



# Virginia Department of Corrections

## Inmate Management and Programs

### Operating Procedure 861.1

#### *Inmate Discipline*

#### **Authority:**

Directive 861, *Inmate Conduct*

**Effective Date:** September 1, 2023

**Amended:** 10/1/23, 12/1/24, 4/17/25

#### **Supersedes:**

Operating Procedure 861.1, April 1, 2016

**Access:**  Restricted  Public  Inmate

#### **ACA/PREA Standards:**

5-ACI-3C-01, 5-ACI-3C-02, 5-ACI-3C-03,  
5-ACI-3C-04, 5-ACI-3C-05, 5-ACI-3C-06,  
5-ACI-3C-07, 5-ACI-3C-08, 5-ACI-3C-09,  
5-ACI-3C-11, 5-ACI-3C-12, 5-ACI-3C-13,  
5-ACI-3C-14, 5-ACI-3C-15, 5-ACI-3C-16,  
5-ACI-3C-17, 5-ACI-3C-18, 5-ACI-3C-19,  
5-ACI-3C-20, 5-ACI-3C-21, 5-ACI-3C-22,  
5-ACI-3C-23, 5-ACI-4A-26, 5-ACI-5C-08;  
4-ACRS-3A-01, 4-ACRS-3A-02, 4-ACRS-6A-03,  
4-ACRS-6C-01, 4-ACRS-6C-02, 4-ACRS-6C-03,  
4-ACRS-6C-04; 2-CI-5A-5, 2-CI-5A-6;  
2-CO-3C-01; §115.41[g], §115.52[g], §115.72,  
§115.78

<b>Content Owner:</b>	Erica T. Westfield Legal Compliance Manager	<i>Signature Copy on File</i>	5/24/23
		Signature	Date
<b>Reviewer:</b>	Ryan C. McCord Director of Administrative Compliance	<i>Signature Copy on File</i>	5/25/23
		Signature	Date
<b>Signatory:</b>	Joseph W. Walters Deputy Director for Administration	<i>Signature Copy on File</i>	5/25/23
		Signature	Date
<b>Signatory:</b>	A. David Robinson Chief of Corrections Operations	<i>Signature Copy on File</i>	5/27/23
		Signature	Date

### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date. (4-ACRS-3A-02)

*The content owner reviewed this operating procedure in November 2024 and necessary changes have been made.*

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

## Table of Contents

DEFINITIONS .....	3
PURPOSE .....	5
PROCEDURE .....	5
I.    Inmate Disciplinary Process .....	5
II.   Hearings Officer Appointment and Training .....	6
III.  Interpreters, Translators and Advisors .....	7
IV.   Reporting Officer .....	9
V.    OIC Duties .....	10
VI.   Serving Officer .....	12
VII.  Scheduling the Disciplinary Hearing .....	15
VIII. Inmate Preparation Prior to the Disciplinary Hearing .....	16
IX.   Hearings Officer .....	17
X.    The Disciplinary Hearing .....	19
XI.   Confidential Witnesses .....	22
XII.  Disciplinary Process Considerations for Transferred Inmates .....	22
XIII. After the Disciplinary Hearing .....	23
XIV.  Appeal Process .....	24
XV.   Authorized Penalties for Disciplinary Offense Convictions .....	28
XVI.  Determining the Penalty .....	29
XVII. Notations and Exceptions .....	29
XVIII. Enhanced Sanctions and Visiting Restrictions .....	31
XIX.  Rehearing of Disciplinary Offense Report .....	31
REFERENCES .....	31
ATTACHMENTS .....	32
FORM CITATIONS .....	32



## DEFINITIONS

**Advisor** - A staff member or inmate provided to assist an accused inmate in understanding the disciplinary process and preparing their defense to a disciplinary charge.

**Amend** - The formal process of altering, modifying, or removing content from a document or an electronic record in VACORIS in order to correct inaccurate or erroneous information.

**Assault (Disciplinary Action)** - Intentional, unlawful touching, or attempted touching of another without their consent.

**Body Worn Camera (BWC)** - A DOC issued device affixed to a Corrections Officer's uniform with the capability of capturing, recording, and storing audio and video information.

**Calendar Day** - Any 24-hour day regardless of weekends or holidays.

**Communication Disability** - Any impairment related to speech, language, and/or auditory processing; this includes hearing impairments, visual impairments, and cognitive impairments evidenced by an inability to speak, read, and/or understand written or oral communications of information provided at the facility.

**Confidential Witness** - An individual who may be subject to retaliation and whose identity must be protected for the individual's personal safety.

**Due Process (Inmate Discipline)** - The procedure established to protect those rights provided by law to inmates, which ensures those charged have reasonable notice of alleged charges of violation, the right to appear in person to challenge allegations, the right to review any evidence submitted on behalf of the agency not otherwise restricted and provide contrary evidence to an impartial hearings officer trained to conduct disciplinary hearings. The inmate must be informed briefly in writing by the hearings officer of the factual or procedural basis and justification for a decision following a disciplinary hearing.

**Enhanced Sanctions** - Restrictions placed upon an inmate in addition to a normal penalty for cases when the accused has shown certain patterns of behavior that are proven to be disruptive, maladaptive, or dangerous.

**Facility Unit Head** - The person occupying the highest position in a DOC residential facility, such as an institution, field unit, or Community Corrections Alternative Program.

**Funds** - Negotiable instruments, including, but not limited to, cash, checks, money orders, lottery tickets, savings, treasury or other bonds, stock certificates, certificates of deposit, etc.

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

**Hearings Officer** - A staff member, under the supervision of the Facility Unit Head or their designee and duly trained to conduct disciplinary hearings, who acts as the sole fact finder in a disciplinary hearing and decides innocence or guilt of the accused inmate and imposes an appropriate penalty.

**Informal Resolution** - A process whereby eligible inmates accused of less serious disciplinary offenses may accept a penalty and avoid the disciplinary offense becoming part of their permanent record. (5-ACI-3C-05; 4-ACRS-6C-04; 2-CI-5A-6)

**Inmate** - A person who is incarcerated in a Virginia Department of Corrections facility or who is Virginia Department of Corrections responsible to serve a state sentence.

**Institutional Classification Authority (ICA)** - The institutional employee designated to conduct inmate case review.

**Limited English Proficiency (LEP) Inmates and Probationers/Parolees** - Individuals whose primary language is not English and who have a limited ability to read, write, speak or understand English.

**Mental Health Clinician** - An individual with at least a Master's degree in psychology, social work, or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders, which may include a Psychiatric Provider, Social Worker, or Registered Nurse.

**Modify** - The process used to change the *Disciplinary Offense Report* to a more appropriate offense code, which can be a higher, equivalent, or lesser offense, when the inmate was charged with an incorrect offense code. This



can only occur during the disciplinary hearing before a decision is rendered by the presiding Hearings Officer or on appeal in cases where the offense code is changed to a lesser or equivalent category. The description of the offense must support the new offense code without modification.

**Officer-in-Charge (OIC)** - A Unit Manager or designated ranking security officer of a correctional facility; normally the Shift Commander, or the Assistant Shift Commander.

**Penalty Offer** - A process whereby an inmate accused of a disciplinary offense may plead guilty to the offense, accept a defined penalty, and avoid a formal disciplinary hearing.

**Personal Property (Inmate and CCAP Probationer/Parolee)** - Any item belonging to an inmate or CCAP probationer/parolee that has been acquired and authorized for possession, excluding authorized state-issued property.

**Procedural Error** - An error which had a measurable or substantive impact on the ability of the accused to exercise their due process rights i.e., ability to effectively formulate a defense, or to file an appeal in a timely manner. When determining whether such an error has occurred, the accused must show how the variation in question fundamentally impacted their ability to defend themselves in a negative way.

**Qualified Interpreter** - An in-house or DOC Language Services contracted individual who is able to ensure effective communication through accurate interpretation from English to the other language being interpreted, as determined by testing or certification protocols established by the LEP Coordinator.

**Re-entry Case Plan** - A case plan that outlines short term and long-term program needs based on an assessment of the inmate's, probationer's, or parolee's individual criminogenic factors.

**Rehearing** - A process whereby a *Disciplinary Offense Report* is heard again due to a procedural error or when the Inmate Discipline Unit determines on appeal the accused was charged with an incorrect offense code. A Rehearing must be approved by the Inmate Discipline Unit Manager or designee, with a clear justification given.

**Reporting Officer** - Any staff member who observes or who receives reliable information indicating a violation of the Code of Offenses or of institutional rules and regulations, and files a written *Disciplinary Offense Report*.

**Voluntary Substance Use Disorder Treatment (V-SUDT)** - A voluntary substance use disorder program for inmates who used or possessed alcohol or drugs for their own use within 30-days prior to the request for admission.

**Working Day** - Weekdays, Monday through Friday, not counting official state holidays.

## PURPOSE

This operating procedure, known as the Inmate Discipline Procedure, establishes the code of offenses, the penalties for violation of this code, and the disciplinary process for all inmates housed in a Department of Corrections (DOC) institution. (2-CI-5A-5)

## PROCEDURE

### I. Inmate Disciplinary Process

- A. This operating procedure governs the disciplinary process of all inmates including inmates from other jurisdictions who are serving their sentences in the Virginia Department of Corrections. (5-ACI-3C-02; 2-CO-3C-01)
1. All DOC staff have access to this operating procedure on the Virtual Library. (5-ACI-3C-03)
    - a. During orientation, each new staff member is given a copy of this operating procedure; see Operating Procedure 102.6, *Staff Orientation*.
    - b. The Hearings Officer will ensure a copy of this operating procedure is readily available to staff in designated institutional locations.
    - c. All staff, who work with inmates, are trained on the rules of inmate conduct, the rationale for the rules, the sanctions available, and the disciplinary process; see Attachment 1, *Staff Duties in the Disciplinary Process*. (5-ACI-3C-04)
  2. Each inmate will receive a copy of this operating procedure and must sign the *Inmate Discipline Procedure Receipt* 861\_F1, verifying receipt. (5-ACI-3C-03)
    - a. Staff will upload the signed *Inmate Discipline Procedure Receipt* 861\_F1 as an external document in the *Facility Notes* section of VACORIS identified as a *Special Entry*.
    - b. The Hearings Officer will ensure a copy of this operating procedure is available in the institutional library, Law Library, and other designated locations.
    - c. Each institution must provide inmates and staff with a copy of the institution rules and regulations during orientation.
    - d. If an inmate is currently pending classification or orientation for new inmates, the Hearings Officer must delay any disciplinary hearings, using a *Notice of Rescheduled Hearing Date*, if necessary, until after the inmate has undergone classification and received a copy of this operating procedure.
    - e. Delaying the disciplinary hearing for new inmates applies to new DOC intakes only; staff are not required to provide inmates who have been transferred from one DOC institution to another an additional copy of this operating procedure prior to conducting a disciplinary hearing.
  3. The inmate disciplinary process, as described in this procedure, is an administrative due process proceeding that is separate and independent from the criminal judicial system. (4-ACRS-6A-02)
    - a. Although strict rules of evidence do not apply, staff must present sufficient evidence at a disciplinary hearing to support a finding of guilt based on the preponderance of evidence. (§115.72)
    - b. An inmate may be held accountable for a violation of the Code of Offenses through this disciplinary process and may also be criminally prosecuted for the same offense.
    - c. Conviction of a disciplinary offense is not a prerequisite for referral for criminal prosecution. Referral for criminal prosecution may arise at any time during the disciplinary process based on information that an alleged crime was committed.
    - d. The Hearings Officer and other staff involved in the disciplinary process lack the authority to negotiate any plea or penalty related to a referral for criminal prosecution.
  4. Inmate Discipline Unit
    - a. The Inmate Discipline Unit monitors the disciplinary process through institutional visits, regular review of *Disciplinary Offense Reports*, and the VACORIS discipline module. (5-ACI-3C-22)



- b. When an Inmate Discipline Unit staff member, monitoring the disciplinary process, determines that a *Disciplinary Offense Report* should be reheard or the inmate's record should be amended to remove a disciplinary conviction, the staff member will notify the Regional Administrator who can order the offense reheard and/or the inmate's record amended, see Operating Procedure 050.1, *Inmate and Probationer/Parolee Records Management*. (5-ACI-3C-21)
- c. The Hearings Officer at each institution must monitor VACORIS to ensure staff finalize disciplinary charges at their institution.

#### B. Temporary Suspension of Time Frames

1. When VACORIS or any subsequent database is not functioning adequately to process a *Disciplinary Offense Report*, staff may extend all time limits for those alleged offenses for the period that the database or other electronic tracking software is unavailable.
2. In the event of a widespread institutional disruption, natural disaster, or other unusual occurrence that requires emergency action, the Facility Unit Head may suspend temporarily any portion or all of this operating procedure.
3. In such cases, the Facility Unit Head or designee will issue a memorandum notifying staff and inmates of the parameters of the suspension, the justification, and, if possible, an estimated time period over which the suspension will occur.
4. In the event of a medical emergency or other unforeseen circumstance, the Facility Unit Head or designee may contact the Inmate Discipline Unit Manager to request a temporary suspension of the timeframes related to the processing a disciplinary charge.

#### C. Forms

All forms associated with this operating procedure will be used as designed and should not be customized by institution staff. All forms available in VACORIS must originate from VACORIS without modification.

## II. Hearings Officer Appointment and Training

#### A. Primary Hearings Officer Appointment

1. Hearings Officers appointed by the Facility Unit Head and approved by the Inmate Discipline Unit Manager must conduct all inmate disciplinary hearings.
2. Staff must meet the following qualifications to be considered for a Hearings Officer appointment:
  - a. The staff member must have a thorough understanding of the inmate disciplinary process.
  - b. The staff member must be an objective and impartial decision-maker. (5-ACI-3C-15)
  - c. The staff member must demonstrate an appropriate level of:
    - i. Competencies
    - ii. Independent Decision-Making
    - iii. Dignity and Decorum
    - iv. Professional Conduct
    - v. Confidentiality
  - d. The staff member must successfully complete *Basic Skills for Hearings Officers* and any additional training requirements set by the Director for Institutions by demonstrating competence in the required qualifications prior to approval by the Inmate Discipline Unit Manager.

#### B. Alternate Hearings Officer

1. The Facility Unit Head must appoint one or more Alternate Hearings Officer(s) to conduct disciplinary hearings in the absence of the primary Hearings Officer and in cases where circumstances require recusal of the Hearings Officer.
  - a. The Inmate Discipline Unit Manager will certify Alternate Hearings Officers.



b. An Institutional Ombudsman may not serve as an Alternate Hearings Officer unless the Deputy Director for Institutions specifically approves an exception.

2. Alternate Hearings Officers are required to complete the same training as the primary Hearings Officer before they may conduct disciplinary hearings.

### C. Maintaining Certification

1. All new Hearings Officers and Alternate Hearings Officers, after receiving *Basic Skills for Hearings Officers* training, must complete a mentorship with an experienced Hearings Officer designated by the Inmate Discipline Unit. The mentorship will include training on the following:

a. Conducting a disciplinary hearing.

b. Reviewing and processing *Reporting Officer Response Forms* 861\_F4, *Witness Request Forms* 861\_F5, *Witness Statements* 861\_F15, *Inmate Evidence Request* 861\_F6, and *Summary of Evidence* 861\_F19.

c. Issuing a *Notice of Rescheduled Hearing Date* 861\_F21.

d. Recording and uploading the disciplinary hearing, to include renaming the file by case number.

e. Accessing and reviewing audio, video, and body camera evidence in the designated network storage folders.

f. Copying, scanning, and uploading external documents to VACORIS.

g. Providing an overview of any additional duties required of the Hearings Officer.

2. Alternate Hearings Officers at all Security Level 2 and above institutions must conduct five hearings per quarter to maintain certification.

3. Alternate Hearings Officers at all Work Centers and field units should conduct two hearings, if feasible, per quarter to maintain certification. In no instance should an Alternate Hearings Officer fail to conduct at least one hearing per quarter.

a. An Alternate Hearings Officer may hold hearings at another institution, if needed, to meet their minimum requirement.

b. If unable to conduct the required hearings, the alternate Hearings Officer must contact the Inmate Discipline Unit Manager in writing and request an extension with a date the certification requirement will be completed included in the request or the alternate Hearings Officer will be de-certified.

4. If certification lapses, the Alternate Hearings Officer must re-take *Basic Skills for Hearings Officers* prior to serving as a Hearings Officer.

5. All Hearings Officers and Alternate Hearings Officers must attend either the *In-Service for Hearings Officers* or the *Hearings Officer Conference*, annually.

### III. Interpreters, Translators and Advisors

A. The Inmate Discipline Unit Manager, in consultation with the Limited English Proficiency Coordinator, will determine if translation of this operating procedure and the associated forms and attachments into other languages is necessary and to which languages; see Operating Procedure 801.7, *Language Services for Limited English Proficiency*. (5-ACI-3C-03)

B. When literacy, a language barrier, communication disability, or other communication limitation exists, the Hearings Officer must provide an interpreter, translator, and/or advisor specific to the inmate's limitation to assist the inmate in understanding the disciplinary procedure and process. (5-ACI-3C-03, 5-ACI-3C-18)

1. The Hearings Officer or OIC must ensure an advisor, interpreter, or translator, as appropriate, is provided whenever an inmate, with a limitation, requests assistance during service of the *Disciplinary Offense Report* and when considering and/or completing the following documents:



- a. *Informal Resolution Agreement (5-ACI-3C-05)*
  - b. *Penalty Offer*
  - c. *Reporting Officer Response Form 861\_F4*
  - d. *Witness Request Form 861\_F5*
  - e. *Inmate Evidence Request 861\_F6*
  - f. *Disciplinary Appeal 861\_F8 and Disciplinary Appeal Continuation 861\_F17*
2. When an inmate's disability hinders their ability to communicate, the Hearings Officer or OIC must provide necessary accommodations so the inmate may communicate effectively throughout all steps of the disciplinary process.
  3. When a LEP inmate requests a qualified interpreter at any point during the disciplinary process, the Hearings Officer or OIC must utilize a qualified staff member who possess the skills necessary to communicate effectively with the inmate, or a qualified interpreter provided by the DOC contract vendor to communicate with the LEP inmate.
  4. Advisors, interpreters, and translators must not accept any form of payment, gratuity, or gift from any inmate they assist or from the inmate's family or friends.
- C. The Hearings Officer must ensure that accused inmates receive due process.
1. Advisors must possess an adequate knowledge of the disciplinary process and all relevant operating procedures accessible to inmates.
  2. The primary function of an advisor is to assist the inmate in preparing a defense and ensuring the inmate's due process rights are not violated.
  3. The Hearings Officer must monitor advisors to ensure the accused inmate receives the appropriate level of assistance required to protect the due process rights of the accused.
- D. Inmate Advisors
1. Inmate advisors are an established institutional job assignment and inmates are paid for the hours scheduled by the Hearings Officer or OIC to assist accused inmates as provided in this operating procedure; see Operating Procedure 841.2, *Offender Work Programs*.
    - a. The Hearings Officer should develop a set of minimum criteria that must be met for any inmate who requests consideration for an inmate advisor job assignment.
    - b. The Hearings Officer will supervise, train, and monitor inmate advisors.
  2. The Hearings Officer will assign an inmate advisor to assist the accused in preparing for their hearing.
- E. Staff Advisors (5-ACI-3C-18)
1. The Institutional Hearings Officer will train and monitor designated Staff Advisors to ensure that they possess adequate knowledge of the inmate discipline procedure.
  2. The Serving Officer will be trained on the inmate discipline procedure and will serve as the advisor to answer any questions the accused may have regarding the charges against them at the time of service.
  3. The Hearings Officer will assign a staff advisor to assist the accused in preparing for their hearing; the accused inmate may not choose a specific staff advisor.
  4. The Hearings Officer will appoint a staff advisor, in lieu of an inmate advisor, when:
    - a. The institution is on lockdown.
    - b. The accused inmate is in a Restorative Housing unit at any institution.
    - c. The institution is a Security Level 5 or above.
    - d. An Inmate Advisor is not available for any reason.
  5. The Hearing Officer may not appoint a staff advisor who was involved in the investigation of the



offense or was a witness to the offense for which they will serve as an advisor.

F. Attorney representation is not permitted at any time during any part of the disciplinary process.

#### IV. Reporting Officer

A. Any staff member trained on the inmate disciplinary process, having reasonable cause to believe an inmate committed a punishable offense may submit, as the Reporting Officer, a *Disciplinary Offense Report* through VACORIS on any inmate. (5-ACI-3C-07)

1. The Reporting Officer should submit the *Disciplinary Offense Report* through VACORIS during the shift they discovered the evidence justifying the *Disciplinary Offense Report*, or within one working day of the completion of any investigation into the events surrounding the incident leading to the charge.
2. When writing the *Disciplinary Offense Report*, the Reporting Officer will document the results of any investigation conducted in the description of the offense.
3. The Reporting Officer must have sufficient knowledge of the incident to answer the Hearing's Officer and accused inmate's questions about the facts of the offense.

B. All *Disciplinary Offense Reports* should include sufficient information to establish why the *Report* was warranted and to ensure the accused inmate is reasonably able to formulate a defense against the charge. The *Disciplinary Offense Report* should include, but is not limited to, the following information: (4-ACRS-6C-03)

1. Name and number of the inmate charged.
2. Institution where the offense occurred.
3. Accused inmate's cell or living area assignment.
4. Specific offense violated; see Attachment 2, *Category I Code of Offenses* and Attachment 3, *Category II Code of Offenses*. (5-ACI-3C-01, 5-ACI-3C-08; 4-ACRS-3A-01, 4-ACRS-6C-02)
5. Date and approximate time the offense occurred.
6. Location where the offense occurred.
7. Description of the offense, including all information pertinent to the alleged disciplinary charge, such as any unusual inmate behavior any immediate action taken, any use of force, etc., needed for a Hearings Officer to ensure the inmate receives due process and subsequently renders an impartial decision supported by a preponderance of the evidence. (5-ACI-3C-08; 4-ACRS-6C-02)
8. During an investigation, if anyone provides a statement to the Reporting Officer, which corroborates observations that the inmate violated the Code of Offenses, the identity of that individual should be included in the description of the offense, except for a confidential informant.
9. In cases where the statement of a confidential informant directly led to the writing of the charge, the statements given should be summarized for the accused, but the identity of the confidential informant is not to be divulged.
10. Any physical evidence and disposition. (5-ACI-3C-08)
11. Names of any witnesses to the incident. (5-ACI-3C-08)
  - a. The Reporting Officer should include the DOC number for any inmate witness to assist in verifying the identity of the inmate.
  - b. The Reporting Officer may not reference witnesses not listed on the *Disciplinary Offense Report* during the hearing.
12. Title and printed name of Reporting Officer
  - a. The Reporting Officer's signature is not required as VACORIS captures the name and title



electronically when the Reporting Officer submits the *Disciplinary Offense Report*. (5-ACI-3C-08)

- b. The Reporting Officer must write and submit the *Disciplinary Offense Report* using their VACORIS account to capture name and title.
- c. If an individual does not have or lacks access to an active VACORIS account to write and submit a *Disciplinary Offense Report*, the following steps will be taken:
  - i. The individual will notify a staff member with access to an active VACORIS account and provide all information pertinent and necessary for the staff member to complete the *Disciplinary Offense Report* in VACORIS.
  - ii. The staff member submitting the *Disciplinary Offense Report* will serve as the Reporting Officer in VACORIS; however, the identity of the individual reporting the rule violation must appear in the body of the charge and be listed as a Witness.

### 13. Date and time of report

#### C. The Reporting Officer, upon completion of the *Disciplinary Offense Report*, must:

1. Submit the completed report in VACORIS and provide further information to the OIC as requested. The Reporting Officer may not request dismissal of the *Disciplinary Offense Report* after submission. (5-ACI-3C-07)
2. Initiate no further communication about the *Disciplinary Offense Report* with the accused inmate, requested witnesses, the Hearings Officer, or anyone else involved in the disciplinary process before the disciplinary hearing. This restriction does not apply to contact by a representative of the institutional administration during the Penalty Offer process, or the OIC interview with the Reporting Officer.
3. Testify in person at the hearing for Category I Offenses, or by speakerphone, if it is more feasible and when the accused inmate is at different institution.
4. During the scheduled hearing, the Reporting Officer will answer questions regarding the *Disciplinary Offense Report* and any other circumstances relevant to the alleged offense.
5. The *Disciplinary Offense Report* will stand as the testimony of the Reporting Officer for Category II Offenses. The inmate may request additional information by completing a *Reporting Officer Response Form 861\_F4*.

#### D. Facility Unit Head as Reporting Officer

1. When the Facility Unit Head is the Reporting Officer for an alleged offense, the Facility Unit Head must serve as the OIC for that offense.
2. The Inmate Discipline Unit Manager or designee will appoint a special Hearings Officer to conduct the disciplinary hearing when the Facility Unit Head is the Reporting Officer.
3. Inmates will submit any Appeals of Category I or II Offenses directly to the Inmate Discipline Unit when the Facility Unit Head is the Reporting Officer.

#### V. OIC Duties

- A. Once the Reporting Officer submits the *Disciplinary Offense Report* in VACORIS, the OIC will process the *Disciplinary Offense Report* in time to allow the Serving Officer to serve the charge by midnight of the following working day, unless a valid reason for delay exists as determined by the Inmate Discipline Manager.
  1. In cases where the OIC is the Reporting Officer, a staff member of equal or higher rank should process the *Disciplinary Offense Report*.
  2. The OIC should not review or approve any *Disciplinary Offense Reports* written for incidents to which they were a direct witness.
  3. The OIC who reviewed and approved the *Disciplinary Offense Report* may not serve the *Disciplinary*



*Offense Report* on the accused inmate.

B. The OIC or next ranking corrections supervisor should:

1. Investigate the allegation including interviewing the accused inmate, Reporting Officer, any relevant witnesses, and review other evidence as appropriate to determine if sufficient facts exist to support the *Disciplinary Offense Report*. (5-ACI-3C-09)
2. Review the *Disciplinary Offense Report* for completeness and accuracy.
  - a. Edit and correct the *Disciplinary Offense Report* for grammatical and spelling errors. If corrections change the content, the OIC must return the report to the Reporting Officer for revision.
  - b. Ensure the offense code title corresponds to the alleged offense description. If a different offense code title is more appropriate, return the *Disciplinary Offense Report* to the Reporting Officer for revision.
3. Contact a Mental Health Clinician as soon as feasible to meet with an accused inmate, if the inmate is:
  - a. Assigned to a Mental Health Unit.
  - b. Housed in Restorative Housing for a mental health reason, e.g., suicide watch.
  - c. Assigned a Mental Health Code of MH-2S or higher.
  - d. Who may be cognitively or mentally impaired in general population.
4. Following contact with a Mental Health Clinician, when applicable, ensure a completed *Disciplinary Offense Mental Health Screening 861\_F2* assessing the following is forwarded to the Hearings Officer along with the *Disciplinary Offense Report*: (§115.78[c])
  - a. Clinical impressions related to the disciplinary offense.
  - b. Likelihood of understanding the acceptance of a *Penalty Offer*.
  - c. Likelihood of effectively participating in the hearing.
  - d. Potential impact of restorative housing on inmate's cognitive/mental condition.
  - e. Provide relevant comments and/or recommendations.
5. Take one or more of the following actions following investigation of the alleged offense:
  - a. Reject the *Disciplinary Offense Report* as unfounded due to lack of evidence or other irregularities, document the explanation in the comment section in VACORIS, and inform the inmate of the rejection.
  - b. If the investigation supports the allegations, arrange to serve the *Disciplinary Offense Report* on the accused inmate.
    - i. Determine an appropriate *Penalty Offer* based upon the facts of the charge as well as the accused's disciplinary record.
    - ii. Refer cases of suspected criminal violations to the Facility Unit Head for consideration and referral, when warranted, to the appropriate law enforcement agency for prosecution. (5-ACI-3C-06)
6. Enter the scheduled hearing date in VACORIS.

C. Penalty Offer

The OIC must take the following steps to prepare to serve the *Disciplinary Offense Report* on the inmate.

1. Determine the appropriate penalty for the offense and prepare a *Penalty Offer* in VACORIS for delivery during the service of the *Disciplinary Offense Report*.
2. Except in cases where an offense requires a mandatory penalty for conviction, the OIC should select a penalty from the list of reduced penalties in the *Reduced Penalty Ranges for Penalty Offers* section of this operating procedure.
3. Provide an interpreter/translator/advisor during the service of the *Disciplinary Offense Report* when



the inmate does not speak or understand English, is hearing impaired, or where a literacy problem exists.

- a. The interpreter/translator must be fluent and possess the skills necessary to communicate effectively with the inmate.
- b. If an appropriate interpreter/translator/advisor is not available at the institution, the OIC must contact the Hearings Officer for assistance.

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

1. An inmate may waive the right to a disciplinary hearing by documenting acceptance of a *Penalty Offer*. (5-ACI-3C-12)
  - a. The offer of a penalty is mandatory but acceptance by the inmate is voluntary.
  - b. The inmate may request the assistance of an advisor when considering acceptance of the *Penalty Offer*.
2. The inmate must be offered three choices during the *Penalty Offer* phase:
  - a. **Accept** - The inmate may accept the offer, enter a guilty plea, and waive the right to a hearing.
  - b. **Decline** - The inmate may decline the offer and the OIC must schedule a disciplinary hearing.
  - c. **Defer** - The inmate may take 24 hours from the service of the charge to consider the *Penalty Offer*. Should the inmate accept the *Penalty Offer*, any trained staff member may witness the decision and forward the *Penalty Offer* to the Hearings Officer.
3. The inmate's consideration of a *Penalty Offer* is not an admission of guilt, and the Hearings Officer must not consider it when determining the inmate's guilt or innocence, nor when imposing a penalty.
4. If the *Penalty Offer* exceeds the authorized penalty range, the Hearings Officer must adjust the penalty and document this on the *Disciplinary Offense Report*. The Hearings Officer must provide the inmate a copy of the revised *Penalty Offer* and the *Disciplinary Offense Report*.
5. When the inmate has documented acceptance and the *Penalty Offer* complies with procedure, the Hearings Officer will:
  - a. Indicate voluntary acceptance of the *Penalty Offer* on the *Disciplinary Offense Report* and write "**Accepted Penalty Offer**" in the *Reason for Decision* section.
  - b. Enter the penalty on the *Disciplinary Offense Report* and in VACORIS.
  - c. Sign the *Disciplinary Offense Report*.
6. The Hearings Officer must correct the *Penalty Offer* when staff modified the *Penalty Offer* improperly or when the *Penalty Offer* was improper because the alleged offense committed was subject to a mandatory penalty.
7. A *Penalty Offer* accepted by the inmate is **not** valid until reviewed and approved by the Hearings Officer.
8. The OIC and Hearings Officer must not negotiate to modify a disciplinary offense or offer a lesser penalty prior to the disciplinary hearing.
9. The OIC approving the charge must not act as the advisor at any point during the disciplinary process for that charge.

#### VI. Serving Officer

- A. The OIC will designate trained security staff to act as Serving Officers for *Disciplinary Offense Reports*.
  1. All Serving Officers must be trained by the Institutional Hearings Officer prior to serving a *Disciplinary Offense Report*.
  2. Serving Officers can serve as an advisor during the service of the charge.
  3. The Hearings Officer will conduct regular training to ensure Serving Officers have a working



- knowledge of the inmate discipline procedure, and to train all Serving Officers on properly carrying out their duties.
4. The Hearings Officer will maintain an electronic record of each Serving Officer's trainings date, to be stored in a shared drive maintained by the Inmate Discipline Unit.
- B. The Serving Officer should serve the *Disciplinary Offense Report* by midnight of the working day following the Reporting Officer's submission of the charge in VACORIS. (5-ACI-3C-11)
1. If the accused inmate is in in-cell restraints, suicide watch, or placed in a stripped cell due to a mental health concern, a Mental Health Clinician must complete a *Disciplinary Offense Mental Health Screening* 861\_F2 to determine if the inmate is clinically stable for service of the *Disciplinary Offense Report* prior to release from these special statuses.
    - a. If the accused inmate is not clinically stable, the Serving Officer should not serve the *Disciplinary Offense Report* until after the inmate is removed from restraints, suicide watch, or stripped cell.
    - b. The Serving Officer should serve the *Disciplinary Offense Report* no later than midnight of the working day following the inmate's removal from their special status. (4-ACRS-6C-02, 4-ACRS-6C-03)
  2. Serving Officers may not serve a *Disciplinary Offense Report* between midnight and 6:00 AM.
- C. In a private area of the institution, if possible, the Serving Officer will:
1. Verify the *Disciplinary Offense Report* against the information found on the accused inmate's identification card.
  2. Read all information on the *Disciplinary Offense Report* to the accused inmate.
  3. Advise the accused inmate of their rights related to the disciplinary hearing, including:
    - a. **Advisor** - The right to the services of an advisor during the disciplinary process. (4-ACRS-6C-03)
    - b. **Witnesses** - The right to request statements from witnesses deemed to possess relevant information related to the charge and to present those statements during a disciplinary hearing.
    - c. **Evidence** - The right to request a review of evidence that is A) relevant to the charge and B) not otherwise restricted from inmate access due to reasonable security considerations. The inmate may request documents, pictures, video, body camera clips, and audio evidence by completing the *Inmate Evidence Request* 861\_F6. If necessary, the assigned Hearings Officer may resolve questions regarding evidentiary access by an inmate following consultation with the Inmate Discipline Unit. (4-ACRS-6C-03)
    - d. **24-Hour Notice of Hearing Date** - The right to a minimum of 24-hours notice of their scheduled hearing date. (5-ACI-3C-11; 4-ACRS-6C-03)
    - e. **Appear at Hearing** - The right to be present at the disciplinary hearing. Refusal to appear may not be considered an admission of guilt or a waiver of the inmate's witnesses. The Hearings Officer will conduct the hearing in the inmate's absence, review any *Witness Statements* 861\_F15 submitted and other requested evidence. The Hearings Officer will base their decision upon the record submitted prior to the scheduled hearing and any relevant evidence offered by witnesses present at the hearing.
    - f. **Question Reporting Officer** - The right to question the Reporting Officer in person or by speakerphone, for a Category I Offense, or by submitting a *Reporting Officer Response Form* 861\_F4 for a Category II Offense.
    - g. **Penalty Offer** - The right to enter into a *Penalty Offer*. The Serving Officer should read to the inmate the conditions of accepting the offer and witness the inmate's signature indicating the accused inmate understands the conditions as listed on the *Penalty Offer*.
    - h. **Remain Silent** - The right to make a statement or remain silent. Silence does not constitute an admission of guilt.

- i. **Modified** - The Hearings Officer may modify the *Disciplinary Offense Report* to a higher, equivalent, or lesser offense code.
  4. Request the accused inmate sign the *Disciplinary Offense Report* and witness their signature.
    - a. An accused inmate's refusal to sign either the *Disciplinary Offense Report* or the *Penalty Offer* constitutes a waiver of the right to accept a *Penalty Offer*.
    - b. An accused inmate's refusal to sign the *Disciplinary Offense Report* is not considered to be a waiver of any other rights.
    - c. When the inmate refuses to sign the *Disciplinary Offense Report*, the Serving Officer should sign twice; once to witness and verify the rights were read to the accused inmate, and a second time in the designated area provided to document the inmate's refusal.
  5. Read the *Penalty Offer* to the accused inmate and explain the rights attached to accepting or refusing the *Penalty Offer*.
    - a. The Serving Officer must serve the *Penalty Offer* after the *Disciplinary Offense Report* and read the conditions of the *Penalty Offer* to the accused inmate.
    - b. The accused inmate will indicate their acceptance or refusal of the *Penalty Offer*.
    - c. The Serving Officer and the accused inmate will sign and date the *Penalty Offer* to acknowledge receipt.
    - d. If the inmate refuses to sign the *Penalty Offer*, the Serving Officer will document the accused inmate's refusal to sign.
  6. Inform the accused inmate, during service of the *Penalty Offer*, of the following options:
    - a. The accused may **Accept** the *Penalty Offer*, which is an admission of guilt and a waiver of the right to a disciplinary hearing.
      - i. An accepted *Penalty Offer* is not valid unless both the *Disciplinary Offense Report* and the *Penalty Offer* are signed by the accused.
      - ii. If the accused indicates, they wish to accept the *Penalty Offer* but refuses to sign either the *Disciplinary Offense Report* or the *Penalty Offer*; the Hearings Officer will reject their acceptance and will schedule a hearing.
    - b. The accused may **Decline** the *Penalty Offer* which results in a scheduled disciplinary hearing.
    - c. The accused may **Defer** their decision until after meeting with an advisor.
      - i. The *Penalty Offer* is valid for only one working day following the accused's meeting with an advisor.
      - ii. If the accused inmate chooses not to **Accept** the *Penalty Offer* within one working following their meeting with an advisor, the Hearings Officer will schedule a disciplinary hearing.
      - iii. If the accused inmate chooses to **Accept** a *Penalty Offer* within one working day following their meeting with an advisor, any staff member may witness their admission of guilt at the bottom of the *Penalty Offer*, then forward the signed copy immediately to the Hearings Officer.
  7. Provide the accused inmate with a completed copy of the *Disciplinary Offense Report* and the *Penalty Offer*, to include all signatures, dates, and times.
  8. Return the original signed copy of the *Disciplinary Offense Report* and *Penalty Offer* to the OIC for entry of service information into VACORIS.
- D. The Serving Officer cannot serve the *Disciplinary Offense Report* and *Penalty Offer*, if they were a witness to the offense. The Serving Officer must notify the OIC so the OIC can designate another trained Corrections Officer or security supervisor as the Serving Officer.
- E. The Hearings Officer must review and approve the *Penalty Offer*, once accepted by the accused inmate, to validate the offense and penalty. (5-ACI-3C-12)
1. The Hearings Officer will validate by:

- a. Ensuring that the charge was written and served correctly and within the required time frames.
  - b. Ensuring that the admission of guilt was signed by the accused.
  - c. Ensuring that the offense code utilized was appropriate for the description of offense.
  - d. Indicating voluntary acceptance of the *Penalty Offer* on the *Disciplinary Offense Report* and write **“Entered a Plea of Guilty”** as the *Reason for Decision*.
  - e. Enter the penalty offered by the OIC and accepted by the inmate on the *Disciplinary Offense Report* and in VACORIS.
  - f. Sign the *Disciplinary Offense Report*.
2. Upon submission of the Hearings Officer’s decision, VACORIS will forward the *Disciplinary Offense Report* for the next level of review. (5-ACI-3C-12)

## VII. Scheduling the Disciplinary Hearing

- A. Once the Serving Officer serves the *Disciplinary Offense Report* and *Penalty Offer*, the OIC will:
1. Ensure the inmate and the Serving Officer signed the *Disciplinary Offense Report* and the *Penalty Offer*.
  2. Ensure the Serving Officer served the charge correctly and sign the *Disciplinary Offense* a second time.
  3. Document service of the charge in VACORIS.
  4. Forward the signed documents to the Hearings Officer.
  5. Schedule the case for a disciplinary hearing to occur no sooner than 5 working days following the service of the charge, but no later than 30 calendar days after service, unless a valid reason exists. (4-ACRS-6C-03)
- B. The accused inmate may not waive the 24-hour notice requirement during the service of the *Disciplinary Offense Report*. The hearing date documented on the *Disciplinary Offense Report* satisfies the 24-hour notice. (5-ACI-3C-13)
- C. When the Hearings Officer must reschedule the disciplinary hearing, the Hearings Officer must send a *Notice of Rescheduled Hearing Date 861\_F21* to the inmate at least 24 hours prior to the newly scheduled hearing date. (5-ACI-3C-13, 5-ACI-3C-14)
1. If the rescheduled hearing date occurs within the 30-calendar daytime frame to hear the charge, no justification for the change in hearing date is needed.
  2. If the Hearings Officer cannot hear the charge within 30 calendar days of initial charge service, the Hearings Officer must provide justification for the delay on the *Notice of Rescheduled Hearing Date 861\_F21*.
  3. Hearing a charge outside the 30-calendar daytime frame is justified when:
    - a. The Reporting Officer, voluntary staff advisor, or witnesses are off duty, unavailable due to staff shortages, or away from the institution on the scheduled hearing date.
    - b. Prolonged absence of Reporting Officer or witnesses due to illness, temporary leave of absence, mandatory training, or military leave.
    - c. The accused inmate is unavailable due to a medical condition, hospitalization, or temporary transfer to another location for medical purposes, court appearances, or other reasons beyond the control of the Hearings Officer.
    - d. The institution is awaiting determination of restitution amounts.
    - e. The institution is awaiting the results of blood or other laboratory tests.
    - f. Staff is unavailable due to escape, disturbance, inclement weather, or natural disaster.
    - g. Accused inmate escape.

- h. The institution is awaiting the outcome of criminal charges as a result of this offense.
  - i. The institution is obtaining an appropriate interpreter/translator/advisor to assist the inmate.
  - j. The institution is on scheduled or unscheduled lockdown.
  - k. The inmate is currently pending classification or orientation for new intakes.
- D. For any reason other than a pre-approved justification or suspension of this operating procedure due to an institutional emergency, the Hearings Officer must request in writing that the Inmate Discipline Unit Manager or the Legal Compliance Manager authorize a disciplinary hearing after the 30-calendar day deadline. (5-ACI-3C-14)
- 1. The Hearings Officer must request this authorization within three working days after the expiration of the thirty working day deadline for the disciplinary hearing.
  - 2. Once the Hearings Officer determines the delay is no longer justified, the Hearings Officer will have five working days to reschedule the hearing and notify the accused of their new hearing date on the *Notice of Rescheduled Hearing Date* 861\_F21.
- E. The Hearings Officer must request in writing that the Inmate Discipline Unit Manager or designee authorize a disciplinary hearing held more than 60 working days after service of the charge, even in the case of pre-approved justifications or suspension of this operating procedure due to an institutional emergency. (5-ACI-3C-14)
- 1. The Hearings Officer must request this authorization within three working days after the expiration of the sixty working day deadline for the disciplinary hearing.
  - 2. Once the Hearings Officer determines the delay is no longer justified, the Hearings Officer will have five working days to reschedule the hearing and notify the accused of their new hearing date on the *Notice of Rescheduled Hearing Date* 861\_F21.

#### VIII. Inmate Preparation Prior to the Disciplinary Hearing

- A. Upon receiving notice of the scheduled hearing date, the Hearings Officer will schedule a time for the accused to meet with an advisor to assist them in preparing a defense and to answer any questions they may have about the inmate disciplinary process.
- 1. The inmate may not request, nor will staff provide them with, a staff advisor who was responsible for the writing, approval, or service of the charge.
  - 2. The accused inmate is responsible for requesting, completing, and submitting the *Reporting Officer Response Form* 861\_F4, *Witness Request Form* 861\_F5, *Inmate Evidence Request* 861\_F6 within two working days of meeting with an advisor.
  - 3. Additionally, these forms are available in each housing unit by inmate request, or a request can be sent to the Hearings Officer.
  - 4. A qualified staff member who possesses the skills necessary to communicate effectively with the inmate, or a qualified interpreter provided by the DOC contract vendor will be provided to assist an LEP inmate in completing the form in English.
- B. If the accused inmate has possession of written documents relevant to the *Disciplinary Offense Report*, the inmate may provide the information to the Hearings Officer at the hearing without submitting an *Inmate Evidence Request* 861\_F6.
- 1. The Hearings Officer will allow the inmate to submit written documents in their possession that are relevant to the offense and were not obtained using an *Inmate Evidence Request* 861\_F6.
  - 2. The Hearings Officer will rule on authenticity and relevancy of the information provided by the accused inmate.
  - 3. Inmates may not submit *Witness Statements* 861\_F15, *Reporting Officer Response Forms* 861\_F4, or



affidavits, signed or unsigned, that they did not obtain by submitting the appropriate request form to the Hearings Officer.

- C. Due to security and privacy concerns, inmates may not request copies of internal electronic communications for any reason; the accused may request that the Hearings Officer or appeal responder review such records if a valid due process question exists which could be resolved by their review.
- D. Except for good cause shown, failure to submit the proper completed *Requests* to the Hearings Officer within the time limit is a waiver of the accused inmate's right to request a reporting officer response, witnesses, or evidence. The Hearings Officer will consider the accused inmate's rationale for demonstrating good cause, if any, prior to determining a waiver of the accused's rights.

## IX. Hearings Officer

### A. Disciplinary Offense Report Review

- 1. The Hearings Officer must determine whether to dismiss the *Disciplinary Offense Report* if not served within the time limit. The Hearings Officer may consider factors that include, but are not limited to:
  - a. The need to secure the services of an appropriate interpreter/translator to assist the inmate during the service of the *Disciplinary Offense Report*.
  - b. The need to have a Mental Health Clinician meet with the accused prior to the service of the *Disciplinary Offense Report*.
  - c. The significant disruption of institutional operations which prevent valid service.
- 2. If, upon review, the Hearings Officer determines that the Reporting Officer or OIC selected an incorrect offense code based upon the description of the offense, the Hearings Officer may:
  - a. Correct the offense code and provide the accused with a new copy of the *Disciplinary Offense Report* noting the change.
  - b. Afford the accused the opportunity to meet with an advisor and turn in any forms they may need to present a defense.

### B. Disciplinary Offense Mental Health Screening

- 1. Prior to scheduling a time for the accused to meet with an advisor, the Hearings Officer will verify a Mental Health Clinician has been contacted to meet with an accused inmate if the inmate is:
  - a. Assigned to a Mental Health Unit.
  - b. Housed in Restorative Housing for a mental health reason, e.g., suicide watch.
  - c. Assigned to a Mental Health Code of MH-2S or higher.
  - d. Who may be cognitively or mentally impaired in general population.
- 2. If the accused inmate qualifies, but has not met with a Mental Health Clinician, the Hearings Officer should contact a Mental Health Clinician to meet with the accused as soon as practicable.
- 3. Once the Hearings Officer verifies contact with a Mental Health Clinician, the Hearings Officer will ensure a completed *Disciplinary Offense Mental Health Screening* 861\_F2 is attached to the *Disciplinary Offense Report*. (115.78(c))

### C. Witness Request Forms and Witness Statements Review

- 1. The Hearings Officer will review any *Witness Request Form* 861\_F5 submitted by the accused inmate to: (5-ACI-3C-17)
  - a. Ensure valid submission within two working days of meeting with an advisor.
  - b. Determine if the *Request* was incomplete and will not be processed.
    - i. If the *Request* is incomplete or the requested information is unclear, the Hearings Officer will return the *Request* to the accused for clarification.
    - ii. The Hearings Officer will give the accused one opportunity to clarify or correct their *Request*.



- c. Determine relevancy of all requested witnesses, and if deemed relevant, forward a *Witness Statement* 861\_F15 to the listed witness.
  - d. Enter the scheduled hearing date and deadline for returning the *Witness Statement* 861\_F15 to the Hearings Officer.
2. The Witness will complete the *Witness Statement* 861\_F15, including date and signature prior to submission to the Hearings Officer.
    - a. If the requested witness is an inmate who refuses to be a witness for the accused, the requested witness will indicate refusal in the designated box on the *Witness Statement* 861\_F15 and return the *Statement* to the Hearings Officer.
      - i. If the requested inmate witness fails to return the *Witness Statement* 861\_F15 to the Hearings Officer, the Hearings Officer should make a good faith effort to determine whether such failure was voluntary.
      - ii. Failure of a requested inmate witness to return the *Witness Statement* 861\_F15 does not constitute a procedural error.
    - b. If the requested witness is neither a staff member nor another inmate, i.e., a member of the public, such as a visitor, the accused inmate must provide the mailing address to the Hearings Officer.
      - i. If the requested witness is a former staff member, volunteer, or other private citizen whose address is available to institutional staff, the Hearings Officer must request a written statement from the witness; however, any response or agreement to testify is voluntary.
      - ii. The institution will pay postage if necessary to mail *Witness Statements* 861\_F15.
  3. The Hearings Officer will review each completed *Witness Statement* 861\_F15 and determine relevance to the offense.
    - a. *Statements* deemed repetitive or irrelevant by the Hearings Officer warrant no additional consideration during the scheduled disciplinary hearing.
    - b. The Hearings Officer will consider *Witness Statements* 861\_F15 deemed relevant to the offense during the disciplinary hearing.

#### D. Review Request for Evidence

1. The Hearings Officer will review any *Inmate Evidence Request* 861\_F6 submitted by the accused inmate for documents, photographs, video, body camera clips, and audio, and determine the request's relevance to the offense. (5-ACI-3C-17)
  - a. The Hearings Officer will document their determination on the *Inmate Evidence Request* 861\_F6 and will notify the accused inmate of this decision at least two working days prior to the scheduled hearing.
    - i. If requested evidence is determined relevant and not restricted to the accused inmate, a copy of the requested evidence will be provided at least two working days prior to the scheduled hearing.
    - ii. If requested evidence is determined relevant, but is restricted to the accused inmate, the Hearings Officer will obtain a copy of the requested evidence for review and will state their findings for the record at the disciplinary hearing.
    - iii. If requested evidence is determined not relevant, notification of the Hearings Officer's decision will be given at least two working days prior to the scheduled hearing.
    - iv. If the accused inmate fails to describe the evidence with reasonable specificity, the Hearings Officer should return the request to the accused to allow them the opportunity to clarify their request.
    - v. If the inmate fails to provide additional clarity, the Hearings Officer may decline to consider the requested evidence.
  - b. When requesting to review evidence deemed relevant, the Hearings Officer should make the request in writing via electronic communication and should retain a copy of all such requests.

#### E. Review Reporting Officer Response Form



1. For Category I Offenses, the Reporting Officer must testify during the disciplinary hearing. There is no need for the Reporting Officer to complete this form.
2. For Category II Offenses, the Hearings Officer will review the questions submitted by the accused inmate, when applicable, on the *Reporting Officer Response Form 861\_F4* and rule on relevancy before forwarding the questions to the Reporting Officer.

X. The Disciplinary Hearing

- A. The Hearings Officer should make a copy of the following available for review by the accused inmate at least two working days prior to the hearing:
  1. *Witness Request Forms 861\_F5*
  2. *Witness Statements 861\_F15* except for confidential witness statements
  3. *Inmate Evidence Request 861\_F6*
  4. *Summary of Evidence 861\_F19*
  5. *Reporting Officer Response Form 861\_F4*
- B. The Hearings Officer will permit the inmate's advisor to confer with the accused inmate 30 minutes prior to the inmate's disciplinary hearing.
- C. When an inmate waived their right or refused to appear at the hearing, the Hearings Officer should verify the reason the inmate is not present. (5-ACI-3C-16)
  1. Staff will confirm that the inmate's failure to appear is voluntary and intentional i.e., inmate chooses to go to recreation instead of attending the hearing, and not due to circumstances beyond the inmate's control.
  2. The Hearings Officer may remove from the disciplinary hearing any individual, including the accused inmate, for disruptive behavior. (5-ACI-3C-16)
    - a. Hearings Officers may not consider an inmate's removal from a hearing due to disruptive behavior as a refusal to appear at any subsequent hearing scheduled for the same day with the same inmate.
    - b. The Hearings Officer should reschedule subsequent hearing(s) to allow the inmate an opportunity to attend the hearing and present a defense and any relevant evidence, if applicable.
    - c. If the accused displays patterns of behavior, which suggest that their presence at the hearing may constitute a security or other serious concern, the Hearings Officer should contact the Inmate Discipline Unit Manager or designee to determine whether the Hearings Officer should bar the accused from attending the hearing in person.
- D. The Hearings Officer will record the Disciplinary Hearing. (5-ACI-3C-15)
  1. The Hearings Officer may not initiate communications with attending parties regarding details of the offense before activating the recording device to ensure recordation of all communications during the disciplinary hearing.
  2. If at any time during the disciplinary hearing the Hearings Officer turns off the recorder, the Hearings Officer, following reactivation of the recorder, must clearly indicate this in the hearing record and state the reason, including the approximate duration of the recordation break. The Hearings Officer must summarize for the record any event relevant to the disciplinary hearing that occurred during the break in recording, including identifying witnesses removed for disruptive behavior.
- E. The Hearings Officer will conduct an impartial hearing and render a fair decision based solely on the facts presented at the hearing; see Attachment 4, *Disciplinary Hearing Narrative*.
  1. The Hearings Officer will document the presence of the accused inmate by asking the inmate to state their name and number for the record. If the accused inmate is not present at the disciplinary hearing, the Hearings Officer will note the reason for the inmate's absence in the recording and in VACORIS.



2. The Hearings Officer may question the Reporting Officer, inmate, and each witness as necessary to clarify the facts surrounding the alleged offense.
  - a. The Hearings Officer will afford the accused inmate the opportunity to present evidence, including testimony relevant to the alleged offense. (5-ACI-3C-17)
  - b. For Category I Offenses:
    - i. The Hearings Officer will ensure the Reporting Officer and any staff witnesses testify in person or via speakerphone, unless the Hearings Officer determines that testimony is repetitive or irrelevant.
    - ii. Inmates and non-DOC staff are not required to testify as witnesses.
      - (a) Non-DOC staff witnesses offering relevant testimony may testify voluntarily by speakerphone unless the Hearings Officer determines a valid security consideration exists.
      - (b) If the non-DOC witness is unavailable at the scheduled hearing time, that witness may submit a written statement, for the Hearings Officer to read into the hearing record.
    - iii. The Hearings Officer may use an inmate's written *Witness Statement* 861\_F15 or allow them to testify via speakerphone in lieu of in-person testimony at any disciplinary hearing.
    - iv. When a witness is unavailable at the institution where the Hearings Officer is conducting the disciplinary hearing, the witness should testify by speakerphone.
  - c. For Category II Offenses:
    - i. Witnesses will provide relevant testimony on a *Witness Statement* 861\_F15 in lieu of attending the disciplinary hearing.
    - ii. Inmates and non-DOC staff may voluntarily provide relevant testimony on a *Witness Statement* 861\_F15 in lieu of attending the disciplinary hearing.
    - iii. The Hearings Officer will read all *Witness Statements* 861\_F15 deemed relevant into the hearing record.
    - iv. The Hearings Officer may, as necessary to render a fair decision, call any witness to appear in person at the hearing, including the Reporting Officer.
3. The Hearings Officer will rule on all matters of evidence. This includes, but is not limited to, ruling on relevancy and repetitiveness of testimony provided at the hearing and the submission of documents.
4. No physical evidence, i.e., weapons, drugs, contraband, etc. may be present at the disciplinary hearing. Photographs of the physical evidence should when possible be submitted.
5. The Hearings Officer may, when necessary, temporarily adjourn and reconvene the hearing at a later time or date to summon a witness to testify in person or by speakerphone, or to secure evidence.
6. The Hearings Officer may adjourn the disciplinary hearing to correct minor technical errors, including, but not limited to, spelling, grammar, and other paperwork discrepancies.
  - a. If, in the judgment of the Hearings Officer, the error did not impair the inmate's ability to prepare a defense, the Hearings Officer may correct the errors and the hearing may continue.
  - b. If, in the judgment of the Hearings Officer, the error impaired the inmate's ability to prepare a defense, the Hearings Officer will adjourn the hearing for not less than two working days to allow the inmate to:
    - i. Prepare a defense.
    - ii. Submit *Witness Request Forms* 861\_F5, *Inmate Evidence Request* 861\_F6 and a *Reporting Officer Response Form* 861\_F4.
  - c. The accused inmate may waive the adjournment, on record, allowing the hearing to proceed with the revised *Disciplinary Offense Report*; the Hearings Officer will note the technical errors in the record.
7. Reconvening an adjourned hearing does not require 24-hour notice to the accused inmate.
8. When the hearing does not reconvene on the same day, the Hearings Officer must notify the inmate not less than one hour before the hearing reconvenes.

9. The Hearings Officer will record all information required on the *Disciplinary Offense Report*, including a summary of the evidence and the factual basis supporting a finding of guilt and subsequent penalty or finding of not guilty. (5-ACI-3C-20; 5-ACI-3C-21)
- F. During the course of the disciplinary hearing, the Hearings Officer may:
1. Decide not to process the *Disciplinary Offense Report* following a determination that staff failed to follow proper procedures necessary to ensure due process.
  2. Offer an accused inmate who qualifies for an *Informal Resolution* an appropriate penalty within the authorized penalty range. (5-ACI-3C-05; 4-ACRS-6C-01; 4-ACRS-6C-04; 2-CI-5A-6)
- G. The Hearings Officer will consider the *Disciplinary Offense Report* and testimony of the Reporting Officer, testimony of any witnesses, the statement of the accused inmate, and any other relevant evidence relevant to the charge presented to fairly adjudicate the accused inmate's innocence or guilt. (5-ACI-3C-19; 4-ACRS-6C-03)
1. The accused inmate's consideration of a *Penalty Offer* is not an admission of guilt; the Hearings Officer may not cite such consideration when determining the accused inmate's guilt or innocence, and when imposing the penalty.
  2. The Hearings Officer must clearly state the decision and rationale for it before concluding the disciplinary hearing. The Hearings Officer will then document the decision on the *Disciplinary Offense Report* and include a penalty within the range authorized for each offense.
  3. The Hearings Officer will, if appropriate, clearly note the start and end dates of any applicable Enhanced Sanctions related to the charge.
  4. The Hearings Officer must notify the inmate of their Enhanced Sanctions to include the start date and the end date, in writing, no later than two working days after the hearing.
- H. When the accused inmate receives more than one *Disciplinary Offense Report*, the Hearings Officer will hear each *Disciplinary Offense Report* individually.
- I. The Hearings Officer, before they render their decision, may determine the Reporting Officer charged the inmate with an incorrect offense code and may modify the *Disciplinary Offense Report* to a more appropriate offense code, which can be a higher, equivalent, or lesser offense.
1. The description of the offense must be able to support the new offense code without revision.
  2. When modifying the charge to an equal or lesser offense code, the Hearings Officer will notify the accused of the change in offense code and will then render their decision immediately.
  3. When modifying the charge to a higher offense code, the Hearings Officer must adjourn the disciplinary hearing and provide the inmate with a copy of the *Disciplinary Offense Report* and any *Witness Request Forms 861\_F5*, *Inmate Evidence Request 861\_F6* and the *Reporting Officer Response Form 861\_F4*.
    - a. The Hearings Officer will allow the accused inmate five working days to consult with an advisor, if needed, and prepare a defense to include the opportunity to submit additional *Witness Request Forms 861\_F5* and/or *Inmate Evidence Request 861\_F6*.
    - b. The Reporting Officer will be required to testify at the hearing either in person or by speakerphone.
    - c. The inmate may waive their right to additional preparation time and allow the Hearings Officer to amend the report and proceed with the hearing.
- J. The Hearings Officer may not allow an accused inmate to accept a *Penalty Offer* prior to the start of the disciplinary hearing and will not negotiate with the accused to elicit an admission of guilt.
- K. The Hearings Officer may not negotiate with an accused inmate to reduce a disciplinary offense or offer a lesser penalty, nor can the Hearings Officer vacate the current offense to offer the accused an *Informal Resolution* where the inmate did not qualify for an *Informal Resolution*.

- L. The Hearings Officer, at the conclusion of the hearing, should inform the inmate of their right to appeal their finding of guilt or the penalty imposed. (4-ACRS-6C-03)

#### XI. Confidential Witnesses

- A. The Hearings Officer must protect the identity of confidential witnesses throughout the disciplinary process.
1. The confidential witness, in their written statement, must include the facts and describe how they obtained the facts.
  2. The confidential witness must sign the written statement.
  3. In cases where confidentiality rules for other units or agencies may apply, the Hearings Officer will apply the most stringent rules of confidentiality to determine what information the accused may access.
- B. The Hearings Officer must observe the following safeguards when a confidential witness statement is presented during the hearing:
1. The Hearings Officer will excuse the inmate, the inmate's advisor, and all witnesses from the hearing so the Reporting Officer, usually the Institutional Investigator, can read the confidential statement(s) into the record. (5-ACI-3C-16)
    - a. Prior to introducing a confidential statement, the Hearings Officer will state for the record why all witnesses including the inmate were excused from the hearing.
    - b. When the accused inmate returns to the hearing, the Hearings Officer will accurately summarize the confidential witness statement, ensuring information summarized does not reveal directly or indirectly the identity of the confidential witness.
    - c. The Investigator's Office will maintain and dispose of the original confidential witness statements in accordance with the *Library of Virginia Records Retention and Disposition Schedule*; see Operating Procedure 025.3, *Public Records Retention and Disposition*. DOC will maintain no other copies in any format.
    - d. The Hearings Officer may access a confidential witness statement upon request but must not maintain additional copies in their files.
  2. The accused inmate may question the Reporting Officer; however, the Reporting Officer is to respond to the questions in a manner that will not reveal the identity of the confidential witness.
  3. The accused inmate does not have the right to confront, cross-examine, or know the identity of the confidential witness.
- C. The Hearings Officer may not base a finding of guilt solely on uncorroborated information from a single confidential witness, unless the specific circumstances of the incident and knowledge possessed by the confidential witness convinces the Hearings Officer that the information is reliable, e.g., the statement of an injured assault victim in an un-witnessed assault may be sufficient evidence.

#### XII. Disciplinary Process Considerations for Transferred Inmates

- A. If an inmate transfers to another institution before the disciplinary hearing, a Hearings Officer at the institution where the offense occurred is responsible for conducting the hearing and completing the disciplinary process unless a Hearings Officer at the institution housing the inmate agrees to conduct the hearing or the Inmate Discipline Unit requests another Hearings Officer conduct the hearing.
- B. The accused inmate will be offered the opportunity to be present at the hearing by speakerphone.
- C. The Hearings Officer at the institution housing the accused inmate will provide the inmate with an advisor.
- D. The Hearings Officer at the institution where the offense occurred will consult with the Hearings Officer at the institution housing the accused inmate to schedule a date and time for the hearing to take place.



- E. The Hearings Officers at both institutions will coordinate to ensure that the accused inmate has access to a *Reporting Officer Response Form* 861\_F4, *Witness Request Forms* 861\_F5 and *Inmate Evidence Request* 861\_F6 as needed in preparation for the hearing.
1. When an inmate, who transferred to another institution prior to their hearing, indicates on an *Inmate Evidence Request* 861\_F6 they would like to review video, body camera clips, and/or audio evidence, the Hearing Officer at the institution where the inmate is housed will consult with the Hearings Officer at the institution where the offense occurred.
  2. The Hearings Officer where the offense occurred will:
    - a. Determine if the request is pertinent and reasonably specific.
    - b. Complete the *Summary of Evidence* 861\_F19.
    - c. Email a copy of the *Summary of Evidence* 861\_F19 to the Hearings Officer where the inmate is housed.
    - d. Arrange a date and time with the Hearings Officer where the inmate is housed for the inmate to view the footage.
  3. Staff at the institution where the inmate is housed will have the inmate, after their review, sign the *Summary of Evidence* 861\_F19, and will return it to the Hearings Officer who conducts the hearing.

### XIII. After the Disciplinary Hearing

#### A. Copy to Inmate

1. Within 25 working days after the disciplinary hearing is completed:
  - a. The Hearings Officer or designee must provide the inmate with a copy of the completed:
    - i. *Disciplinary Offense Report*
    - ii. *Witness Request Forms* 861\_F5
    - iii. *Witness Statements* 861\_F15
    - iv. *Inmate Evidence Request* 861\_F6
    - v. *Summary of Evidence* 861\_F19
    - vi. *Reporting Officer Response Form* 861\_F4
    - vii. *Notice of Restitution or Deduction of Fine* 861\_F3, when applicable.
  - b. The copy given to the inmate provides a written record of the decision made and the reason supporting the decision. (5-ACI-3C-20; 4-ACRS-6C-03)
  - c. No copies of internal communication, Mental Health Evaluations, or confidential statements will ever be a part of the packet copied to the inmate.
2. The inmate will sign the *Disciplinary Offense Report Receipt Log* 861\_F14, or other receipt document or logbook to confirm receipt of the completed copies for those offenses that resulted in a conviction either at the hearing or by an admission of their guilt on the *Penalty Offer*.
  - a. When the inmate was transferred to a different institution, the Hearings Officer where the offense occurred will forward the completed copies to the Hearings Officer at the institution housing the inmate.
  - b. The Hearings Officer or designee at the institution housing the inmate will ensure the inmate signs a *Disciplinary Offense Report Receipt Log* 861\_F14 prior to receiving their copies and will forward the *Log* to the Hearings Officer at the originating institution within in 15 working days.
  - c. The Hearings Officer must retain the official *Disciplinary Offense Report Receipt Log* 861\_F14 for three years.
3. The Hearings Officer will forward completed copies of offenses that resulted in an *Informal Resolution*, dismissal, or a finding of not guilty to the inmate through the institutional mail.

- B. The Hearings Officer will load all digital disciplinary hearing recordings into the Inmate Discipline Unit



shared folder within 15 working days.

1. All voice recordings will be labeled with the case number generated by VACORIS. No other labeling will be used.
  2. Recorded hearings needed in an investigation, criminal proceeding, or other matters known to be under litigation, will be saved to the digital storage folder; see Operating Procedure 030.1, *Evidence Collection and Preservation*. (5-ACI-3C-15, 5-ACI-3C-20)
- C. Upon the conclusion of the hearing and any applicable post-hearing review processes, the Hearings Officer will upload the *Disciplinary Offense Report* and all related documents for all charges, regardless of outcome, as external documents in VACORIS. VACORIS will serve as the official inmate disciplinary record. (5-ACI-3C-15; 5-ACI-3C-20)
- D. Once the Hearings Officer uploads the completed *Disciplinary Offense Report* and related documents into VACORIS and performs all quality control measures to ensure they uploaded all documents successfully, there is no need to maintain the hard copy record. (5-ACI-3C-15; 5-ACI-3C-20)
- E. Inmate Referrals Upon Conviction of Certain Charges
1. If the outcome of the hearing is likely to affect the inmate's housing status, Security Level, or Good Time Award Level, the Hearings Officer should refer the inmate to the Institutional Classification Authority (ICA) for review; see Operating Procedure 830.1, *Institution Classification Management*.
  2. The Hearings Officer should refer any inmate convicted of offenses numbered 100 through 108, 116, and 200a, when the *Re-entry Case Plan* requires the work, education, or program assignment, and multiple Category I Offenses to the ICA for review of Good Time Award Level, unless the inmate is in Class Level IV.
  3. The Hearings Officer should refer any inmate convicted of offense code 106 (a/b) to their Counselor for reassessment of the inmate's risk of sexual victimization or abusiveness. (§115.41[g])
  4. At the discretion of the Hearings Officer, a conviction of Offenses 233a and 233b may also warrant referral to inmate's Counselor for reassessment of the inmate's risk of sexual victimization or abusiveness. (§115.41[g])
  5. The Hearings Officer should refer any inmate convicted of a 119 (a-f) or 200b offense to the inmate's Counselor to determine whether an interim review of the inmate's Good Time Class Level and/or Security Level is appropriate.
  6. The Hearings Officer should refer any inmate convicted of a 122 (a-h) offense to the inmate's Counselor or the Institutional Program Manager (IPM) to determine whether completing a new COMPAS assessment, prioritizing the inmate for substance use disorder programming, placing an inmate in the *Voluntary Substance Use Disorder Treatment (V-SUDT)* or other similar program(s) would be appropriate.
  7. The Hearings Officer should refer any inmate convicted of multiple violations of offense code 137 (a/b) to a Mental Health Clinician at the institution where the inmate is housed to determine whether placement in the *Sex Offender Awareness Program (SOAP)* is appropriate; see Operating Procedure 735.2, *Sex Offender Treatment, Institutions*.
  8. When the Hearings Officers finds an inmate in parole granted status guilty of a disciplinary offense, the Facility Unit Head will notify the Manager of the Community Release Unit. If, during the appeal process, the finding of guilt is overturned, the Facility Unit Head should notify the Manager of the Community Release Unit accordingly.

#### XIV. Appeal Process

- A. An inmate may appeal a finding of guilt, and/or degree of any penalty imposed, to the Facility Unit Head where the offense occurred using the *Disciplinary Appeal 861\_F8*.





1. When the inmate has received an *Informal Resolution*, no appeal is available.
2. If an inmate has entered a plea of guilty either at the hearing or by accepting the *Penalty Offer*, or has waived the right to appear at the hearing, but later appeals the *Disciplinary Offense Report*, only the following issues may be considered:
  - a. If there was an admission of guilt.
  - b. If the penalty imposed was outside the authorized range.
  - c. If there was a serious procedural error prior to an inmate's admission of guilt.
- B. The inmate must submit their appeal within the specified time limits; the time limit for appeal begins immediately upon signing the *Disciplinary Offense Report Receipt Log 861\_F14* indicating they were advised of their right to appeal the charge.
- C. A qualified staff member who possess the skills necessary to communicate effectively with the inmate, or a qualified interpreter provided by the DOC contract vendor will be provided to assist the LEP inmate in completing all appeals and supporting documents in English.
- D. The inmate has the right to an advisor when preparing their *Disciplinary Appeal 861\_F8*. The Hearings Officer will schedule a time for an advisor to meet with the accused following their receipt of the completed appeal packet to provide them with any assistance they may need in filing their appeal.
- E. When an inmate is transferred, the Hearings Officer at the inmate's current institution will forward the inmate's *Disciplinary Appeal 861\_F8* to the institution where the offense occurred for processing.
- F. Level I Appeal - Facility Unit Head
  1. The inmate must direct their Level I Appeals to the institution where the charge was written, unless the Inmate Discipline Unit Manager or designee determines the facts of the charge, or the basis of the inmate's appeal necessitates a response from a different Facility Unit Head.
  2. Under no circumstances will more than one Facility Unit Head answer a *Disciplinary Appeal 861\_F8* for a charge.
  3. Inmates must submit their Level I Appeals for *Disciplinary Offense Reports* where the Facility Unit Head is the Reporting Officer to the Regional Administrator for response.
  4. The inmate cannot file their appeal until they receive a copy of the completed *Disciplinary Offense Report*.
  5. The inmate must submit their Level I Appeal to the Facility Unit Head within 15 calendar days following the inmate's receipt of their copy. (5-ACI-3C-23)
  6. In cases where an inmate must file an appeal to an institution other than the one where they are housed, staff should accept the appeal if it is postmarked within 15 calendar days following the inmate's receipt of their copy.
  7. The inmate must submit their appeal contentions on the *Disciplinary Appeal 861\_F8* and the *Disciplinary Appeal Continuation 861\_F17*, if needed.
    - a. When the inmate does not submit their appeal on the *Disciplinary Appeal 861\_F8* or the *Disciplinary Appeal Continuation 861\_F17*, the respondent may reject and return the appeal to the inmate for resubmission.
    - b. The inmate's contentions must be factual and are limited to the space provided on the *Disciplinary Appeal 861\_F8* or the *Disciplinary Appeal Continuation 861\_F17* for each contention raised.
    - c. In cases where the Facility Unit Head returns the appeal to the accused for resubmission, the time frame to file an appeal will start again; beginning with the date the accused receives notice that they must resubmit their appeal.
    - d. The inmate will be given only one chance to correct the errors in their appeal.
    - e. The inmate must not attach any additional documents to the *Disciplinary Appeal 861\_F8* and

*Disciplinary Appeal Continuation* 861\_F17, as all documents eligible for review and consideration on appeal are available for review in VACORIS.

8. Within 2 working days of receiving a *Disciplinary Appeal* 861\_F8, staff designated by the Facility Unit Head will sign and document the date received on the *Appeal* and in VACORIS.
  9. The staff member will return a copy of the *Disciplinary Appeal* 861\_F8 to the inmate to confirm receipt.
  10. The Facility Unit Head will provide a written response to the inmate within 30 working days of the date received as documented on the inmate's *Disciplinary Appeal* 861\_F8. (5-ACI-3C-23)
    - a. The written response must address each issue or contention raised in the appeal.
    - b. The Facility Unit Head has the authority to:
      - i. **Approve** - Approve the action of the Hearings Officer
      - ii. **Reduce Penalty** - Reduce the recommended penalty if determined to be excessive. The Facility Unit Head will inform the inmate of their decision to reduce the penalty in their appeal response.
      - iii. **Suspend Penalty** - Suspend any penalty, or portion thereof, at any time before the penalty's expiration, except for good conduct time or earned sentence credits lost for conviction of offense 100 or 101a. Good time or earned sentence credits lost as the result of a conviction of offenses 116 a/b/c and 119 may only be suspended if the inmate has, after being charged, provided a sample for DNA analysis, or has submitted to testing/treatment.
      - iv. **Re-Hearing** - Order a re-hearing for a procedural error. When a re-hearing is ordered, any penalty in force must be halted and the penalty already served will be credited to any penalty resulting from the re-hearing. When a re-hearing is ordered, a copy of the *Disciplinary Offense Report* should be served on the inmate within **five working days** following receipt of the re-hearing order by the Hearings Officer.
      - v. **Refer to Hearings Officer for Informal Resolution** - Refer the *Disciplinary Offense Report* back to the Hearings Officer for an Informal Resolution, when appropriate.
      - vi. **Disapprove** - Disapprove the action of the Hearings Officer. This includes the authority to dismiss the charge against the accused inmate.
    - c. The disposition of the appeal must be entered in VACORIS, and the appeal response uploaded as an external document in VACORIS.
  11. When there is a dismissal or reduction of a penalty ordered for a *Disciplinary Offense Report*, where the penalty is a fine or restitution, the Facility Unit Head should notify the Business Office using the *Reimbursement of Fine or Restitution* 861\_F9.
    - a. If the *Disciplinary Offense Report* is dismissed, any funds deducted from the inmate's account for the penalty must be reimbursed and unpaid work hours paid to their account.
    - b. If the *Disciplinary Offense Report* is upheld but the penalty reduced, deductions from or reimbursements to the inmate's account must be made in accordance with the penalty reduction.
    - c. The Facility Unit Head will inform the inmate of the decision to reduce the penalty in the appeal response.
  12. The Facility Unit Head or designee will enter the disposition on the *Disciplinary Appeal* 861\_F8 and upload the *Appeal* response in VACORIS, even in cases where the appeal was rejected at the first level of appeal.
- G. Level II Appeal - Regional Administrator
1. Within 15 calendar days after receipt of the response to their Level I Appeal; the inmate may submit a Level II Appeal to the Regional Administrator.
  2. The inmate must mail their Level II Appeal directly to the Inmate Discipline Unit.
  3. The inmate must submit their appeal contentions on the *Disciplinary Appeal* 861\_F8 and the *Disciplinary Appeal Continuation* 861\_F17, if needed.

- a. When the inmate does not submit their appeal on the *Disciplinary Appeal* 861\_F8 or the *Disciplinary Appeal Continuation* 861\_F17, Inmate Discipline Unit staff may reject and return the appeal to the inmate for resubmission.
  - b. The inmate must not attach any additional documents to the *Disciplinary Appeal* 861\_F8 other than the *Disciplinary Appeal Continuation* 861\_F17, as all documents eligible for review and consideration on appeal are available for review in VACORIS.
  - c. Contentions or issues must be factual and are limited to the space provided for each contention raised on the on the *Disciplinary Appeal* 861\_F8 and the *Disciplinary Appeal Continuation* 861\_F17, appeals that do not comply with this restriction will be returned to the inmate for resubmission.
  - d. If the Facility Unit Head is the Reporting Officer, then the Regional Administrator is the first level of appeal.
4. Only those contentions or issues raised by the inmate in the Level I Appeal to the Facility Unit Head, or issues raised in the Facility Unit Head's response will the Regional Administrator provide a response.
  5. Within 60 working days following receipt of an inmate's appeal, Inmate Discipline Unit staff must review the case and forward their recommendation for a Level II Appeal decision to the Regional Administrator.
    - a. The Regional Administrator has the same options as the Facility Unit Head on appeal.
    - b. In addition to the options available to the Facility Unit Head, the Regional Administrator or designee may order a charge reheard due to a procedural error or when Inmate Discipline Unit staff determines the Reporting Officer charged the accused with an incorrect offense code. A rehearing must be approved by the Inmate Discipline Unit Manager or designee, with a clear justification given.
    - c. The Regional Administrator will inform the inmate of their decision in writing.
    - d. The decision of the Regional Administrator is final, and no further appeals are available to the inmate.
  6. If the Regional Administrator dismisses, reduces, or orders a rehearing for an offense where a fine or restitution was imposed, the Facility Unit Head, upon receipt of the Regional Administrator's decision, will notify the Business Office using the *Reimbursement of Fine or Restitution* 861\_F9.
  7. Inmate Discipline Unit staff will enter the disposition of the appeal and will upload the appeal response into VACORIS.
  8. Regional Office staff are responsible for completing the appeal process by uploading a copy of the signed Level II Appeal response and finalizing the action in VACORIS.

#### H. Other Appeal Considerations

1. In cases where the Facility Unit Head has failed to respond to a Level I Appeal in the required time frame; the inmate should forward a Level II Appeal to the Regional Administrator for review.
2. Failure to respond to an appeal in the prescribed time frame does not require an overturn of the charge in question, unless such failure is determined to be part of a pattern of indifference or a conscious effort on the part of staff, which denies the inmate's due process rights.
3. Staff should not answer any appeal submitted where the staff member deems the substance or content to be consistent with the modes and/or methods of a known security threat group. Similarly, staff will not answer any appeal which contains threats.
  - a. In such cases, staff must return the appeal to the inmate and give the inmate an additional fifteen working days to submit an appeal in accordance with operating procedure.
  - b. Staff may consider an inmate's refusal to resubmit an appeal as outlined in this operating procedure a waiver of their right to appeal.



4. The reviewer will only consider contentions related to a perceived violation of this procedure on appeal. The inmate must address any issues related to a perceived violation of any other operating procedure through the established inmate grievance process; see Operating Procedure 866.1, *Offender Grievance Procedure*.
5. As noted on Attachment 5, *Disciplinary Appeal Instructions*, the only documentation staff must accept is the *Disciplinary Appeal Form* 861\_F8 and the *Disciplinary Appeal Continuation* 861\_F17, if applicable.
  - a. Staff should not accept appeals if the *Disciplinary Appeal* 861\_F8 is not present and completed.
  - b. As noted in the *Disciplinary Appeal Instructions*, the Hearings Officer makes all other documentation related to the charge available in VACORIS.
  - c. The appeal responder will not return submitted documents to the appellant at the completion of the Level II Appeal process.

XV. Authorized Penalties for Disciplinary Offense Convictions (5-ACI-3C-01)

- A. The Hearings Officer may impose one or more of the following penalties on any inmate who is convicted of violating the Code of Offenses: (5-ACI-3C-01; 4-ACRS-3A-01)
1. Reprimand
  2. Loss of one of the following privileges for up to 60 calendar days for Category II Offenses or up to 120 calendar days for Category I Offenses.
    - a. Commissary
    - b. Recreation and/or extracurricular activities
    - c. Personal electronic device (does not include tablet)
    - d. Telephone
    - e. Visitation
  3. Loss of two of the following privileges for up to 60 calendar days for Category II Offenses or up to 120 calendar days for Category I Offenses.
    - a. Commissary
    - b. Recreation and/or extracurricular activities
    - c. Personal electronic device (does not include tablet)
    - d. Telephone
    - e. Visitation
  4. A fine of up to \$15.00 for Category II Offenses or up to \$25.00 for Category I Offenses, to be placed in the commissary fund.
  5. Loss of personal property, not to include authorized religious and legal materials, for up to 30 calendar days.
  6. Loss of good time of up to 180 days good conduct allowance or equivalent earned sentence credits.
  7. Loss of good time of up to all accumulated good conduct allowance or earned sentence credits.
  8. Restitution for damages to institution-owned or institution-issued property, and/or payment for recovery of the cost of any medical treatment or transportation resulting from an intentional act on the part of the accused.
  9. Mandatory Penalties and Restitution
    - a. A mandatory penalty requires that the Hearings Officer, even in the case of accepted *Penalty Offers*, impose the designated penalty for the offense; the Hearings Officer may not impose a lesser penalty.
    - b. The amount of restitution will not be reduced in cases where the accused is assessed a penalty for damages to institution-owned or institution-issued property, and for payment for recovery of the

cost of any medical treatment or transportation resulting from an intentional act on the part of the accused.

- B. In accordance with COV §53.1-39, *Certain punishment of prisoners prohibited*, and constitutional law, corporal punishment and inhumane treatment are expressly prohibited. Meals will not be withheld, nor the standard menu varied, as a disciplinary sanction. (5-ACI-5C-08; 4-ACRS-6A-03)
- C. Conviction of certain offenses may result in the imposition of restitution payment; see COV §53.1-32.01, *Payment for bodily injury*. The Hearings Officer may impose restitution instead of, or in addition to, any other penalty authorized for the offense.

#### XVI. Determining the Penalty

- A. In determining the appropriate penalty, the Hearings Officer and OIC should consider the nature and circumstances of the offense committed and the inmate's disciplinary history. (§115.78[b])
- B. The Hearings Officer may only impose one penalty within the authorized penalty range for each violation, except for Penalty 8.
- C. Penalty Ranges
  - 1. Penalty Range for Category I Offenses:  
Category I Offenses have a range of 1-6, and 8 if applicable.
  - 2. Penalty Range for Category II Offenses:  
Category II Offenses have a range of 1-4, and 8 if applicable.
  - 3. Penalty Range for Informal Resolutions: (5-ACI-3C-05)  
Penalties 1-4 are the only authorized penalties for *Informal Resolutions*
  - 4. Offenses for which Penalty 7 may be imposed:  
Penalty 7 'Loss of good time of up to all accumulated good conduct allowance or earned sentence credits' is only authorized as a penalty for offense codes 100a, 101a, 116 (a-c), and 119 (a-f).

#### XVII. Notations and Exceptions

- A. Inmate Possession of Unauthorized Items
  - 1. The Reporting Officer may charge an inmate with an offense for possession when the item in their possession is on their person, is physically within their control, or is in an area to which the inmate can reasonably control the access of other inmates.
  - 2. Double Cell
    - a. Inmates assigned to a double cell are individually responsible for items found on their person or in their locker, whether locked or unlocked.
    - b. Both inmates are jointly responsible for items found in the common areas of the cell, unless one inmate claims responsibility for the item or there is additional reliable evidence linking the inmate to the item.
    - c. Inmates may only claim responsibility for items found in a common area prior to the writing of the charge.
  - 3. Dormitory
    - a. Inmates assigned to a dormitory are individually responsible for their person and assigned locker(s).
    - b. The Reporting Officer should not charge an inmate for possession of items found in an open dormitory area or other areas easily accessible by other inmates, unless there is additional reliable evidence linking the inmate to the item.
    - c. The Reporting Officer may not charge an inmate solely on the fact that they found the item in the



vicinity of the inmate's living area if other inmates have access to the area.

## B. Loss of Privileges

### 1. Commissary

- a. When a penalty of loss of commissary privileges is imposed, the inmate will be restricted from commissary purchases during the specified period.
- b. Staff must allow the inmate a one-time purchase of stamps, a reasonable quantity of writing materials, over-the-counter medications, and personal hygiene items before imposing the restriction.
- c. Staff must allow inmates who are on restriction from commissary for more than 30 days at least one commissary purchase at the completion of each 30 days to purchase stamps, a reasonable quantity of writing materials, and over-the-counter medications.

### 2. Recreation and Extracurricular Activities

- a. Staff cannot use this penalty to deny an inmate assigned to the Restorative Housing Unit their required hours of out-of-cell activity; see Operating Procedure 841.4, *Restorative Housing Units*.
- b. Staff will not allow inmates on restriction from recreation and/or extracurricular activities to participate in recreational activities in their living unit or outside the living unit, e.g., gym, recreation yard, etc.

### 3. Telephone

Staff cannot use this penalty to deny verified legal or bereavement phone calls. (5-ACI-4A-26)

### 4. Visitation

- a. This penalty applies to all normal, non-contact, and video visitation for the imposed time period.
- b. Staff cannot use this penalty to deny attorney visits.
- c. Calendar days must be used to calculate the number of days on restriction.

### 5. Loss of Personal Property

- a. When a penalty of loss of personal property is imposed, staff will remove all personal property obtained by the accused such as commissary purchases, personal electronic devices, and any non-state issued clothing from the inmate's possession and will store the property in accordance with Operating Procedure 802.1, *Inmate and CCAP Probationer/Parolee Property*, for the duration of the penalty imposed.
- b. Staff will allow the inmate to retain possession of stamps, a reasonable quantity of writing materials, over-the-counter medications, personal hygiene items, legal materials, and approved religious items.
- c. When the Hearings Officer imposes a penalty of loss of personal property staff will restrict the inmate from making commissary purchases during the specified period, other than purchases of stamps, a reasonable quantity of writing materials, and over-the-counter medications.

### 6. Loss of Good Time

- a. Except for Offense 116a, 116b, and 116c an inmate cannot request restoration of Good Time lost as a penalty for conviction of an offense under this operating procedure.
- b. Inmates who have complied with the requirements that resulted in their conviction of offense 116a, 116b, or 116c, may submit a request for restoration of their Good Time; see Operating Procedure 830.3, *Good Time Awards*.
- c. An inmate not satisfied with their Good Time restoration should address their concern through the established grievance process; see Operating Procedure 866.1, *Offender Grievance Procedure*.

## C. Regarding Charges Stemming from Written Documents

When the Reporting Officer writes a *Disciplinary Offense Report* on an inmate based on a letter or other



document written by the accused, the Reporting Officer must preserve the letter or other document as evidence and the evidence must be available to the Hearings Officer and Inmate Discipline Unit staff upon request.

#### XVIII. Enhanced Sanctions and Visiting Restrictions

- A. Inmates convicted of any drug related offenses at a disciplinary hearing or by acceptance of the *Penalty Offer* will be subject to visiting and phone restrictions in addition to any penalty assessed at the hearing; see Attachment 6, *Enhanced Sanctions Guide*. (4-ACRS-6C-04)
- B. The Hearings Officer will maintain a record of all inmates subject to Enhanced Sanctions and visiting restrictions.
  - 1. The Hearings Officer should calculate the period that the sanctions will be in place and document such on the *Disciplinary Offense Report*.
  - 2. The Hearings Officer will make the appropriate notifications to suspend visitation and phone privileges.
  - 3. If an inmate transfers while on Enhanced Sanctions and/or visiting restrictions, the Hearings Officer must notify staff at the receiving institution.

#### XIX. Rehearing of Disciplinary Offense Report

- A. When the Regional Administrator orders a rehearing, VACORIS will automatically create a new *Disciplinary Offense Report* for review and approval by the OIC.
- B. The OIC must review and approve the *Disciplinary Offense Report* as originally written; staff cannot modify the description of the offense.
- C. The Hearings Officer will credit any penalty already served toward any penalty resulting from the rehearing.
- D. When a rehearing is ordered, a Serving Officer will serve the new *Disciplinary Offense Report* on the inmate within five working days following submission of the rehearing order in VACORIS.
- E. Staff must follow the entire disciplinary process as they would for any new *Disciplinary Offense Report* submission.
  - 1. The same inmate rights and time limits specified for the original hearing apply to the rehearing, including *Notice of Rescheduled Hearing Date*.
  - 2. The same Hearings Officer may rehear the *Disciplinary Offense Report* unless otherwise specifically requested by the individual(s) who ordered the rehearing.
  - 3. The Hearings Officer may not impose a penalty greater than the penalty imposed at the original hearing except for mandatory penalties or in cases where the original penalty is not valid for the newly reheard offense.
  - 4. Where the *Disciplinary Offense Report* is dismissed or the inmate is found not guilty of the offense, the *Disciplinary Offense Report* cannot be reheard.

## REFERENCES

COV §53.1-32.01, *Payment for bodily injury*

COV §53.1-39, *Certain punishment of prisoners prohibited*

Operating Procedure 025.3, *Public Records Retention and Disposition*

Operating Procedure 030.1, *Evidence Collection and Preservation*

Operating Procedure 050.1, *Inmate and Probationer/Parolee Records Management*



Operating Procedure 102.6, *Staff Orientation*  
Operating Procedure 735.2, *Sex Offender Treatment, Institutions*  
Operating Procedure 801.7, *Language Services for Limited English Proficiency*  
Operating Procedure 802.1, *Inmate and CCAP Probationer/Parolee Property*  
Operating Procedure 830.1, *Institution Classification Management*  
Operating Procedure 830.3, *Good Time Awards*  
Operating Procedure 841.2, *Offender Work Programs*  
Operating Procedure 841.4, *Restorative Housing Units*  
Operating Procedure 866.1, *Offender Grievance Procedure*

## **ATTACHMENTS**

Attachment 1, *Staff Duties in the Disciplinary Process*  
Attachment 2, *Category I Code of Offenses*  
Attachment 3, *Category II Code of Offenses*  
Attachment 4, *Disciplinary Hearing Narrative*  
Attachment 5, *Disciplinary Appeal Instructions*  
Attachment 6, *Enhanced Sanctions Guide*

## **FORM CITATIONS**

*Inmate Discipline Procedure Receipt* 861\_F1  
*Disciplinary Offense Mental Health Screening* 861\_F2  
*Notice of Restitution or Deduction of Fine* 861\_F3  
*Reporting Officer Response Form* 861\_F4  
*Witness Request Form* 861\_F5  
*Inmate Evidence Request* 861\_F6  
*Disciplinary Appeal* 861\_F8  
*Reimbursement of Fine or Restitution* 861\_F9  
*Disciplinary Offense Report Receipt Log* 861\_F14  
*Witness Statement* 861\_F15  
*Disciplinary Appeal Continuation* 861\_F17  
*Summary of Evidence* 861\_F19  
*Notice of Rescheduled Hearing Date* 861\_F21

