, but not limited to, active or passive physical resistance to any lawful order, instruction, rule or assignment. Class A.

**Mail.** Violating mail rules. Class B.

**Martial Arts.** Demonstrating or practicing wrestling, boxing, or other martial arts without authorization from the staff in charge of the recreation area. Class B.

**Medication.** Unauthorized possession, giving, receipt, concealment, or hoarding of any medication or any medication related item, or abuse of any medication or medication related item. Class B.

**Money.** Failure to deposit money earned by, inherited by, gifted to, loaned to, or otherwise credited to the resident (except for a credit improvement loan approved pursuant to

Department Policy, 2.12, Resident Accounts) into the resident's account at the facility. Class B.

**Multiple Violation, Class A.** Committing a Class B violation within one hundred and twenty (120) days of committing the second of two violations which were either Class A or Class B for which the resident was previously found guilty through the formal resolution process. Class A.

**Multiple Violation, Class B.** Committing a Class C violation within one hundred and twenty (120) days of committing the second of two violations of any class for which the resident was previously found guilty through the formal resolution process. Class B.

**Noises.** Making loud noises, except for sounds made as part of an athletic or similar event, e.g., clapping, cheering, etc. Class C.

**Off Grounds Activity Violation.** Any conduct that results in removal from an off-grounds recreational activity. Class B

**Offensive Physical Contact, Staff, Volunteer, or Student Intern.** Offensive physical contact against staff, volunteer or student intern not resulting in bodily injury, including, but not limited to, touching or other contact for the purpose of causing affront or alarm to the other person or arousing or gratifying the resident's sexual desire, pushing, shoving, bumping, grabbing, or pinching. It also includes throwing an object or substance at staff, volunteer or student intern. Class A.

**Offensive Physical Contact, Other Person.** Offensive physical contact against any other person not resulting in bodily injury, including, but not limited to, touching or other contact for the purpose of causing affront or alarm to the other person or arousing or gratifying the resident's sexual desire, pushing, shoving, bumping, grabbing, or pinching. It also includes throwing an object or substance at the other person. Class B.

**Order, Negligent Failure to Obey.** Negligent or careless failure to carry out any lawful order, instruction, or assignment. Class C.

**Order, Refusing to Obey.** Refusing to obey any lawful order, instruction, rule, or assignment. Class B.

**Out of Place.** Leaving a place of assignment or otherwise moving through the correctional facility without authorization from the staff in charge of the place of assignment. Class C.

**Possession, Adulterated Food or Drink.** Possession of adulterated food or drink that can be used to make alcohol. Class B.

**Possession, Contraband.** Possession of any item that residents are not allowed to possess by statute, including, but not limited to, a weapon, escape tool, scheduled drug other than a drug prescribed to the resident by facility health care staff, or a mobile telephone or other handheld electronic communication device without written authorization from the Chief Administrative Officer. Class A.

**Possession, Paraphernalia.** Possession of paraphernalia related to a substance prone to abuse, e.g., a still for making alcohol, vaping device, etc. Class B.

**Possession, Substance Prone to Abuse.** Possession of a substance prone to abuse other than a medication prescribed to the resident by the facility health care staff. Class B.

**Possession, Other.** Possession of any other item which was not issued to the resident, sold through the canteen/commissary, or otherwise authorized to be in the resident's possession; use of an authorized item for other than its intended purpose; use of an

authorized item to manufacture contraband or conceal contraband or a non-allowable item; or alteration of or tampering with an authorized item (to include alteration of or tampering with a label, seal, or other security device). Class C.

**Power of Attorney.** Giving or receiving of a power of attorney between a resident and another resident or former resident, or between a resident and staff, volunteer or student intern. The giving or receiving of a power of attorney between a resident and the family or friend of another resident without written authorization from the Chief Administrative Officer. Class C.

**Prohibited Contact, Current Victim.** Having contact, directly or indirectly, with a person who the resident has been prohibited from having contact with as a result of any Department policy and who is a victim of any crime for which the resident was, is, or will be serving a sentence during the current time in custody or for which the resident is being detained; or who has a current protection from abuse order; or who has a current notification issued pursuant to Title 17-A section 506-A. This includes sending a gift to the victim. This includes sending money to or receiving money from the victim unless there is a court order permitting it (e.g., child support order). Class A.

**Prohibited Contact, Other Than a Current Victim.** Having contact, directly or indirectly, with any person who the resident is prohibited from having contact with as a result of any Department policy and who is not a current victim of the resident as described above. This includes sending a gift to the person. This includes sending money to or receiving money from the person unless there is a court order permitting it (e.g., child support order). Class B.

**Provocation.** Provocation of any person by words, gesture, or other behavior. Class C.

**Rules.** Failure to abide by the rules of any program not specifically covered in this policy and conspicuously posted in the program area or otherwise provided to the resident. Class C.

**Running.** Running, except when engaged in an authorized activity or during an emergency. Class C.

**Safety.** Failure to follow any safety procedure or use proper safety clothing or equipment provided by the correctional facility, whether during practice or actual performance of work or while engaging in another activity. Class C.

**Search or Scan.** Refusing to submit to a search or scan, whether of the resident's person, assigned area, e.g., room, cell, work area, or locker, etc., or property or refusing or failing to follow instructions in connection with the search or scan. Class A.

**Sex Trafficking.** Promotion of prostitution. Class A.

**Sexual Conduct, Consensual.** Any sexual act, sexual contact, sexual touching, or kissing (other than kissing as permitted by visit rules) not involving force or threat of force and not otherwise nonconsensual. Class B.

**Sexual Conduct, Nonconsensual.** Any sexual act, sexual contact, sexual touching, or kissing involving force or threat of force or otherwise nonconsensual. Class A.

**Sexually Explicit Materials Involving Minors.** Viewing, possessing, creating, reproducing, exhibiting, distributing, furnishing, or transferring materials that describe or depict a sexual act, sexual contact, sexual touching, bestiality, or masturbation involving a person who is, appears to be, or is represented to be under 18 years of age or materials that describe or depict violence inflicted on a person who is, appears to be, or is represented to be under 18 years of age for the purpose of arousing or gratifying sexual desire. This includes, but is not

limited to, a “person” who is real, who is generated by artificial intelligence, or who is a product of animation or is otherwise not real. Class A.

**Social Networking.** Creating or posting, directly or indirectly, on an internet social networking site, or blogging, directly or indirectly, the content of which jeopardizes safety, security or orderly management of the facility. Class B.

**Soliciting or Sending.** Soliciting money or other property from another party other than a family member or sending out money or other property to another party other than a family member without written authorization from the Chief Administrative Officer. Class B.

**Tablet, Personal or State-Issued, Major.** Using a tablet for any purpose which could jeopardize the safety, security, or orderly management of the facility or that is a violation of criminal law. Class A.

**Tablet, Personal or State-Issued, Minor.** Using a tablet for any other purpose which is not authorized, or which otherwise violates tablet rules or agreements. Class B.

**Tampering.** Tampering with, blocking, or obtaining control of any safety or security device, including, but not limited to, any locking device, key or key card, door, window, fire alarm, smoke alarm, heat sensor, fire sprinkler, security touch screen, or radio, or causing a false alarm. Class A.

**Tattooing.** Tattooing or any other intentional puncturing of one's own skin or the skin of another or the possession of tattooing equipment, tattooing pictures, or tattooing ink. Class B.

**Telephone.** Violating telephone rules. Class B.

**Test, Negative Drug Test.** A negative test result for a drug prescribed to the resident by facility health care staff that should have produced a positive test result, if the drug is one that is prone to being trafficked, including, but not limited to, suboxone, opioid pain killers, stimulants, and benzodiazepines. This does not include a test conducted by facility health care staff. Class B.

**Test, Positive Substance Prone to Abuse.** A positive test result for a substance prone to abuse other than a medication prescribed to the resident by facility health care staff. This does not include a test conducted by facility health care staff. Class B.

**Test, Refusing to Take Substance Prone to Abuse Test.** Refusing or failing to take a test for a substance prone to abuse, refusing or failing to provide an adequate specimen, or refusing or failing to follow instructions for providing an adequate and uncontaminated specimen. Class A.

**Test, Tampering with Substance Prone to Abuse Test.** Adding an adulterant to a specimen for a test for a substance prone to abuse, diluting a specimen, providing a specimen from another person, or otherwise trying to alter test results. Class A.

**Theft, \$100 or less.** Theft of the property of another party, where the value of such property is \$100.00 or less. Class B.

**Theft, More than \$100.** Theft of the property of another party, where the value of such property is greater than \$100.00. Class A.

**Threatening.** Threatening to strike or otherwise injure another individual, to include direct or indirect communication. Class B.

**Throwing.** Throwing any object or substance other than body fluids. Class B.

**Tobacco.** Trafficking, possession or use of tobacco, trafficking or possession of tobacco related devices, including, but not limited to, electronic cigarettes, pipes, lighters, matches, cigarette papers, and cigarette rollers, except as otherwise provided by a Department policy. Class B.

**Trafficking, Substance Prone to Abuse.** Trafficking of a substance prone to abuse, regardless of whether or not prescribed to the resident by facility health care staff, or related paraphernalia. Class A.

**Under the Influence or Use of Substance Prone to Abuse.** Being under the influence of or using a substance prone to abuse other than a medication prescribed to the resident by facility health care staff. Class B.

**Victim or Witness Tampering.** Any attempt, direct or indirect, to cause a victim or witness to withhold information or testimony or give false information or testimony in connection with any criminal or disciplinary investigation or proceeding, fail to cooperate with any criminal or disciplinary investigation, or fail to attend any criminal or disciplinary proceeding. Class A.

**Visits.** Violating visit rules, including rules for video visits. Class B.

**Work, Refusal.** Refusing to work, failing to work as instructed, or leaving work without permission. Class B.

**Written Communication.** Passing, giving or receiving, directly or indirectly, of any written communication between a resident and another resident without written authorization from the Chief Administrative Officer. Class C.

ALL THE AFOREMENTIONED VIOLATIONS INCLUDE PARTICIPATION AS AN ACCESSORY, ATTEMPT, CONSPIRACY, PLANNING, OR SOLICITATION AS DEFINED ABOVE.

**Procedure O: Other Actions**

1. The Chief Administrative Officer, or designee, shall review all disciplinary hearings and sanctions to assure conformity with Department policy.
2. If a resident receives a sanction of disciplinary segregation and/or loss of good time or deductions, the sanction shall be reviewed by the Chief Administrative Officer, or designee, and shall not be imposed unless approved.
3. If a resident is found not guilty or the disciplinary report is dismissed, the disciplinary report and any other disciplinary documents shall be forwarded to the Chief Administrative Officer, or designee, who shall examine the documents and then destroy them.
4. If a resident is found guilty of some, but not all violations, the parts of the disciplinary documents listing the violations for which the resident was found not guilty or which were dismissed shall be blacked out after review by the Chief Administrative Officer, or designee.
5. If a resident is found not guilty or the disciplinary report is dismissed, designated staff shall expunge the disciplinary documentation in the Department's resident and client records management system, as appropriate. Documents, other than disciplinary documents, which describe the incident, such as incident reports, records documenting separation from the general resident population, logbook entries, etc., shall not be destroyed, blacked out, or expunged.

6. If a resident is found guilty, and, if there is an appeal, the guilty finding is not reversed and the disciplinary report is not dismissed, the disciplinary report and any other disciplinary documents shall be uploaded and attached to the disciplinary case in the Department's resident and client records management system by designated staff, including any documents containing the resident's signature.
7. Once the disciplinary process is complete, appropriate staff shall take action, as necessary, to ensure all sanctions to be imposed are imposed as soon as practicable (e.g., if there is a loss of good time sanction, classification staff shall, as necessary, ensure that the good time is deducted from the resident's sentence immediately).
8. If a sanction is one that requires action by housing unit staff in order to be imposed (e.g., disciplinary restriction, disciplinary segregation, etc.), the resident's Unit Manager, or designee, shall ensure that the disciplinary sanction is imposed as soon as practicable.
9. At least weekly, each Unit Manager, or designee, shall review the active sanctions report in the Department's resident and client records management system to determine if any of the above sanctions still need to be imposed and, if so, shall take the appropriate action to ensure they are imposed as soon as practicable.
10. If a disciplinary restriction sanction is not begun within ninety (90) days of when the disciplinary process was completed, it shall not be imposed.
11. If a disciplinary segregation sanction is not begun within ninety (90) days of when the disciplinary process was completed, it shall be totally suspended. ~~The suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the resident is found guilty of having committed a new violation at any time and after consultation with the resident's Unit Team.~~ If the resident commits another violation within one hundred twenty (120) days from the date of suspension of the sanction, the Chief Administrative Officer, or designee, may revoke the suspension in whole or in part, after consultation with the resident's Unit Team, upon a finding of guilt of the new violation.
12. Monetary sanctions and restitution, if not fully collected prior to the resident's release from imprisonment, shall continue to be collected if the resident later returns on a new sentence or a revocation of an old sentence.
13. Loss of good time or deductions shall apply only to the sentence the resident was serving at the time of the violation, and if applicable, the good time or deductions may be withdrawn and the sentence completion date adjusted any time prior to the resident's release from imprisonment, but not if the resident later returns on a new sentence or a revocation of an old sentence.
14. All other sanctions, if not carried out prior to the resident's release from imprisonment, may not be imposed if the resident later returns on a new sentence or a revocation of an old sentence.
15. The Chief Administrative Officer, or designee, may at any time modify a sanction of disciplinary segregation time to a sanction of disciplinary restriction time of the same number of days.

16. If a resident in an IMHU commits a disciplinary violation and if, pursuant to this policy, the resident receives a sanction of disciplinary segregation, that sanction shall be reduced by the Chief Administrative Officer, or designee, to a sanction of disciplinary restriction, unless the resident has since been discharged from the IMHU.
17. The Chief Administrative Officer, or designee, may at any time suspend some or all of any disciplinary sanction that the resident has accumulated if the resident has demonstrated an extended period of good behavior, except for the mandatory minimum monetary sanction. ~~The suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the resident is found guilty of having committed a new violation at any time and after consultation with the resident's Unit Team.~~ If the resident commits another violation within one hundred twenty (120) days from the date of suspension of the sanction, the Chief Administrative Officer, or designee, may revoke the suspension in whole or in part, after consultation with the resident's Unit Team, upon a finding of guilt of the new violation.
18. The Chief Administrative Officer, or designee, may at any time suspend some or all of any disciplinary sanction that the resident has accumulated if the resident signs a written contract agreeing to demonstrate good behavior and satisfactory program participation on terms set by the Chief Administrative Officer, or designee, except for the mandatory minimum monetary sanction. ~~The suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the resident fails to abide by the contract as determined by the Chief Administrative Officer, or designee, or is found guilty of having committed a new violation at any time and after consultation with the resident's Unit Team.~~ If the resident commits another violation within one hundred twenty (120) days from the date of suspension of the sanction, the Chief Administrative Officer, or designee, may revoke the suspension in whole or in part, after consultation with the resident's Unit Team, upon a finding of guilt of the new violation.
19. After consultation with appropriate medical or mental health staff, the Chief Administrative Officer, or designee, may at any time suspend some or all disciplinary segregation time or disciplinary restriction time that a resident has accumulated to the extent necessary to address medical or mental health needs. After consultation with appropriate medical or mental health staff, the suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the resident's medical or mental health condition allows.
20. In the case of a resident who has been given a disciplinary sanction that would result in the resident being on continuous disciplinary segregation status for more than thirty (30) days, the Chief Administrative Officer, or designee, shall review and determine whether to approve the continuation on disciplinary segregation status beyond the thirty (30) days or modify or suspend the sanction as set out above.
21. Conduct constituting a disciplinary violation may result in a change in custody level, transfer to another housing unit or facility, change in housing status, drop in privilege level, issuance of a resident performance report, modification of a case plan, restriction, ~~or suspension,~~ or termination of privileges, including, but not limited to, mail, phone, in-person or video visits, text messaging, state-issued or personal tablet, and computer and/or internet access privileges, or the taking of any other action based on a determination that such action is in the interest of the resident, in the interest of the

resident population, or in the interest of safety, security, or orderly management, regardless of whether the disciplinary process is initiated and, if initiated, regardless of whether ~~the conduct leads to~~ there is an informal resolution or formal resolution of the violation. A dismissal or a finding of not guilty does not preclude taking any such action. Such action is not in the nature of a disciplinary sanction.

---

STATUTORY AUTHORITY: 34-A MRS §3032

EFFECTIVE DATE (Chapter 10 as a whole):  
February 18, 1984

AMENDED:

February 28, 1987 - Subsection 15.1 - as "Acts Prohibited for a Prisoner(s) and Discipline Procedure"  
March 7, 1988 - Subsection 15.1  
November 9, 1988 - Subsection 15.1  
February 6, 1991 - Subsection 15.1 - as "Client Disciplinary Procedures"  
March 28, 1994 - Subsection 15.1

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
October 30, 1996

AMENDED:

August 28, 1998 - Subsection 15.1 (EMERGENCY) - as "Prisoner Disciplinary Procedures"

NON-SUBSTANTIVE CORRECTION:

November 15, 1998 - this Subsection split off into a separate electronic file.

AMENDED:

November 30, 1998

NON-SUBSTANTIVE CORRECTION:

March 6, 2000 - Section V, Procedure B(8)(d)(6)

REPEALED AND REPLACED:

July 19, 2000  
February 1, 2002 – filing 2002-43 as Subsection 20.1, repealing Subsection 15.1 (EMERGENCY)  
August 5, 2002 – filing 2002-285 as Subsection 20.1, repealing Subsection 15.1  
August 22, 2005 – filing 2005-329  
March 27, 2005 – filing 2006-127  
September 19, 2012 – filing 2012-271  
April 15, 2013 – filing 2013-080  
February 29, 2016 – filing 2016-026 as corrected

AMENDED:

November 6, 2019 – filing 2019-178

APAO ACCESSIBILITY CHECK (Word):

February 11, 2026 (no issues detected)

REPEALED AND REPLACED:

February 16, 2026 – filing 2026-044