

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 325.00

DATE: 01 September 2021

SUBJECT: DISCIPLINE OF INMATES

POLICY DIRECTIVE

PURPOSE:

To delineate disciplinary rules describing acts that inmates are prohibited from committing, procedures for charging individual inmates for violations of the rules, and for determining the guilt or innocence of inmates charged with the violations, and the sanctions which may be imposed for the violations.

REFERENCE:

WV Code §§15A-4-17 and 25-4-6; and Prison Rape Elimination Act (PREA) §115.780.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject, including DOC Policy Directive 325.00, dated 01 April 2015 (including 28 July 2015 revision); DOC Policy Directive 325.01, dated 01 January 2004; DOC Policy Directive 325.04, dated 01 April 2005; DOC Policy Directive 325.06, dated 01 April 2008; DOC Policy Directive 325.10, dated 01 May 2013; DOC Commissioner's Instruction #17-09, dated 14 June 2017; RJA Policy 15001, dated 04 November 1991; RJA Policy 15002, dated 01 March 1990; 15003, dated 15 May 1997; 15004, dated 15 May 1997; and 15005, dated 15 May 1997.

APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation (DCR) that have custody of adult inmates. This Policy is available for general distribution. **All inmates shall be given a copy of this Policy Directive upon intake to a DCR facility.**

DEFINITIONS:

Contraband: Any item or article which is not specifically authorized in writing by the Commissioner or Superintendent for inmate possession, or an authorized item which has been altered or which has been obtained from any unauthorized source.

Correctional Hearing Officer: A Division of Corrections and Rehabilitation employee who is employed independent of the institutional chain of command to conduct inmate disciplinary hearings pursuant to division policy.

Detention: A level of pre-hearing custody, not atypical of correctional facility life, but which is necessary to preserve institutional order and security. Detention is both preventive and reactive in nature. As such, detention can allow for the removal and segregation of an inmate from general population for purposes including, but not limited to, allowing the responsible official to conduct an investigation into the circumstances of the incident(s), ensuring immediate control and supervision, protecting potential victims, ensuring witnesses against intimidation, and ensuring facility security and public safety.

Employee – Any person who works in or for the WV Division of Corrections and Rehabilitation facilities. For the purpose of this Policy Directive, this includes but it is not limited to full time, part-time, temporary, provisional, probationary, and permanent status employees of the State of West Virginia; contractors and their employees; interns and volunteers.

Felony: Whenever an inmate allegedly commits an act, which if prosecuted in a court of competent jurisdiction, would constitute a violation of the criminal laws of the United States or the State of West Virginia for which one (1) or more years of imprisonment could be imposed or is otherwise designated as a felony, provided that the burden of proof in criminal cases shall not be the standard of proof herein.

Good Time: A day-for-day commutation for each day of physical incarceration, which is credited to an inmate's sentence(s) as imposed by the appropriate court of jurisdiction. (NOTE: only sentenced inmates earn good time.)

Immediate Family: For the purpose of this Policy, consists of the father, mother, brother, sister, spouse, children, grandchildren, grandparents, or great-grandparents. These shall include "step" relations and legal guardianships.

Misdemeanor: Whenever an inmate allegedly commits an act, which if prosecuted in a court of competent jurisdiction, would constitute a violation of the criminal laws of the United States or the State of West Virginia or any municipality therein for which one (1) year or less of incarceration could be imposed or is otherwise designated as a misdemeanor, provided that the burden of proof in criminal cases shall not be the standard of proof herein.

Regular Business Day: All days, except Saturdays, Sundays, and State Holidays, as set forth in State Law or by a proclamation of the Governor.

Tobacco or Tobacco Products – For the purpose of this Policy, shall include cigarettes, cigars, dissolvables, hookah tobacco, nicotine gels, pipe tobacco, roll-your-own tobacco; smokeless tobacco products including dip, snuff, snus, and chewing tobacco; vapes, e-cigs, hookah pens, and other electronic nicotine delivery systems.

POLICY:

I. In order to facilitate institutional order and security, each inmate shall be held personally accountable for any violation of the rules contained in this Policy. This accountability extends to the inmate's behavior, physical actions, communications, and the contents of the inmate's personal living and workspace. As such, the below listed rules apply to any inmate in the custody of the Division of Corrections and Rehabilitation (DCR). It is to be noted that the attempt to violate any of the below listed rules shall be viewed with the same weight and gravity as having actually violated the rule. The written rules of inmate conduct shall be reviewed annually and updated as necessary to ensure that they are consistent with constitutional and legal principles.

A. The offenses are divided into three (3) classes:

1. **Class I Offenses**: Those rule violations which, if violated, threaten life or limb, or seriously breach or threaten the safety and/or security of the facility and/or public:

a. **1.01 - Escape**: No inmate shall escape, attempt to escape or assist another inmate in escaping or attempting to escape from the custody of the Division of Corrections and Rehabilitation or other custody in which they may be placed.

(1) Any escape, attempt to escape or assist another in escaping or attempting to escape from a correctional facility. No inmate shall possess any item, device, or tool which could clearly be used to facilitate an escape or is clearly linked to an escape attempt.

(2) Any escape, attempt to escape or assisting another in escaping or attempting to escape by a work release status inmate. This shall include any inmate who cannot be located while on furlough in accordance with the master furlough agreement and any attempt to breach security perimeters or barriers. Additionally, an inmate may be charged with escape if unable to verify his/her location for a minimum of 2 hours.

b. **1.02 – Assault and/or Battery**: No inmate shall physically harm or assault any person with or without a weapon. No inmate shall attempt to physically harm or threaten with violence any person. This shall include the throwing of any item or substance.

(1) Assault/Battery resulting in serious injury (A serious injury requires urgent and immediate medical treatment and restricts the inmate's usual activity. Medical treatment should be more extensive than mere first aid such as the

application of bandages to wounds. It might include stitches, setting of broken bones, treatment of concussion, etc.) involving the following:

- (a) No Weapon
- (b) Edged Weapon
- (c) Impact Weapon
- (d) Liquid or Gaseous Substance
- (e) Firearm
- (f) Other

(2) Assault/Battery NOT resulting in serious injury (as defined above) involving the following:

- (a) No Weapon
- (b) Edged Weapon
- (c) Impact Weapon
- (d) Liquid or Gaseous Substance
- (e) Firearm
- (f) Other

c. **1.03 - Rape/Sexual Assault/Sexual Abuse/Sexual Acts:** No inmate shall:

- (1) Physically force or attempt to force any person to submit to or perform any sexual act.
- (2) Make sexual proposals to any person or threaten any person with violence in order to compel or coerce another person to commit a sexual act.
- (3) Engage in any sexual act, such as, but not limited to sexual intercourse, oral sex, kissing, fondling, or masturbation.
- (4) Commit any act of indecent exposure.
- (5) No inmate shall possess, nor have in his/her possession, drawings, photographs, letters, writings of any sort, or other correspondence that contain or depict any form of child pornography to include animations and characterizations.

d. **1.04 - Riot:** No inmate shall riot, mutiny, or attempt to riot or mutiny, or plan with other persons to riot, mutiny, or prevent any employee from performing his/her duties or from entering, leaving, or moving about any part of the facility by force or threat of force. No inmate shall incite or attempt to incite a riot or mutiny.

e. **1.05 - Arson/Fires:** No inmate shall cause or attempt to cause a fire or explosion, or damage, mar, deface, or destroy any property belonging to the

State of West Virginia or property belonging to them or any person, by fire or with an incendiary or explosive device.

- f. **1.06 - Hostage Taking:** No inmate shall take or attempt to take an employee, another inmate, or any person as a hostage or kidnap any person.

- g. **1.07 - Possession of Weapons:** No inmate shall possess, manufacture, or attempt to manufacture any weapon or any item which could be used as a weapon.
 - (1) Edged Weapon
 - (2) Impact Weapon
 - (3) Liquid or Gaseous Substance
 - (4) Firearm
 - (5) Other

- h. **1.08 - Introduction of a Weapon:** No inmate shall smuggle, or attempt to smuggle, any weapon into any facility. No inmate shall arrange for others to smuggle or introduce any weapon into any facility.
 - (1) Edged Weapon
 - (2) Impact Weapon
 - (3) Liquid or Gaseous Substance
 - (4) Firearm
 - (5) Other

- i. **1.09 - Extortion or Bribery:** No inmate shall extort, blackmail, or bribe any other person or attempt to extort, blackmail, or bribe any other person.

- j. **1.10 - Tampering with Locks and/or Doors:** No inmate shall possess non-issued keys or lock picks. No inmate shall tamper with, remove, damage, destroy, obstruct, jam, or in any way make any lock, door, security device, fire or safety equipment operate in a manner other than intended by the builder, or attempt to tamper with, remove, damage, destroy, obstruct, jam, or make any such item fail to operate as intended.

- k. **1.11 - Trafficking:** No inmate shall sell, transfer, or manufacture any narcotic drug, prescription drug, marijuana, or any intoxicant. No inmate shall bring, attempt to bring, or arrange for any other person to bring any such item into a

facility or onto DCR property. Intoxicant shall be defined as any substance which may be injected, consumed, huffed, inhaled, or ingested by any means with an intoxicating affect.

- (1) Alcohol
- (2) Marijuana/Hashish
- (3) Opiate
- (4) Cocaine
- (5) Methamphetamine
- (6) PCP
- (7) Benzodiazepines
- (8) Other

- l. **1.12 - Demonstration**: No inmate shall organize or participate in a group demonstration, protest, sit-down strike, sickout, hunger strike, or work stoppage or any other joint demonstration or attempt to do any of the above.
- m. **1.13 – Accessory**: No inmate shall aid or abet any other inmate in the commission of any Class I violation. No inmate found guilty of aiding or abetting shall be punished more severely than the inmate who was found guilty of the actual Class I violation.
- n. **1.14 - Cumulative Class II Violations**: Any inmate who has been found guilty of the commission of two (2) Class II offenses and commits a third Class II offense within thirty-one (31) consecutive days may be charged under a Class I provision for the third Class II offense. Any subsequent charges may result in additional disciplinary action.
- o. **1.15 - Vacant**
- p. **1.16 - Obstructing**: No inmate shall hinder, impede, or obstruct by acts or other means or attempt to hinder, impede, or obstruct any employee or visitor from performing his/her duties or interfere with the normal or free movement of any person. No inmate shall hinder, impede, or attempt to hinder or impede through falsification of any information, verbally or in writing, to any CID Investigator or any law enforcement entity during the course of any felony investigation.
- q. **1.17 - Alteration of Food or Drink**: No inmate shall introduce or attempt to introduce poison or unsanitary items or substances into any food or drink. No

inmate shall tamper with food, drink, or kitchen appliances before, during, or after preparation.

- r. **1.18 - Violation of State Law:** No inmate shall commit or attempt to commit any action or acts which are defined as a felony or misdemeanor by the laws of the State of West Virginia or Federal Law; this rule applies only to those alleged actions or acts that are not otherwise referenced as rule violations within this Policy.
- s. **1.19 - Use and Possession of Drugs and Intoxicants/ Paraphernalia:** Intoxicants shall be defined as any narcotic drug, prescription drug, alcoholic substance, or substance which may be injected, consumed, huffed, inhaled, or ingested by any means with an intoxicating affect.
- (1) No inmate shall use, possess, inject, inhale, huff, ingest by any means, or be under the influence of a drug or intoxicant. Drugs shall include any substance defined in Chapter 60-A of the WV Code.
 - (a) Alcohol
 - (b) Marijuana/Hashish
 - (c) Opiate
 - (d) Cocaine
 - (e) Methamphetamine
 - (f) PCP
 - (g) Benzodiazepines
 - (h) Other
 - (2) No inmate shall use, possess, or consume any prescription drug, or medication not specifically prescribed for that inmate or in a manner not consistent with the prescription or the directions of the medical staff.
 - (3) No inmate shall use, possess, or consume any non-prescription drug or medication unless purchased from the Commissary for his/her own use, or specifically authorized by staff.
 - (4) No inmate shall use or possess any drug/intoxicant/paraphernalia. An inmate shall be held responsible for any such items found in his/her own living area.
- t. **1.20-Refusing Drug/Alcohol Screening:** No inmate shall refuse to participate in the drug/alcohol screening process as instructed by any person employed by or for the DCR or any law enforcement agency within a period not to exceed two (2) hours. This shall include tampering with any drug or alcohol screening process, or failure to produce a sample sufficient for testing within a two (2) hour period.

- u. **1.21 - Theft of Property Valued Over \$100.00:** No inmate shall steal or attempt to steal property belonging to the facility or to any person valued over \$100.00. No inmate shall be in possession of stolen property. The taking or borrowing of the property of another and refusing to return the property shall be considered to be theft.
- v. **1.22 - Refusing DNA Blood Screening:** No inmate shall refuse to provide a blood sample or otherwise participate in DNA blood screening as instructed by a person employed by or for the DCR.
- w. **1.23 – Trading or Selling with Others:** No inmate shall trade, sell, loan, give, borrow, receive, or offer for trade, sale, loan, gift, or receipt any goods or services of any nature or attempt to trade, sell, loan, borrow, receive, or offer for trade, sale loan, gift or receipt any good or services of any nature with employees, or any other persons who have dealings with the DCR, including visitors, other than through the system established by the Superintendent for that purpose.
- x. **1.24 - Vacant**
- y. **1.25 - Compromising an Employee:** No inmate shall aid, abet, incite, encourage, or otherwise attempt to aid, abet, incite, or encourage any employee of the DCR or any employee of any entity contracting with the DCR and/or any volunteer to engage in violations of DCR policies and procedures, jeopardize security, engage in poor work performance, or otherwise violate applicable laws or regulations.
- z. **1.26 - Exposing Body Fluids/Tattooing/Piercing:** No inmate shall intentionally expose to any person body fluids such as urine, feces, spit, blood, or any other body fluid. No inmate shall give oneself or others a tattoo/piercing or allow another inmate to give him/her a tattoo/piercing. No inmate shall possess any tattooing/piercing equipment, to include, tattooing ink, tattooing patterns, tattooing needles, etc.
- aa. **1.27 - Hate/Gang Activity:** No inmate shall engage in racial/ethnic/religious slurs, graffiti and/or symbols thereof towards any person or any gang activity, graffiti and/or symbols.
- bb. **1.28 - Refusing Housing Assignment:** No inmate shall refuse a housing assignment, including a housing assignment within his/her present facility or a transfer to another facility.
- cc. **1.29 - Invasion of Privacy:** No inmate shall possess or seek to obtain or possess any item, record, document or other information containing a residential address (physical or mailing), social security number, date of birth, driver's license number, telephone number, voter registration information, personnel information, payroll information, medical/biometric information,

financial information, or any other form of personal identifiable information of any current or former employee; any item, record, document or other information identifying an employee's spouse or former spouse as such; any item, record, document or other information identifying an employee's parents, siblings, children or step-children as such; any item set forth above pertaining to any member of an employee's immediate household regardless of whether the same is a spouse or blood-relative. Unless such item, record, document, or other form of media is permitted by a specific ruling from a proper proceeding before a court of competent jurisdiction.

- dd. **1.30 – Inmate E-Mail, Internet, Website, etc. Prohibition:** No inmate shall use a computer or any other electronic device, including wireless devices, to transfer, e-mail, text messages, photographic images, sound files, or other computer files using a file transfer protocol or other mechanism, without the express authorization of his or her Superintendent in a controlled setting, such as an educational laboratory, which is subject to monitoring.
 - ee. **1.31 - Destruction of Property Valued Over \$100.00:** No inmate shall alter, damage, mar, deface, or destroy any property belonging to any person or institution valued over \$100.00.
2. **Class II Offenses:** Those rules which, if violated, would tend to disrupt the normal operation of the facility, or subvert institutional systems of control.
- a. **2.01 - Refusing an Order:** No inmate shall refuse to obey or fail to carry out any order, instruction, or assignment.
 - b. **2.02 - Threats:** No inmate shall threaten to commit any act, which violates facility rules. No inmate shall threaten or cause any person to be threatened, as distinguished from 1.02 – Assault and/or Battery, a threat of harm or violence.
 - c. **2.03 - Refusal to Work/Attend Class and Programs:** No inmate shall refuse a work detail or assignment, or refuse to carry out required assignments, work orders, or instructions, or leave a place of assignment including programs or classes without permission from the person in charge, or be absent from work without authorization or violate terms of his/her work contract.
 - d. **2.04 - Missing or Confusing Count:** No inmate shall miss count or take any action which creates confusion or error in the count of inmates.
 - e. **2.05 - Bucking Line:** No inmate shall buck, break out of, and refuse to join in, or prevent the orderly progression of any inmate line or group.
 - f. **2.06 - Entering Another's Cell/Living Area:** No inmate shall enter, break into, or be present in any cell, room, or living area, which is not assigned to him/her, unless granted permission by a staff member.

- g. **2.07 - Unauthorized Presence:** No inmate shall be in any unauthorized area unless granted permission by a staff member (e.g., posted areas, housing units other than their own, etc.). No inmate shall be in any unauthorized area with a person of the opposite sex without a supervisor's permission.
- h. **2.08 - Fighting:** No inmate shall fight, wrestle, or engage in any physical altercation with any other person.
- i. **2.09 – Vacant**
- j. **2.10 - Self-Mutilation:** No inmate shall deliberately cause injury to oneself or commit any act which could cause harm to themselves or attempt to do any of these acts.
- k. **2.11 - Contraband:** No inmate shall possess any contraband, whether in his/her possession or in his/her cell. Contraband shall include any item or substance not specifically permitted to be inmate property by institutional rules or any altered, permissible item or excess of permissible items. Contraband shall also include any permissible item not being used for its original intent. Inmates shall be held accountable for contraband items found in their own living areas.
- l. **2.12 - Possession of Money:** Except where authorized in writing by facility regulations, no inmate shall have any United States currency or any other form of legal tender or money in his/her possession. Those inmates authorized to do so may possess only that amount of money specified by facility regulations.
- m. **2.13 – Failure to Tender Monies/Paychecks:** No inmate shall fail to give to the facility staff any paychecks, wages, or other funds they receive from any source for deposit in their Trustee Account.
- n. **2.14 Theft of Property Valued Under \$100.00:** No inmate shall steal or attempt to steal facility property or property belonging to another person valued under \$100.00, nor shall they possess stolen property.
- o. **2.15 – Destruction of Property Valued Under \$100.00:** No inmate shall alter, damage, mar, deface, or destroy any property belonging to any person or institution valued under \$100.00.
- p. **2.16 - Forgery:** No inmate shall counterfeit, forge, alter, reproduce without authorization, or attempt to do so, any document, article of identification, security, official paper, or the signature of any other person. No inmate shall possess a forged document.
- q. **2.17 - Fraudulent Representation:** No inmate shall represent himself/herself to any individual either as being a person other than who they are or incorrectly act as a representative of any corporation, association, or organization. No

inmate shall deceive, attempt to deceive, misinform, or attempt to misinform any fact or information to any person. No inmate shall tender or attempt to tender a worthless voucher.

- r. **2.18 - Trading and Selling:** No inmate shall trade, sell, pass, loan, borrow, or receive or offer for trade, sale, loan, gift, or receipt any goods or services of any nature or attempt to trade, sell, pass, loan, borrow or receive or offer for trade, sale, loan, gift, or receipt any goods or services of any nature with other inmates other than through the system established by the Superintendent for that purpose.
- s. **2.19 - Gambling:** No inmate shall gamble for money, anything of value, or services of any kind. No inmate shall, without permission, possess or manufacture dice or any other gambling device, equipment, or paraphernalia. No inmate shall organize, operate, or participate in any gambling operation or betting pool.
- t. **2.20 – Misuse of Telephone:** No inmate shall use or attempt to use a telephone except in accordance with and when allowed by facility rules and in accordance with telephone company regulations. An inmate shall not use a credit card/debit card for making a telephone call. No inmate shall arrange through any means or be a party to a three-way or conference call.
- u. **2.21 - Misuse of Correspondence Regulations:** No inmate shall misuse, violate, or attempt to misuse or violate the mail regulations and policies of the facility. No inmate shall purchase, or contract to purchase, any item through the mail without written authorization from the Superintendent/designee.
- v. **2.22 – Failure to Proceed or Return:** No inmate shall fail to proceed directly to a specified destination. An inmate shall remain at the specified destination unless permission is given to leave the area or proceed to another area. No inmate shall fail to directly return to a specified area, including movement within and without buildings and facilities, movement covered by verbal or written directive, passes and furloughs.
- w. **2.23 – Failure to Report Arrests or Accidents:** No inmate shall fail to report to facility staff within two (2) hours, any arrest or accident, detention or questioning by any law enforcement agency.
- x. **2.24 – Contempt of Disciplinary Hearing:** No inmate shall shout, act rudely, speak persistently out of turn, or otherwise disrupt proceedings at any disciplinary hearing.
- y. **2.25 - Falsification of Information/Testimony:** No inmate shall intentionally provide false, incorrect, or incomplete information to a staff member or give false or untrue testimony at any disciplinary hearing.

- z. **2.26 - Accessory:** No inmate shall aid or abet any other inmate in the commission of a Class II Violation. No inmate found guilty of aiding or abetting shall be disciplined more severely than the inmate who was found guilty of the actual Class II violation.

- aa. **2.27 – Vacant**

- bb. **2.28 – Operation of a Motor Vehicle:** No inmate shall operate a motor vehicle without authorization of the Superintendent/designee.

- cc. **2.29 - Unauthorized Entering into a Contract:** No inmate shall enter into any form of contract or be a party to such without the authorization of the Superintendent or his/her designee including marriage, bank accounts, loans, post office boxes, etc.

- dd. **2.30 - Creating a Disturbance:** No inmate shall be disruptive by engaging in horseplay or in insulting, vulgar, or obscene language or gestures or in creating other loud noise in any form.

- ee. **2.31 - Furlough Condition Violation:** No inmate shall violate any condition of his/her master furlough agreement.

- ff. **2.32 - Insubordination/Insolence:** No inmate shall be insubordinate or insolent to or toward any employee. As used herein the term “insolent” shall mean to engage in behavior which is insultingly contemptuous in speech or conduct directly toward staff; is overbearing or impudent toward staff. Such insolent conduct can include abusive, insulting, derogatory, ridiculing, or profane statements, gestures or actions to staff or otherwise committed in the presence of supervising staff.

- gg. **2.33 - Illegal Inmate Store:** No inmate shall operate or participate in the operation of an illegal “store.” Also, no inmate shall engage in purchasing any item or service from any such illegal “store.” Participation in any such illegal store will consist of the sale or accepting as a purchase, with or without interest consideration, any goods, or services between inmates without appropriate approval of the Superintendent.

- hh. **2.34 – Vacant**

- ii. **2.35 – Vacant**

- jj. **2.36 - Physical Contact:** No inmate shall engage in purposeful physical contact (e.g. embracing, holding hands, etc.) with any other person.

- kk. **2.37 - Use of Tobacco or Tobacco Products:** No inmate shall possess or use tobacco or tobacco-like products within the confines of a correctional facility or any other time when the inmate is under the supervision of staff during

transport, while working on a road crew, or any similar direct supervision work detail from any correctional facility or any other non-community work setting.

ll. **2.38 - Unauthorized Communication:** No inmate shall contact or attempt to contact inmates or person(s) that is not in accordance with DCR policy and procedures.

(1) No inmate within a secure facility shall converse, pass notes, or make or attempt to make contact in any way with inmates who are housed in another housing unit. No inmate shall contact or attempt to contact persons outside the facility through doors or windows or shout at or attempt to attract the attention of persons passing by the facility.

(2) No inmate within a community-based facility shall possess a cell phone or any electronic device that enables him/her to access the internet or connection to wireless internet. No inmate within a community-based facility shall be permitted to access or register with any social media websites such as Facebook, Twitter, eHarmony, Match.com, etc. Any internet access must be approved by the facility and for employment purposes only. This includes while inmates are on furlough from the facility.

mm. **2.39 - Obstructed Windows/Lights:** No inmate shall obstruct facility windows and lights in any way.

nn. **2.40 - Inmate ID:** No inmate shall be without proper identification. Inmates are required to wear/carry identification with them at all times. Inmates may be charged restitution for replacement of lost or damaged identification, other than normal wear and tear.

oo. **2.41 - Vacant**

pp. **2.42 – Altering Appearance:** No inmate shall alter his/her appearance so that it deviates from that contained in his/her current inmate identification photograph without the permission of the Chief of Security.

qq. **2.43 - Physical Encounters/Military Drill:** No inmate shall demonstrate, practice, or use martial arts, boxing (except for use of a punching bag), wrestling, or other forms of violent or potentially violent physical encounter, or military exercises or drills.

3. **Class III Offenses:** Violations which disturb the normal operation and routine of the facility, or which manifest a personal problem of adjustment but do not individually rise to a level significant to interfere with parole eligibility.

a. **3.01 - Feigning Illness:** No inmate shall miss work call, school call, or any other mandatory assignment for reason of illness without verification from

medical staff or other authorized personnel. No inmate shall attempt to miss work or avoid any assignment by pretending to be ill.

- b. **3.02 - Littering:** No inmate shall dispose, throw, or drop any garbage, litter product, or any other item or material in an unauthorized or inappropriate manner, including toilets, sinks, showers, air vents, etc.
- c. **3.03 - Personal Hygiene/Sanitation:** No inmate shall fail to either shower at least three (3) times per week, fail to maintain personal cleanliness and grooming, fail to wear clean and appropriate clothing, or fail to maintain living and sleeping areas in a clean and orderly fashion.
- d. **3.04 - Improper Use of Food:** No inmate shall waste or create mess with food. No inmate shall take any food from the kitchen, except as part of a job assignment.
- e. **3.05 - Attentiveness:** No inmate shall be late in reaching a place of assignment or destination. No inmate shall engage in poor work habits through failure to attend to duty or sleeping on the job or in class.
- f. **3.06 - Improper Use of Property:** No inmate shall misuse equipment or property or engage in inappropriate or unauthorized use or possession of tools, machinery, equipment, or other property whether owned by the facility or any person.
- g. **3.07 – Vacant**
- h. **3.08 - Posted Procedures:** No inmate shall violate any other facility procedures as posted that are not defined as Class I or Class II offenses.
- i. **3.09 - Accessory:** No inmate shall aid or abet any other inmate before, during, or after the commission of any Class III offense. No inmate found guilty of aiding and abetting shall be punished more severely than the inmate who was found guilty of the actual Class III offense.
- j. **3.10 – Vacant**
- k. **3.11 – Vacant**
- l. **3.12 – Interfering with Escort Searches:** No inmate shall be permitted to carry any item such as candy, combs, toothbrushes etc. from his/her section without authorization from staff.
- m. **3.13 – Handrails and Shelves:** No inmate shall use a handrail or shelf for other than its intended purpose. Exercising on them or hanging clothes and bed linens from them is not permitted.

- n. **3.14 – Stairway Obstruction:** No inmate shall obstruct the movement up or down a stairway at any time.
- o. **3.15 – Proper Clothing:** All inmates are to be fully clothed in the inmate uniform any time they leave their cell. Specifically, shirt, pants, briefs, socks, shoes, and brassieres for females, unless otherwise specified by the Superintendent in posted rules/procedures.

B. **PUNISHMENTS**

1. **5.01 - Class I Rule Violations**

- a. For each Class I rule violation by an inmate, with the exception of any young adult offender committed to the Anthony Correctional Center, up to a maximum of seven hundred and thirty (730) days of earned good time which has been granted to the inmate may be forfeited and revoked (lost) as imposed by the Correctional Hearing Officer and approved by the Superintendent.
- b. In addition to loss of good time noted above, an inmate who is found guilty of a Class I rule violation, with the exception of any young adult offender committed to the Anthony Correctional Center, may be punished by one (1) or more of the following:
 - (1) Segregation for not more than sixty (60) days, and/or transfer to another facility.
 - (2) Restitution to include repair or replacement costs, special housing or treatment costs, related extra staff expenses (overtime, mileage, etc.) and any other identifiable costs related to the offense.
 - (3) Loss of privileges for not more than sixty (60) days.
 - (4) Change or loss of work assignment.
 - (5) Assignments of up to eighty (80) hours of extra work. The Superintendent/designee will determine specific assignment locations and scheduling. Extra work assignments will not be required on the Sabbath or religious holidays.
 - (6) Forfeiture of cash monies. Cash will be ordered placed in the facility's Inmate Benefit Fund (IBF).
 - (7) An inmate who is found guilty of violating rules 1.03 or 1.25 may be referred for participation in available therapy, counseling, or other interventions as a condition of access to programming or other benefits.

- c. Any inmate sentenced to serve segregation at any facility, to include, any inmate transferred from another DCR facility, will be sentenced under the sentencing guidelines delineated in this Policy and housed under authorized DCR policies and/or appropriate facility Operational Procedures concerning the housing of segregation inmates and the release process there from at any DCR facility.

2. **5.02 - Class II Rule Violations:**

- a. With the exception of any young adult offender committed to the Anthony Correctional Center, an inmate found guilty of a Class II violation may be punished by one (1) or more of the following:

- (1) Segregation for not more than thirty (30) days, and/or transfer to another facility when deemed necessary to maintain the orderly operation of the facility or public safety.
- (2) Forfeiture and revocation (loss) of earned good time which has been granted to the inmate, not to exceed one hundred and eighty (180) days, as imposed by the Correctional Hearing Officer and approved by the Superintendent.
- (3) Restitution to include repair or replacement costs, special housing or treatment costs, related extra staff expenses (overtime, mileage, etc.) and any other identifiable costs related to the offense.
- (4) Loss of privileges for not more than thirty (30) days.
- (5) Change or loss of work assignment.
- (6) Assignments of up to eighty (80) hours of extra work. The Superintendent/designee will determine specific assignment locations and scheduling. Extra work assignments will not be required on the Sabbath or religious holidays.
- (7) Forfeiture of cash monies. Cash will be ordered placed in the facility's IBF.
- (8) An inmate who is found guilty of violating rule 2.36 may be referred for participation in available therapy, counseling, or other interventions as a condition of access to programming or other benefits.

- b. No other punishment shall be permitted.

3. **5.03 - Class III Rule Violations:**

- a. With the exception of any young adult offender committed to the Anthony Correctional Center, an inmate found guilty of a Class III violation may be punished by one (1) or more of the following:

- (1) Restitution to include repair or replacement costs, special housing, or treatment costs, related extra staff expenses (overtime, mileage, etc.) and any other identifiable costs related to the offense.
 - (2) Loss of privileges for not more than thirty (30) days.
 - (3) Change or loss of work assignment.
 - (4) Assignments of up to forty (40) hours of extra work. The Superintendent/designee will determine specific assignment locations and scheduling. Extra work assignments will not be required on the Sabbath or religious holidays.
- b. No other punishment shall be permitted.
4. **5.04 – ANTHONY CORRECTIONAL CENTER – YOUNG ADULT OFFENDERS:**
- a. The following offenses may result in the return of the offender to the committing court for further disposition:
 - (1) 1.01 – Escape
 - (2) 1.02 – Assault and/or Battery
 - (3) 1.03 – Rape/Sexual Assault/Sexual Abuse/Sexual Acts
 - (4) 1.06 – Hostage Taking
 - b. For all other rule violations committed by a young adult offender committed to the Anthony Correctional Center, the Correctional Hearing Officer may impose one (1) or more of the following:
 - (1) Up to one hundred-twenty (120) extra work hours.
 - (2) Restitution as appropriate.
 - (3) Recommendation to the Superintendent for the return of the offender to the committing court for further disposition.
 - (4) Other punishments for rule violations may be imposed if they are in accordance with a written plan for the rehabilitation of an offender prepared by the Superintendent.
 - (5) Loss of privileges for a period not less than fifteen (15) or more than ninety (90) days. The loss of privileges will include one (1) or more of the

following privileges: dorm (passive recreation), phone privileges, tablets, store-line (commissary), and/or visitation.

(6) Additional Days

- (a) The Correctional Hearing Officer may impose three (3) to ten (10) additional days to be added at the end of an offender's program.
- (b) The Correctional Hearing Officer may impose this action for Class I offenses (other than those that require the return to court) and/or serious or repeated Class II offenses.

5. **5.05 - PROBATION:** In every case in which an inmate is found guilty of a rule violation, a Correctional Hearing Officer may first prescribe punishment as permitted by this Policy Directive and then suspend the imposition of the punishment.

- a. Such suspension shall be in the nature of probation. If the inmate maintains good behavior, he/she shall continue on probation until the term of probation ends.
- b. **NOTE:** No administrative proscriptions beyond those imposed by a Correctional Hearing Officer shall be applied.
- c. If the inmate commits a subsequent rule violation, a Correctional Hearing Officer may revoke his/her probation. When the probation is revoked, a Correctional Hearing Officer may choose to impose part or all the punishment for the original offense **and** he/she shall impose punishment for the second offense.
- d. When a Correctional Hearing Officer imposes probation, he/she shall impose it for a specific period.
 - (1) If the inmate committed a Class I offense, the term of probation shall not exceed three hundred sixty-five (365) days.
 - (2) If the inmate committed a Class II offense, the term of probation shall not exceed one hundred eighty (180) days.
 - (3) If the inmate committed a Class III offense, the term of probation shall not exceed thirty (30) days.
 - (4) The term of probation for Young Adult Offenders committed to Anthony Correctional Center shall not exceed three (3) months.
 - (5) At a Correctional Hearing Officer's discretion, probationary terms may be concurrent or consecutive.

6. **5.06 - RESTITUTION:** May be ordered to compensate another person, business, or the state.
 - a. Restitution shall be made by deductions from the guilty inmate's trustee spending account.
 - b. Restitution will be collected in accordance with DCR Policy Directive 111.06 Financial Responsibility Program for Inmates/Residents.
 - c. In no event, however, shall restitution be ordered unless the amount is reasonable and a Correctional Hearing Officer makes a determination of the inmate's ability to pay such amount without undue hardship to himself/herself or his/her dependents.

7. **5.07 - LOSS OF PRIVILEGES:** When permitted by policy, a Correctional Hearing Officer may punish an inmate for a rule violation by loss of privileges or restriction. Such punishment shall be limited **only** to one (1) or more of the following:
 - a. Loss of telephone privileges, except for calls to and from attorneys.
 - b. Loss of reading library privileges. Legal/law library privileges may not be taken.
 - c. Restriction of recreation privilege to one (1) hour outdoor exercise per day.
 - d. Loss of access to the Commissary, except for purchases of personal hygiene items and writing materials (limited to writing tablets, pens, pencils, envelopes, and stamps.)
 - e. Restriction from weekly draw for change for vending machines.
 - f. Loss of access to arts and crafts and music room areas.
 - g. Restriction from use of personal radio, television, tablet, stereo and/or other electronic devices, or access to television viewing.
 - h. Loss of pass or furlough privileges.
 - i. Loss of visitation privileges.
 - j. Restriction from use of personal clothing.
 - k. Restriction to housing unit, not to exceed thirty (30) days.
 - l. Restriction of mail privileges, except for mail to and from the following: immediate family members, as approved by the Superintendent; courts;

counsel; officials of DCR; state and local chief executive officers; the Superintendent/designee of the Inmate Grievance System; and the West Virginia Parole Board.

C. 6.01 - PROCEDURE FOR CLASS I, II, AND III VIOLATIONS:

1. All Class I, II, and III disciplinary rule violations shall be prosecuted and heard by a Correctional Hearing Officer in accordance with this policy except Class II or III disciplinary rules as allowed by the policy governing the Unit Behavior Management process.
2. It must be noted, however, that an inmate may waive the right to a hearing providing that the waiver is documented on a Disciplinary Hearing Waiver (**Attachment #1**) and reviewed by the Superintendent/designee.

3. 6.02 - Reporting Rule Violations:

- a. **Incident Reports:** Any employee witnessing or determining the occurrence of a rule violation pursuant to this policy directive will document such utilizing the Incident Report function in the Offender Information System (OIS) as soon as possible. The Incident Report will fully describe the date, time, location, individuals present, and all other pertinent details regarding the alleged violation.
 - (1) Shift Commanders shall review all reports and take appropriate action, including notifying the author if any corrections need made.
 - (2) When necessary, an appropriate investigation of the alleged rule violation must commence within twenty-four (24) hours of the time the violation is reported and must be completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.
 - (3) The Chief of Security shall then review all reports and take appropriate action which may include referring the Disciplinary Incident Report alleging a Class I, II or III violation to a Correctional Hearing Officer, or as deemed appropriate, referring a Class II or III violation to the Unit Behavior Management process.
- b. **Confidential Information:** Any employee receiving confidential inmate information related to a disciplinary rule violation shall inform the Chief of Security of such. The Superintendent will designate in writing those subordinates authorized to present confidential inmate information to a Correctional Hearing Officer during a disciplinary hearing.
 - (1) The Superintendent/designee must be prepared to explain to a Correctional Hearing Officer, outside the presence of inmates, why the source is reliable and the information credible.

- (2) A Correctional Hearing Officer must decide if the informant is generally reliable and evaluate the specific information for credibility.
- (3) When a Correctional Hearing Officer is satisfied the two (2) basic requirements of reliability and credibility have been met, the information may be properly considered. A Correctional Hearing Officer shall make a record of his/her findings and the evidence received to support such findings.
4. **6.03 - Charging an Inmate:** The employee writing the Incident Report alleging the violation(s) is the reporting employee.
- a. The Chief of Security will review all incident reports and approve or disapprove charging an inmate with a rule violation, except for those Class II or Class III violations to be disposed of per the Unit Behavior Management process.
 - b. In cases involving confidential inmate information, the reporting employee must be authorized in writing by the Superintendent to present confidential inmate information to a Correctional Hearing Officer during a disciplinary hearing.
5. **6.04 - Detention of the Inmate Before Charging:**
- a. Before an inmate is served with a Disciplinary Incident Report charging him/her with a violation, the Chief of Security/designee or higher administrative authority may place him/her in detention.
 - b. Such detention shall be approved **only** if it is necessary to conduct an investigation, ensure immediate control and supervision, protect potential victims, ensure witnesses against intimidation, ensure facility security or public safety, or causes of similar nature and gravity.
 - c. The Superintendent/designee must approve the detention in writing, including an explanation of the reasons why immediate detention is necessary on a Detention Report (**Attachment #2**).
 - d. Any inmate so placed in detention shall not be detained for longer than seventy-two (72) hours unless a Disciplinary Incident Report is served charging him/her with a rule violation. Weekends and holidays are not exempt time frames.
 - e. An inmate may be placed in a secure facility pending service of a Disciplinary Incident Report, provided it is determined by the staff person in charge that a dangerous condition exists which seriously threatens the safety of the inmate population, the facility, another person, or that the inmate poses an escape risk. This placement must be accompanied by a written explanation of the reasons why this placement is necessary on a Detention Report (**Attachment #2**).

- f. A Disciplinary Incident Report must be served within seventy-two (72) hours of the inmate being placed on detention.

6. **6.05 - Detention of the Inmate Before Hearing**

An inmate who has been served with a Disciplinary Incident Report charging him/her with a Class I or Class II rule violation may be placed in detention pending the outcome of the case if, in the judgment of the Chief of Security/designee or higher authority, the detention is necessary due to an ongoing investigation, in order to ensure immediate control and supervision, in order to protect potential victims, in order to ensure witnesses against intimidation, and in order to ensure facility security or public safety, or causes of similar nature and gravity.

7. **6.06 - Approval of Detention**

- a. The employee who placed an inmate in detention, whether before the inmate is charged or pending the outcome of the hearing shall submit a Detention Report (**Attachment #2**) in which he/she shall state the reason for the detention.
- b. The employee shall either submit the Detention Report (**Attachment #2**) to the Superintendent/designee or notify and receive verbal approval within twenty-four (24) hours after the inmate is detained and receive written approval within seventy-two (72) hours after the inmate is detained.
- c. The Superintendent/designee shall review the report and make any inquiry of staff or the inmate they feel is necessary.
- d. The Superintendent/designee may release the inmate from detention should it be determined he/she believes the detention is not necessary under the circumstances.

8. **6.07 – Scheduling Hearings**

- a. A Correctional Hearing Officer/designee shall schedule a hearing on the charge before the inmate is served with a copy of the Disciplinary Incident Report.
- b. The employee who serves the inmate with the copy of the Disciplinary Incident Report shall thereafter complete the record of service on the original Disciplinary Incident Report.
- c. Hearings shall be scheduled no sooner than twenty-four (24) hours, excluding weekends and holidays, after serving the Disciplinary Incident Report, except if the inmate agrees in writing to waive this requirement.
- d. The hearing should be scheduled no later than seven (7) days, excluding weekends and holidays, after the accused inmate has been served with the Disciplinary Incident Report.

- e. A hearing may be postponed by a Correctional Hearing Officer or if the accused inmate or staff moves for a continuance, and then only for good cause. If a continuance is granted, the Correctional Hearing Officer shall document the continuance within the hearing report.
- f. The reasons for granting a continuance include, but are not limited to, the preparation of a defense, illness, or unavailability of inmate or staff, further investigation of factual matters relevant to the hearing, or pending criminal court prosecution.
- g. No hearing shall be continued beyond the fifteenth (15th) regular business day after the accused has been served with the Disciplinary Incident Report, except when criminal court prosecution is pending on the charges or a suspension of these rules exists as outlined in this policy.
- h. If a continuance beyond the fifteenth (15th) regular business day is granted due to a suspension of these rules in an emergency, a written declaration by the Superintendent must be entered to cover the days exempted.
- i. Thereafter, the inmate, if in detention, shall be released, provided that releasing the inmate from detention does not mean that charges should be dismissed.
- j. In those instances when an inmate waives his/her right to appear at his/her scheduled hearing, the fact will be noted on the record by the Correctional Hearing Officer of the inmate's refusal to appear. The inmate's waiver to appear through behavior reasons should be identified in the Correctional Hearing Officer's findings.

9. **6.08 - Considering More than One Violation**

- a. A Correctional Hearing Officer may consolidate two (2) or more violations alleged to have been committed by one (1) inmate at one (1) hearing consideration.
- b. Consolidation may also be done of one (1) single violation alleged to have been committed by two (2) or more inmates, or by one (1) inmate and an accessory.

10. **6.09 - Disqualification of Correctional Hearing Officer**

- a. A Correctional Hearing Officer shall not consider a particular case in which he/she has:
 - (1) Witnessed the incident or filed an incident report.
 - (2) Participated in any investigation of the incident.

(3) Has a personal interest in the outcome of the case.

(4) Solicited evidence outside of the hearing.

- b. Whenever a Correctional Hearing Officer disqualifies himself/herself or is disqualified by the Superintendent for any of the above reasons, the DCR Chief Hearing Officer or his/her designee shall designate a substitute Correctional Hearing Officer to consider the particular case.

11. 6.10 - Inmate Representatives

- a. In any disciplinary proceeding on a Class I, Class II, or Class III rule violation, an inmate will be entitled to inmate or staff representation.
- (1) An inmate in the general population will be permitted to have an inmate or staff representative of his/her choice. Requests for inmate representatives of different classification or security status must be approved by the Chief of Security or designee.
- (2) An inmate housed in a restricted housing unit will be permitted to have a representative appointed to represent him/her. Such representative shall be selected from an approved list of inmates assigned to serve in this capacity. The approved list to be provided by the facility in which the inmate is housed. In the event of security or other needs, a staff member from the facility shall be assigned to represent the inmate.
- b. It is the responsibility of the inmate to seek inmate or staff representation, if desired.
- c. An inmate must provide the name of the representative to the Correctional Hearing Officer within twelve (12) hours of the hearing.
- d. No person needs serve as a representative unless they are willing.
- e. No inmate in segregation shall be allowed to serve as a representative.
- f. A Correctional Hearing Officer may refuse to allow an inmate to have a particular person as their representative, but only if there are compelling reasons based on security considerations. Such reasons shall be rendered in writing with the reason(s) stated.
- g. An inmate shall be allowed to confer in private with their representative prior to the hearing for a reasonable amount of time (e.g., 15-30 minutes), if no previous contact has taken place.
- h. In those cases where an accused inmate has a representative, he/she need not say a word, even in answer to a question.

- (1) Instead, an accused inmate may have his/her representative exercise all the rights afforded him/her by these rules.
- (2) If silent, an accused inmate shall be informed that a Correctional Hearing Officer can draw a negative inference from their silence.

12. **6.11 - HEARING PROCEDURES FOR ALL VIOLATIONS**

a. **Commencement of Hearing/Motion(s)/Correction of Charge(s)**

- (1) At the commencement of the hearing, the Correctional Hearing Officer shall first read to the accused inmate the text of the violation that the inmate is being charged with violating.
- (2) Whenever an inmate is charged with a Class I violation, he/she shall be advised at the beginning of the disciplinary hearing that anything he/she says during the course of the hearing may be used against him/her in subsequent criminal proceedings.
- (3) Prior to the inmate entering a plea to the charge(s), the inmate may make the following motions:
 - (a) Move to dismiss the charge because Sections 6.02 through 6.11 were not followed.
 - (b) Move to dismiss the charge because the facts contained in the Disciplinary Incident Report do not properly describe a disciplinary rule violation.
 - (c) Move to reduce a charge to a lower-class rule violation.
 - (d) The inmate may move for a continuance to secure the attendance of an incident report author, if such continuance is not more than fifteen (15) business days as outlined within Section 6.07.
- (4) In the event the Disciplinary Incident Report does not properly describe a disciplinary rule violation; the Correctional Hearing Officer may remand the Disciplinary Incident Report to the Chief of Security/designee for correction or revision.
- (5) In the event of remand, the corrected and revised report shall be served on the accused within seventy-two (72) hours, or the charge shall be dismissed.
- (6) If there is no objection by the inmate, the Correctional Hearing Officer may correct any error on any report, record the same verbally and proceed with the hearing, or make motions under Section 6.08, 6.09, 6.10, and 6.11.

- (7) If the inmate objects to the correction of any error, the Correctional Hearing Officer will remand all necessary paperwork to the Chief of Security/designee for revision and follow item four (4) of this section.

b. **Inmate Plea**

The Correctional Hearing Officer shall then ask the inmate to enter a plea to the charge(s).

- (1) If the plea is guilty, the Correctional Hearing Officer shall first ask the inmate if he/she has anything to add about the violation before punishment is imposed. A Correctional Hearing Officer may then pronounce punishment.
- (2) If the plea is no-contest, the Correctional Hearing Officer shall first ask the inmate if he/she understands that a plea of no-contest is consenting to being found guilty of the charge. The Correctional Hearing Officer shall then ask the inmate if he/she still wishes to plea no-contest and if so, shall then ask the inmate if he/she has anything to add about the violation before punishment is imposed. The Correctional Hearing Officer may then pronounce punishment. The plea of no-contest is defined as there is some evidence in the alleged charge(s) and he/she will be found guilty of alleged charge(s).
- (3) If the plea is not guilty, the Correctional Hearing Officer shall conduct the hearing in accordance with this section.

c. **Evidence Against the Inmate**

- (1) The Correctional Hearing Officer will first hear all testimony and receive all evidence that staff has which tends to prove the inmate's guilt.
- (2) The inmate or his/her representative may cross-examine.

d. **Evidence for the Inmate**

- (1) The inmate may testify on his/her own behalf after all evidence against him/her is presented.
- (2) The inmate or his/her representative may present witnesses on the inmate's behalf, where such would not be unduly hazardous to institutional safety or correctional goals.
- (3) The inmate shall have the right to request the attendance of all staff who have witnessed or investigated the incident. Any other inmate called as a witness by the charged inmate may refuse to testify

- (4) A list of witnesses must be presented to the Correctional Hearing Officer no later than noon of the first regular business day preceding the day of the scheduled hearing.
- (5) The Correctional Hearing Officer may compel the attendance or telephonic testimony of any staff. A staff witness may testify by telephone only if the telephone is speaker equipped allowing all parties to hear the testimony and magnetic taping/digital recording to take place.

e. **Incident Reports as Evidence**

- (1) The Correctional Hearing Officer may receive a written incident report as evidence if the author of the report is present to testify as to its truthfulness.
- (2) If the author is absent from the facility due to either termination or suspension of employment, any approved absence, or reassignment to another facility, the Correctional Hearing Officer may receive the written report on its own merit. Otherwise, a written incident report will be inadmissible as evidence.

f. **Physical Evidence**

- (1) If the charge concerns the discovery and confiscation of weapons, drugs, or contraband, the item confiscated or a photograph of the same must be presented as evidence and identified by the employee who discovered it.
- (2) If the item confiscated has been destroyed, stolen, given to law enforcement authorities, the employee with the best knowledge of the identity and description of the item(s) and of why it was destroyed, stolen, or given to the law enforcement authorities, should be called to testify.
- (3) If the item(s) confiscated cannot be within proximity of the inmate for safety and security reasons a photograph of the item(s) will be considered a sufficient means of presenting the physical evidence.

g. **Exclusion of Evidence**

- (1) The Correctional Hearing Officer may exclude any evidence or testimony he/she deem to be irrelevant to the issue of guilt/innocence or redundant.
- (2) The Correctional Hearing Officer may also exclude or refuse any witness who has no personal knowledge of the incident.
- (3) The Correctional Hearing Officer may disallow any witness or exclude any evidence if the presentation of such would be disruptive to institutional order or security. If such an exclusion is made, the Correctional Hearing Officer shall make specific findings on the record and in the hearing report

for the exclusion and shall receive a proffer from the inmate as to what the inmate believes the evidence may show.

h. Disruption of Hearing

- (1) Disruptive behavior will not be tolerated in the Hearing Room. Any disruptive inmate may be removed from the hearing and/or be found in contempt in accordance with the disciplinary rules.
- (2) The Correctional Hearing Officer may continue the hearing in the absence of any inmate who persists in disorderly behavior.

i. Participation of the Correctional Hearing Officer

- (1) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate.
 - a. For this purpose, the Correctional Hearing Officer shall be authorized to call and interrogate any witness. Each inmate or employee called as a witness by the Correctional Hearing Officer shall be compelled to appear.
 - b. The Correctional Hearing Officer may ask questions of the accused inmate. *Provided* the inmate is not required to answer.
 - c. The Correctional Hearing Officer may bring out fact by direct or cross-examination but shall not act as prosecutor on behalf of the facility or charging officer against the accused inmate, or on behalf of the inmate.
 - d. At the conclusion of staff and inmate evidence, the Correctional Hearing Officer can order the presence of any employee or inmate whose testimony he/she desires to hear within the hearing setting.
 - e. Testimony and evidence shall not be received by the Correctional Hearing Officer or introduced outside of the presence of the accused inmate, except that the accused inmate shall not be present when the Correctional Hearing Officer reviews any facility security videotape evidence or other electronically delivered video evidence.
- (2) The Correctional Hearing Officer may schedule another hearing, if necessary, in order to secure their presence.
- (3) The Correctional Hearing Officer may, with or without a motion by the defendant, reduce a charge to a lower-class rule violation.
- (4) The Correctional Hearing Officer upon completion of the adjudication

process may dismiss without prejudice any charge(s) he/she has determined to be redundant and cumulative in nature.

j. **Participation by the Inmate or Inmate's Representative**

- (1) The accused inmate or representative shall have the right to present evidence.
- (2) The accused inmate or representative may call witnesses and confront and cross-examine witnesses (other than confidential sources or witnesses).

k. **Record of Hearing**

- (1) The hearing proceedings shall be recorded by digital recording.
- (2) Hearing recordings shall be retained for a period of two (2) years.

1. **6.12 - FINDING AND DISPOSITION**

- (1) The Correctional Hearing Officer may deliberate in private after the conclusion of the hearing or may issue a ruling without deliberation.
- (2) The verdict should be either guilty or not guilty. If there is some evidence presented as to the guilt of the inmate, the verdict may be guilty. Some evidence means something more than no evidence but does not mean a preponderance of the evidence. If there is no evidence presented as to the guilt of the inmate, the verdict must be not guilty.
- (3) The inmate shall be advised of the verdict and disposition within five (5) days (excluding weekends and holidays).
- (4) The verdict and the disposition, if any, shall be recorded on the hearing report (recorded on the digital recording containing the hearing). A detailed accounting of the findings on the hearing report must include:
 - a. Any hearing continuance(s).
 - b. Any inmate's refusal to attend his/her scheduled hearing.
 - c. Inmate's waiver of the twenty-four (24) hour notification of hearing.
 - d. The names of all witnesses.
 - e. A summary of each witness's testimony.
 - f. A description of all physical evidence presented.

- g. A list of all reports and documents used in evidence.
 - h. The basis upon which the findings are made.
 - i. The penalty or punishments imposed. The Correctional Hearing Officer shall sign the hearing report.
- (5) Dispositions of all disciplinary hearings shall be entered into the appropriate field in OIS.
- (6) The Superintendent or designee shall review all disciplinary hearings and dispositions in order to ensure conformity with policy and regulations.
- (7) The incarceration of an inmate shall not be prolonged by reason of the imposition of disciplinary sanctions, unless the sanction has included the loss of earned good time credit. An inmate shall be released upon the conclusion of his/her sentence or as otherwise directed by applicable court order.

D. APPEALS

1. 7.01 - Appeal to Superintendent

- a. Any inmate found guilty of a rule violation may appeal such a finding to the Superintendent of the facility.
- b. When an inmate is filing a disciplinary appeal pertaining to a violation that occurred at a facility other than the one, he/she is currently housed at, that appeal is to be filed to the Superintendent of the facility where the violation occurred.
- c. Any appeal must be made in writing and must be made no later than the fifteenth (15th) calendar day after receiving the hearing report.
 - (1) It is the discretion of the Superintendent to decide whether a meeting with the inmate would be helpful in consideration of the appeal.
 - (2) The Superintendent must answer the appeal in writing, within thirty (30) calendar days of its receipt.
 - (3) An appeal to the Superintendent must contain a copy of the Disciplinary Incident Report, hearing report, and grounds for the appeal.

2. 7.02 - Appeal to Commissioner

- a. Any inmate who has been found guilty of a Class I or Class II violation and who has received an unfavorable answer to their appeal may then appeal to the

Commissioner.

- b. The appeal must be made within fifteen (15) calendar days after the date of the Superintendent's written response.
- c. The appeal to the Commissioner must be made in writing.
- d. The Commissioner must either respond in writing or designate a responsible official to respond in writing.
- e. The answer to the appeal must be made within thirty (30) calendar days of its receipt.
- f. The Commissioner may also order divisional employees to conduct investigations into the allegations raised by the appeal.
- g. Class III violations may not be appealed to the Commissioner except in the case of cumulative Class III violations.
- h. An appeal to the Commissioner must include all the documents required for the appeal to the Superintendent, plus the decision of the Superintendent. It is the responsibility of the appealing inmate to mail the appeal in its own envelope separate and apart from any other correspondence, grievance, or appeal.

3. **7.03 - GROUNDS FOR APPEAL**

- a. An inmate may appeal upon any assignment of error including, but not limited to, the following grounds:
 - (1) The inmate failed to receive timely notice of the charge or the date and time of the hearing.
 - (2) The Disciplinary Incident Report did not correctly state the rule violation or did not set forth specifically the alleged facts of the violation.
 - (3) The inmate was detained in segregation for an excessive amount of time (Sections 6.04 and 6.07 e.).
 - (4) The inmate was denied his/her right to a representative (Section 6.10) or other provisions of this section were not followed.
 - (5) The inmate was denied the right to a fair hearing as set forth in Section 6.11.
 - (6) The finding of guilt was contrary to the weight of evidence [Section 6.12 (2)].

(7) The punishment either was in violation of Section I, B or was too harsh given the circumstances of the violation.

(8) Procedures under Sections 6.02 or 6.03 were violated.

b. Any appeal must contain a specific statement of facts.

4. **7.04 - ACTION ON APPEAL**

a. Upon consideration of any appeal brought under this section, the Superintendent or the Commissioner may decide to:

(1) Affirm the guilty verdict.

(2) Reverse and vacate the guilty finding and order the record expunged of all file material relating to the guilty finding, provided that such action shall not prevent the facility from recharging the inmate, unless specifically prohibited by the Commissioner in such an order.

(3) Reduce the punishment.

(4) Order the Correctional Hearing Officer to conduct a new hearing or correct any technical defects found within the hearing report, which does not require a new hearing.

(5) Order the Correctional Hearing Officer to conduct a new hearing on a reduced charge.

b. An order to conduct a new hearing may or may not include an order to serve the inmate with a new Disciplinary Incident Report.

5. **7.05 - EXPUNGING OF RECORDS**

a. When a Superintendent overrules a disciplinary decision upon an inmate appeal at the first level, he/she shall:

(1) Submit to the Commissioner copies of **all** records relating to the misconduct and disciplinary action taken.

(2) Provide a detailed report explaining the overruling and make a recommendation to either expunge or not to expunge the inmate's records.

b. The decision whether to expunge or not expunge the inmate's record is solely within the discretion of the Commissioner or designee both in the above circumstance and where the Commissioner at the second level overrules a disciplinary decision.

(1) If the Commissioner decides to expunge the inmate's records, he/she will send a letter to all entities having records of the conviction removed from the inmate file and stored under seal in a separate place. This shall include the order to expunge.

(2) Nothing herein shall be construed as requiring destruction of any record or investigative file.

II. **PROCEDURES FOR FELONIES**

A. **8.01 - Felony Notifications/Investigations**

1. Upon the determination of the Superintendent that an inmate may have committed a felony, the appropriate law enforcement officials shall be notified.
2. A request shall be made that a criminal investigation be conducted. If the criminal investigation produces sufficient evidence that a felony was committed, an arrest shall be made, and prosecution initiated.

B. **8.02 - Felony Rule Violation**

1. Where a rule violation may also be the subject of a criminal investigation or prosecution, it is permissible to proceed with a disciplinary hearing.
2. It is also permissible for the Correctional Hearing Officer to continue the hearing pending completion of criminal proceedings.

C. **8.03 - Felony Procedures**

1. Felony procedures (as noted above) shall be followed whenever an inmate allegedly commits a violation of facility rules which is a felony under the criminal laws of the State of West Virginia.
2. Felony procedures shall be followed when an inmate has criminal charges filed against him/her.

III. All staff who work with inmates shall receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available.

IV. **9.01 - Suspension of Rules**

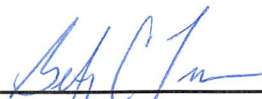
A. In case of an emergency, any or all portions of these procedures or all other rules pertaining to inmate privileges may be temporarily suspended by the Superintendent, in writing, with the written approval of the Commissioner.

- B. Any inmate who is involved in or who has contributed to an emergency may be detained on the Superintendent's order without a hearing until the end of the emergency.
- C. Any such inmate may also have his/her privileges and work and school assignments suspended.
- D. However, at the conclusion of the emergency, any such inmate shall be promptly charged with any rule violations arising out of the emergency and given a hearing on the charge in accordance with these rules.
- E. Any emergency detention or suspension of privileges shall be credited to the punishment set by the Correctional Hearing Officer, if the inmate is found guilty of any charge.

ATTACHMENT(S):

- #1 Disciplinary Hearing Waiver
- #2 Detention Report

APPROVED SIGNATURE: _____


Betsy C. Jividen, Commissioner

7-27-21
Date

DISCIPLINARY HEARING WAIVER

INMATE NAME: _____ OID #: _____

DATE: _____

I, _____, do hereby indicate my desire to
[Inmate Name and OID #]

waive my disciplinary hearing for Rule Violation _____
[Rule Violation #]

[Rule Violation Name]

which occurred on _____.
[Date]

I am waiving my disciplinary hearing of my own free will and hereby indicate, by my signature below, that I have not been threatened, coerced, bribed, or had any promises of leniency made to me for this voluntary waiver of my disciplinary hearing for the above-noted Rule Violation.

Signature of Inmate

OID #

Date

Time

Witnessed by: _____
Name of Witness Date Time

Name of Witness

Date

Time

Signature of Superintendent/Designee: _____

Date: _____ Time: _____

DETENTION REPORT

DIRECTIONS:

This report must be completed by the employee placing the inmate in detention pursuant to Division of Corrections and Rehabilitation Policy Directive 325.00. The employee shall either submit the Detention Report to the Superintendent/designee or notify and receive verbal approval within twenty-four (24) hours after the inmate is detained and written approval within seventy-two (72) hours after the inmate is detained.

NOTE: Weekends and Holidays are not exempt time frames.

(1) **Name of Inmate:** _____ **OID#** _____

(2) **Employee authorizing Detention:** _____

(3) **Date of Detention:** _____ (4) **Time:** _____

(5) **Reasons for Detention:** _____

(6) **Date and time of verbal approval (only applicable during non-business hours)**

Date: _____ **Time:** _____

Superintendent/designee notified for verbal approval _____

(7) **Date and Time submitted to the Superintendent/designee**

Date: _____ **Time:** _____

(8) **Inmate to remain on Detention:** _____

(9) **Inmate to Be Released** _____

Superintendent /Designee