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Disciplinary Procedures	ACA Standards: 2-CO-3C-01, 4-4226 through 4-4248, 4-4281 4-ACRS-3A-01 through 4-ACRS-3A-04, 4-ACRS-3A-07, 4-ACRS-6A-03, 4-ACRS-6C-01 through 4-ACRS-6C-04		
Robert Patton, Director Oklahoma Department of Corrections	Signature on File		

Offender Disciplinary Procedures

This procedure is intended to provide guidance to staff in exercising discretion in the day-to-day operation of the department. It is not intended to, and does not grant any right to any offender as the right to due process protection comes from the Constitution. (4-4281, 4-ACRS-6A-03)

“Acts Constituting Rule Violation” ([Attachment A](#), attached) of this procedure defines all offender disciplinary rule violations and specifies the allowable range of disciplinary sanctions authorized by the Oklahoma Department of Corrections (ODOC) for each violation. The referenced attachment, containing the disciplinary rule violations, must be posted at each facility for review by all offenders. (2-CO-3C-01, 4-4226, 4-ACRS-3A-02, 4-ACRS-3A-03, 4-ACRS-3A-04)

All personnel who have contact with offenders will receive training so that they are familiar with the rules of offender conduct, the rationale for the rules, and the disciplinary sanctions available. (4-4229) The Administrative Review Authority will ensure the lesson plans for this training are submitted for approval in accordance with [OP-100101](#) entitled “Training and Staff Development.” This procedure will be reviewed annually and a rulebook, including all chargeable offenses, penalties and disciplinary procedures, will be given to all offenders through facility orientation. (4-4227, 4-4228, 4-ACRS-3A-01, 4-ACRS-3A-02) To provide for uniformity of the hearings, the "Disciplinary Hearing Guide" ([Attachment B](#), attached) is provided. The disciplinary hearing officer is encouraged to utilize this attachment as a guide during the hearing.

Substantial amendments have occurred to this procedure. Any “Offense Report” ([DOC 060125A](#), attached) completed prior to the effective date of this procedure will be governed by the prior version of this procedure. Any “Offense Report” that is completed on or after the effective date of this procedure must be governed by this procedure. The amendments to this procedure are designed to make the procedure required for offender discipline more efficient. There is now a separate provision for Class X violations and Class A and B violations. Additionally, many of the time frames in this procedure have been reduced.

I. General Information

A. Definition of Terms

1. Administrative Review Authority (ARA)

The director's designee to whom Class X misconduct appeals are submitted for final review.

2. Charged

After the "Offense Report" has been submitted to the disciplinary coordinator and the offender has received a copy, the offender is considered "charged."

3. Civilian

Civilian, as used in this operating procedure, refers to any person who is not a staff member and who is not an offender.

4. Direct Involvement

The activities below constitute direct involvement in the disciplinary process, and a staff member who has direct involvement is prohibited from conducting the investigation, conducting the disciplinary hearing or being a staff representative; however, neither the serving of an "Offense Report" nor awareness of the offense constitutes direct involvement.

- a. Directly witnessed the offense or reviewed/referred /prepared the "Offense Report" ([DOC 060125A](#)).
- b. Involved in or witnessed the events leading to and/or immediately following the offense.
- c. Engaged in any activity which may compromise the ability to function objectively, e.g., family relationship between staff member writing the "Offense Report" and/or the disciplinary hearing officer, the disciplinary coordinator, the staff representative or a person involved in the offense (victim or witness).

5. Disciplinary Hearing/Disposition

The review of the evidence and the disposition of the "Offense Report."

6. Informal Resolution (4-ACRS-6C-01)

The attempt by staff to handle a rule infraction committed by an offender without having to document the infraction with an "Offense Report." This is at the discretion of shift supervisors/unit managers or higher, and can include informal discipline. Informal discipline may include, but is not limited to extra duty, written reprimand, additional program requirements such as a "reflective report", or reduction/suspension of privileges. Informal discipline must be documented with an entry in the case notes.

7. Preparation Period

The preparation period is that period of time in which an offender can gather/review facts, documents, and all evidence and reports in order to prepare a defense.

8. Private Contract Facility

Any private prison/jail or other non-departmental facility or contractor who contracts with DOC to house offenders assigned to the custody of the Oklahoma Department of Corrections.

9. Restitution

Restitution is a penalty imposed on the offender by the disciplinary hearing officer upon a finding of guilt for an offense causing economic loss when evidence of economic loss is introduced. If more than one offender is found guilty of the violation, the offenders are jointly and severally liable for the total amount of restitution. An offender may be assessed restitution as a sanction even though the rule violation that resulted in the economic loss was a lesser offense than the one charged, so long as there is evidence introduced that supports the offender's guilt in causing the economic loss.

10. Staff Member

Staff member, as used in this operating procedure, refers to any employee, student intern, volunteer, employee of any contract facility, Career Tech employee and anyone else who works with offenders in an official capacity.

B. Training Disciplinary Hearing Officers, Disciplinary Coordinators and Staff (4-4229)

1. Facility heads and district supervisors will appoint employees, pay band H and above, to serve as disciplinary hearing officers who will preside at the disciplinary hearings and impose the appropriate disciplinary sanction as required.
2. Facility heads and district supervisors must appoint a supervisory staff member as a disciplinary coordinator who must coordinate the disciplinary functions of the facility and who must ensure that the facility complies with this operating procedure. Facility heads/district supervisors must appoint a back-up disciplinary coordinator to act in the absence of the primary disciplinary coordinator.
3. Staff representatives will be appointed when required in this operating procedure.

4. Facility heads/district supervisors will ensure all disciplinary hearing officers, disciplinary coordinators and staff are trained in the disciplinary process prior to assuming responsibilities in the process and as significant changes occur.

C. Time Frames

1. The time frames provided for in this section will be followed by staff. Failure to comply with the time frames indicated below will result in the dismissal of the "Offense Report" ([DOC 060125A](#)). Extensions of time may be permitted in accordance with the procedures below.
2. All time frames will include weekends and holidays unless otherwise stated. If the last date of any time period falls on a weekend, holiday, or a date in which non-essential employees are permitted to take administrative leave at an affected facility, the time period will be extended to the next business day.
3. Extensions of any time period for reasonable cause/s will be documented in writing and the justification for such an extension will be attached to the "Offense Report." The first extension permitted must not exceed thirty (30) days. Any subsequent extensions must not exceed seven (7) days. All extensions must be signed by the facility head/district supervisor. When it is necessary to extend the time limits set forth in this procedure, the offender will receive documented notification of the extension.
4. The "Offense Report" will be prepared and submitted to a supervisor within 24 hours from when the violation is reported and/or discovered, an Inspector General investigation is complete, or when an escapee or walkaway is returned to DOC custody.
5. The supervisor will review and forward the "Offense Report" to the disciplinary coordinator within 24 hours of the supervisor's receipt of the "Offense Report."
6. The disciplinary coordinator will do the following within seven (7) days from the disciplinary coordinator's receipt of the "Offense Report":
 - a. For Class X violations and Class A and B violations in which restitution is sought: conduct the investigation, accept a plea of guilty and impose a negotiated sanction(s), dismiss the "Offense Report" or forward the "Offense Report" and "Disciplinary Coordinator's Report" ([DOC 060125B](#), attached) to the Disciplinary Hearing Officer.
 - b. For Class A and B violations: conduct the investigation, accept a plea of guilty and impose a negotiated sanction(s), dismiss

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the "Offense Report" or find the offender guilty and impose the appropriate sanction for the Class A or Class B violation.

7. The disciplinary hearing will occur within seven (7) days from the date the disciplinary hearing officer receives the "Offense Report" from the disciplinary coordinator. (4-4238)

D. Use of Pre-hearing and Pending Investigation Detention

The offender may be placed in pre-hearing and pending investigation detention prior to a hearing or disposition according to the guidelines established in [OP-040204](#) entitled "Segregation Measures." (4-4235)

E. Signatures

All signatures must be legible and include the printed name of the employee signing his/her name underneath or next to the signature.

F. Standard of Proof

In order for an offender to be found guilty of a rule violation, the trier of fact must find that there is some or any evidence that the offender committed the rule violation charged.

G. Use of an Office of Inspector General's Investigation/Report

In no instance should an Investigation/Report or a summary of said Investigation/Report by the Office of Inspector General be used as evidence in a disciplinary hearing nor should said Investigation/Report or Summary be turned over to the offender. An Incident Report prepared by the Inspector General or OIG agent may be used as evidence. Any documents or records that were a part of an investigation may be used as evidence. The Inspector General or OIG agent who conducted the investigation may be called as a witness to testify to his or her findings or a "Witness Discretionary Action Record" ([DOC 060125](#), attached) may be utilized in the event the Inspector General or OIG agent is unavailable to attend the hearing.

H. Violation of Criminal Law

When an offender allegedly commits an act that is also a violation of a criminal law, the case may be referred to the Inspector General for a criminal investigation, and the decision to refer a case for prosecution will be made by the General Counsel after reviewing the reports/charges. (4-4231)

II. The "Offense Report" (4-4230, 4-4232, 4-4233, 4-ACRS-6C-01)

A. Preparation

Upon the reasonable belief that a violation of rules has occurred, an "Offense

Report” may be prepared by any staff member. The offense should be reported, approved by the appropriate staff member, and investigated by the disciplinary coordinator. The “Offense Report” must be prepared and forwarded to a supervisor within 24 hours of one of the following:

1. After the violation is reported and/or discovered;
2. After an investigation by the Inspector General has been completed and received by the facility in which the violation occurred; or
3. After an escapee or walkaway is back in the custody of the agency.

B. Occurrence of Disciplinary Infractions

1. If more than one infraction occurs as a result of a single incident in which there is more than one rule violation, the offender may only be charged for the most serious rule violation.
2. The facts regarding violations not charged that occurred during a single incident can be considered in determining the appropriate sanction for the charged violation.
3. If a violation of a rule results in damages wherein restitution should be sought as a sanction but the rule violation is not the most serious violation, restitution may be ordered as a sanction for the most serious violation to cover all damages, including the damages of a violation not charged.

C. The “Offense Report” will identify a specific rule violation as outlined in [Attachment A](#) entitled “Acts Constituting Rule Violation” to give the offender notice of the offending behavior, as well as the date and approximate time of the offense, to allow for preparation of a defense. (4-4230, 4-4236, 4-ACRS-6C-02) The reporting employee should ensure that the “Offense Report” contains the elements of who, what, when, where and how before it is submitted. If restitution is being sought for an offense that is not the most serious offense, there must be sufficient information contained in the “Offense Report” to justify a sanction of restitution. (4-4233)

D. The “Offense Report” will be prepared and submitted to the appropriate shift supervisor/unit manager/team supervisor within 24 hours. The supervisor will review the report to ensure it is complete, correct, legible, and understandable. If necessary, the “Offense Report” will be corrected by the supervisor or returned to the writer for corrections. The supervisor must forward the “Offense Report” to the disciplinary coordinator within 24 hours of the supervisor’s receipt of the “Offense “Report.”

E. The supervisor may recommend informal disposition prior to approving the charge of offense through a verbal warning, dismissal due to lack of evidence, or take informal action. In such cases, the offender and

appropriate staff will be notified. (4-ACRS-6C-01)

- F. If an "Offense Report" was written, but the decision was made to handle the infraction informally, the report must still be logged on the "Facility Misconduct Report Record" and case notes.
- G. Clerical errors in a completed "Offense Report" will not invalidate the report. Corrections may be made by the reporting staff member, reviewing supervisor, disciplinary coordinator, disciplinary hearing officer or by a supervisor. Copies of corrections will be provided to the offender. If the offender could not have known of the correct information and the information is material to a determination of guilt, an additional 24-hour preparation period will be offered and provided unless it is waived by the offender. Items such as misspelled names, incorrect DOC number or failure to put am/pm on reports are not always material and can be verified and corrected at the hearing without an extension.
- H. Copies of the "Disciplinary Hearing Report" ([DOC 060125C](#), attached) will be distributed as follows:
 - 1. The original will be maintained in the offender commitment document folder in accordance with [OP-060212](#) entitled "Maintenance and Access of Offender Records."
 - 2. A copy will be provided to offender.
 - 3. A copy will be filed in section 6 of the offender field record.
 - 4. A copy will be maintained by the facility head. (4-4245, 4-ACRS-6C-03)

III. Disciplinary Coordinator and Investigation of Charges

A. Disciplinary Coordinator

- 1. The disciplinary coordinator will be responsible for the processing and distribution of all records and reports under the operating procedure unless the responsibility is expressly delegated to another.
- 2. The disciplinary coordinator must, upon receipt of the "Offense Report", log the "Offense Report" on the "Mental Health Disciplinary Process Consultation Log" ([DOC060125M](#), attached). The log will be submitted to the mental health authority or designee, and the mental health authority or designee must return the log to the disciplinary coordinator within 24 hours, excluding weekends and holidays.
 - a. For offenders with mental health classification level of B, C1, C2 or D, the mental health authority or designee will complete a "Mental Health Recommendations Regarding Offender

Discipline” form ([DOC 060125R](#), attached) and return the form, along with the log, to the assigned disciplinary coordinator within 24 hours of receipt, excluding weekends and holidays. (4-4399)

- b. The “Mental Health Recommendations Regarding Offender Discipline” form will remain with the original copy of the “Offense Report” throughout the remainder of the disciplinary process.
3. In addition to the administrative duties, the disciplinary coordinator will have authority to:
 - a. Amend a charge laterally or to a lesser charge on an “Offense Report” in accordance with the provisions of Section III. B. item 9. of this operating procedure;
 - b. Defer prosecution of an “Offense Report” in accordance with the provisions of Section XIII. of this operating procedure; and
 - c. Dismiss an “Offense Report”, prior to a hearing that does not serve the disciplinary interests of the facility.
 4. If an “Offense Report” is deferred, dismissed or the charge amended, the disciplinary coordinator must send a copy of the relevant forms to the reporting employee and the facility head.

B. Investigation of Charges

1. The investigation of the alleged offense will be the responsibility of the facility where the offense occurred. If the offender has been transferred before the conclusion of the investigation or hearing, the facility head/district supervisor of the receiving facility must cooperate with the facility head/district supervisor of the facility where the offense occurred and provide assistance, if requested. The disciplinary coordinator will be the person responsible for conducting the investigation. The disciplinary coordinator is responsible for gathering all relevant evidence and/or witness statements and will accept any documentary evidence submitted by the offender during the investigation. (4-4243) The disciplinary coordinator will obtain the offender’s version of the violation and must contact any staff member or offender who, in the disciplinary coordinator’s judgment, may have information pertaining to the allegation and charge, and obtain from the offender a summary of expected testimony of a requested witness, as a condition of the witness being contacted.

When Class X violations or Class A and B violations in which restitution will be sought as a sanction are forwarded to the disciplinary hearing officer for a disciplinary hearing, the disciplinary

coordinator is to act as a neutral party by making no determination of guilt or innocence.

2. If the offender chooses to plead guilty during the investigation or when served, the disciplinary coordinator will ensure the offender initials the appropriate line on Section III of the "Offense Report" and signs and dates the form as required.
 - a. The disciplinary coordinator has the authority to negotiate with an offender regarding sanctions for any level of offense that will be imposed should the offender choose to plead guilty. The available sanctions the disciplinary coordinator may impose must be in accordance with [Attachment A](#) entitled "Acts Constituting Rule Violation." The disciplinary coordinator may also amend the charge as part of a negotiated plea of guilty.
 - b. The disciplinary coordinator will complete the relevant disciplinary documents with the negotiated sanction imposed by the disciplinary coordinator.
3. If the offender pleads guilty at the hearing, the "Disciplinary Coordinator's Report" ([DOC 060125B](#)) will remain a part of the "Offense Report." An audio recording of the disposition and imposition of sanctions is not required when the offender waives a hearing or pleads guilty. If the offender pleads guilty during the hearing, the audio recording may be stopped after the offender states his plea.
4. Coercion by the disciplinary coordinator, disciplinary hearing officer or any staff member for a guilty plea or dismissal of charges is prohibited. Coercion is defined as the actual or threatened use of physical force or the actual or threatened withholding of a right or privilege to which the offender is entitled under [P-030100](#) entitled "Provision of Services/Offender Rights and Responsibilities." Negotiations between the disciplinary coordinator and the offender regarding sanctions to be imposed, in accordance with [Attachment A](#) entitled "Acts Constituting Rule Violation," does not constitute coercion.
5. If an offender chooses to plead guilty after an initial plea of not guilty during a hearing of a Class X violation or a Class A or B violation in which restitution is being sought, the disciplinary hearing officer will record the guilty plea on the "Change of Plea Form (Class X)" ([DOC 060125N](#), attached) with the plea acknowledged by both the offender and the disciplinary hearing officer.
6. When an alleged rule violation is reported and referred for investigation, the investigation will be initiated within 24 hours of the

date the "Offense Report" is referred to the disciplinary coordinator. The investigation will be completed without unreasonable delay unless circumstances dictate a need for delaying/extending the investigation. (4-4234)

7. Investigations must be conducted in the following manner:
 - a. The disciplinary coordinator should review the "Offense Report" and complete the "Disciplinary Coordinator's Report" as it relates to the offense. An investigation will be performed by speaking to the accused offender, and any witness who has not yet provided a written statement, or whose statement is not understandable or legible. Additional facts will be submitted by the disciplinary coordinator which includes all relevant information pertinent to the charge, to include any mitigating or exculpatory information (that information which indicates innocence).

For all investigations of Class X violations and Class A and B violations in which restitution is being sought the disciplinary coordinator will not include personal opinions. If the offender pleads guilty, the disciplinary coordinator will impose one or more sanctions on the "Disciplinary Hearing Report (Class X or Violation Involving Restitution)" form ([DOC 060125C](#)) or the "Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)" form ([DOC 060125C-1](#), attached), whichever is appropriate.

- b. If the offender refuses to cooperate in the investigation, the failure to cooperate will be documented, and the investigation will be completed and the "Disciplinary Coordinator's Report" form will be completed in its entirety.
8. Disciplinary coordinators are responsible for ensuring that a copy of the offender's "Consolidated Record Card" ([DOC 060211H](#)) (front and back of the card) is attached to the disciplinary paperwork for review by the disciplinary hearing officer. The offender does not receive a copy of this documentation.
9. Amendment of Rule Violation

A charge may be amended by the use of "Amendment of Rule Violation" ([DOC 060125G](#), attached). The offender will be notified and offered an opportunity of 24 hours to prepare if the hearing is already scheduled to be conducted within 24 hours of service of the amended disciplinary charge. A charge may be amended by the disciplinary coordinator, disciplinary hearing officer or the facility head/district supervisor.

10. All pleas of guilty with a negotiated sanction imposed are final and may only be amended on facility head/district supervisor review to reduce a sanction(s).

C. Witnesses Requested by the Offender

1. The offender will be given the opportunity to make a statement and present documentary evidence to the disciplinary coordinator and/or the disciplinary hearing officer. The offender may request witnesses on the offender's behalf. (4-4242)
2. In regard to witnesses, the disciplinary coordinator may elect to take statements in lieu of allowing direct testimony at the disciplinary hearing, disqualify a witness if testimony is not material to the offense (e.g., character witness), or may limit the number of witnesses if the testimony is repetitive and/or duplicative. The disciplinary coordinator may also disqualify any proposed witness who has no direct knowledge of the incident. Any discretionary action taken by the disciplinary coordinator as to a witness must be documented by utilizing the "Witness Discretionary Action Record" ([DOC 060125I](#), attached) and attached to the "Disciplinary Coordinator's Report." (4-4242)
3. Whether the offender requests or presents witnesses or not, the offender will so indicate by initialing the appropriate box of the "Disciplinary Coordinator's Report." When written statements are taken, the disciplinary coordinator will document the acceptance of the written statement by completing the "Witness Discretionary Action Record" ([DOC 060125I](#)).
4. Reasonable attempts will be made to locate all identified witnesses; however, it is the offender's responsibility to provide sufficient information to properly identify a witness. If witnesses cannot be located, the disciplinary coordinator must document the efforts made to locate the witnesses on the "Witness Discretionary Action Record." If an offender refuses to identify a witness it will be the offender's responsibility to gather any statements and provide them to the disciplinary coordinator. Such statements must be verifiable or will not be considered credible.
5. Witnesses who decline to provide a statement will not be forced to provide a statement or made to testify.
6. Offenders may only request witnesses during the investigation of the offense. However, offenders may present witness statements directly to the disciplinary hearing officer at the hearing. Such witnesses must be verifiable or may not be considered reliable by the disciplinary hearing officer. If the offender fails to request witnesses from the disciplinary coordinator and fails to provide any witness statements to

the disciplinary hearing officer, it will constitute a waiver by the offender.

D. Guidelines for the use of Confidential Witness Testimony or Confidential Physical Evidence

1. If confidential witness testimony constitutes a portion of the evidence, the name and testimony of the confidential witnesses will be documented thoroughly, stating the facts as submitted by the witness and the manner in which knowledge of those facts were acquired. Such documentation will be signed by the confidential witness and/or the staff taking the testimony, placed in an envelope, and sealed. Should the informant decline or refuse to sign the statement the staff member taking the information will document such refusal. A staff member cannot be a confidential witness for purposes of this operating procedure.
 - a. An evaluation regarding the reliability of the confidential witness will be prepared by staff taking the testimony and attached to the sealed confidential witness testimony. This evaluation will be submitted with the "Disciplinary Coordinator's Report" ([DOC 060125B](#)).
 - b. Confidential testimony will only be used to protect the identity of a witness or if the release of such might pose a threat to the security of a facility, staff member, another offender, or any other person. Confidential information will not be accepted in exchange for avoiding charges, the granting or denial of privileges, or intervening in an offender's current status.
2. Reports from other agencies, such as police arrest reports, or internal department reports, such as chronological reports, are not confidential material unless they contain the name or identity of a confidential informant, the release of which might pose a threat to the safety of the informant. If such information is contained in such a report, the information will be removed from the report and the report provided to the offender if the identity of the informant will not be revealed.
3. If confidential witness testimony is admitted in a disciplinary hearing, the anonymity of the confidential witness will be maintained. If it is not clear from the "Offense Report" and "Disciplinary Coordinator's Report", the disciplinary hearing officer will describe to the accused offender the substance of the confidential testimony in general terms so as to protect the identity of the witness and inform the offender of what evidence/information has been provided.
 - a. For the taped record, when the hearing convenes, the disciplinary hearing officer will state in the presence of the

offender if confidential testimony will be part of the evidence presented.

- b. Confidential evidence will be reviewed by the disciplinary hearing officer to determine the reliability of the confidential witness and whether the confidential testimony will be considered. If considered and found to be reliable and relevant, the disciplinary hearing officer will submit the following written statement, which will include the offender's name, number, offense, and date of offense:

"I have independently reviewed the reliability statement and confidential testimony and have found it to be sufficiently reliable."

The statement will be signed by the disciplinary hearing officer and read during the hearing. The offender and/or staff representative will not be present for this review.

4. If confidential physical evidence is used, it will be reviewed by the disciplinary hearing officer, and it will be described to the offender in general terms, but the offender will not be allowed to possess or view the material. Examples of confidential evidence would be the plans for manufacturing weapons, bombs, drugs, etc.

E. Evidence

1. Physical material constituting evidence of the alleged violation will be confiscated, labeled, and secured in the facility's designated area in accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence" and [OP-040110](#) entitled "Search and Seizure Standards" and will be retained for one year following the final appeal in the disciplinary matter.
2. If such evidence is too voluminous to be readily secured, it may be photographed or photocopied and described in its original state. Samples and photographs or photocopies will be retained until the appeal process is complete; photographs or photocopies will also be attached to the "Disciplinary Hearing Report."
3. Evidence relevant and/or material to the alleged offense will be viewed by the disciplinary coordinator who will ensure a field test is completed if identification remains uncertain of any substance(s).
 - a. If a photograph, photocopy, video or audio of the evidence is not attached to the disciplinary paperwork, a detailed description of the evidence may be completed by the disciplinary coordinator during the investigation and a "Review of Evidence" form completed by the disciplinary coordinator.

- b. A copy of the "Review of Evidence" form ([DOC 060125P](#), attached) will be attached to the "Offense Report" if completed. If no such statement is available, the evidence, or the photographs or photocopies of the evidence, laboratory reports, etc., will be reviewed by the disciplinary hearing officer during the hearing.
 - c. If videotapes or audiotapes are part of the evidence, the disciplinary hearing officer and the offender may review those items prior to or during the hearing and such review will be documented. If, however, security concerns prohibit the offender from reviewing the video or audio, the specific security concern will be documented and provided to the offender. If review is prohibited, the disciplinary hearing officer will describe to the offender in general terms the evidence/information that has been reviewed.
4. Breathalyzer, urinalysis, or blood tests will be administered in accordance with [OP-030134](#) entitled "Chemical Abuse Testing." If such test is administered, photocopies or photographs of the urinalysis results will be part of the evidence and attached to the "Offense Report."
 - a. A list of current medications will be provided by the facility qualified health care provider for each offender who tests positive as a result of a chemical abuse test. This list of medications will be compared to the test kit package insert by the disciplinary coordinator or disciplinary hearing officer to determine if any of the medication may have affected the test result.
 - b. If the test kit is such that no photocopy can be made of the results of the urinalysis, then at least two staff members will prepare incident reports of their observations of the test and the results. Test kits utilizing human body fluids of any kind will be handled and disposed of as a contaminant in accordance with [OP-030134](#) entitled "Chemical Abuse Testing."
 - c. Staff should use caution and not place the test kits on any copy machine due to the biohazard the kits present to other staff members. If a photocopy must be made, the employee must ensure the glass is cleaned and disinfected in accordance with universal precautions.
 - d. Offenders supervised by probation and parole staff and who claim they were on medication must submit evidence to the disciplinary coordinator prior to the disposition or disciplinary

hearing and make their medical records available for review. Failure to do so constitutes a waiver of the issue.

- e. Breathalyzer, urinalysis, or blood tests are not required to establish that an offender is under the influence of a chemical substance. In lieu of testing, staff members may document their observations of the offender (e.g., slurred speech, smell, uneven walk, etc.).
5. Photocopies of incident reports, witness statements or evidence, other than confidential witness statements or evidence, utilized for writing the "Offense Report" or discovered during the investigation will be provided to the offender at least 24 hours before the disciplinary hearing. Exceptions will be documented with justification. (4-4236, 4-ACRS-6C-02)
6. If evidence requested by the offender is found not to exist, the disciplinary coordinator must document this finding.

IV. Service of the "Offense Report"

- A. The "Offense Report" will be served to an offender within 48 hours after the "Offense Report" has been referred for investigation or as promptly as practicable, but no less than 24 hours prior to the disciplinary hearing. (4-4236) "Offense Report's" for escape do not have to be served until the offender is returned to a DOC facility, when an "Offense Report" is prepared prior to the offender's return to DOC.
- B. If the offender is unable or unavailable to receive a copy of the "Offense Report" within the 48 hours, it will be documented in writing and attached to the completed report. It will be presented to the offender promptly after availability occurs, but in all cases no later than 24 hours before the disciplinary hearing is conducted. (4-4236, 4-ACRS-6C-02)
- C. Upon service of the "Offense Report" to the offender, the disciplinary coordinator will ensure Section III of the report is completed before a copy is given to the offender.
- D. The offender may waive the right to a disciplinary hearing and/or plead guilty. The disciplinary coordinator serving the offender will ensure the offender understands that waiving the right to a hearing will result in sanctions being imposed immediately by the disciplinary coordinator. When the offender waives a hearing or pleads guilty, there will be no formal hearing. The waiver or plea of guilty also constitutes a waiver of the appeal process by the offender. Waivers or guilty pleas will be documented and reviewed by the facility head/district supervisor or designee. (4-4230, 4-4237)
- E. If the hearing is not waived, the offender will be provided the opportunity for a 24-hour preparation period. (4-4238, 4-ACRS-6C-03) The offender may

waive the 24-hour preparation period; however, the waiver must be in writing and signed by the offender.

V. Assignment and Responsibilities of Staff Representatives

A. Assignment of a Staff Representative (4-4243)

A staff representative may be assigned for any level of offense. A staff representative will be assigned only when an offender is incapable of understanding the charge or when an interpreter may be required. The staff representative will assist prior to and during the hearing/disposition. Staff representatives are assigned to help offenders only to understand the charges against them, the disciplinary hearing/disposition process, the process for presenting their version of the charges, and the process to appeal. Staff Representatives must not act on behalf of, or serve as advocates for inmates. Offenders may not act as staff representatives, but offenders may be utilized by a staff representative as an interpreter, if a staff interpreter is unavailable.

1. If a staff representative is assigned during the investigation, the offender and his/her representative will be provided the opportunity to meet and prepare prior to the scheduled hearing or disposition. The assigned staff representative will document all meetings with the offender.
2. During the investigation, if the disciplinary coordinator determines a staff representative is warranted, the "Assignment of Staff Representative" form ([DOC 060125U](#), attached) will be completed by the disciplinary coordinator. A copy will be included with the "Disciplinary Coordinator's Report" form ([DOC 060125B](#)).
3. Staff representatives and interpreters will be assigned by the facility head/district supervisor or designee.

B. Responsibilities of the Staff Representative (4-4243)

1. The staff representative will attend the disciplinary hearing/disposition with the offender.
2. The staff representative will be impartial in the roles and responsibilities as defined:
 - a. Will consult with the offender before the hearing/disposition;
 - b. Will explain the charge against the offender and the potential sanctions;
 - c. Will explain the ramifications of a guilty plea;

- d. Will assist the offender in understanding the disciplinary process including the process for appeal;
- e. Will assist the offender in understanding the process of presenting their version of the charges;
- f. Will attend the hearing/disposition with the offender; and
- g. When required, will assist the offender in communicating with the disciplinary coordinator and/or the disciplinary hearing officer.

VI. Class A and Class B Violations

A. Disposition of Class A and Class B Violations

1. Class A and Class B violations are deemed minor violations. Class A violations are of greater significance in a prison or corrections setting; therefore, they are treated accordingly. Class A and Class B violations are enumerated in Attachment A entitled "Acts Constituting Rule Violation."
2. All Class A and Class B violations are to be disposed of by the disciplinary coordinator without the necessity of a disciplinary hearing, unless restitution is being sought as a sanction. If restitution is being sought as a sanction, the process for Class X violations must be followed, but the sanctions should be limited to the sanctions available for the class of rule violation charged.

B. Responsibilities of Disciplinary Coordinator

In addition to the responsibilities provided for in Section III. of this procedure, the responsibilities of the disciplinary coordinator for Class A and Class B violations are as follows:

- a. Provide a copy of the "Offense Report" to the offender.
- b. Resolve or dispose of all Class A and Class B violations within seven (7) days of the date the "Offense Report" is received. Accept guilty pleas of Class X violations and impose sanctions within seven (7) days of the date the "Offense Report" is received.
- c. Meet with the offender and determine whether the offender has been properly charged; if not, the disciplinary coordinator must amend the charge.
- d. Conduct an investigation and complete the Disciplinary Coordinator's Report, if necessary.

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- e. Interview the offender and obtain witness statements from other offenders or staff.
- f. Decide whether to resolve the violation formally or dismiss the charge and handle it informally.
- g. Determine whether any sanctions are appropriate, in accordance with [Attachment A](#) entitled "Acts Constituting Rule Violation."
- h. Advise the offender of his or her appeal rights.
- i. Document the resolution in the "Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)" form ([DOC 060125C-1](#)).

C. Resolution of Class A or Class B Violations

- 1. The disciplinary coordinator may dismiss the charge, resolve the matter informally, or assess penalties for Class A and Class B violations in accordance with [Attachment A](#) entitled "Acts Constituting Rule Violation." Assessment of sanctions may be tailored to individually address the behavior of each offender. There are no mandatory sanctions. In addition, the disciplinary coordinator may:
 - a. Defer prosecution of an "Offense Report" in accordance with the provisions of Section XIII. of this procedure.
 - b. Suspend one or more of the sanctions imposed. The allowable sanction may be suspended for a specified period not to exceed 90 days. There will be no partial suspension of a single sanction. If the offender is found guilty of another offense during the period of the suspended sanction, the suspension will be revoked by the disciplinary coordinator to run consecutive to the new sanction. A revoked suspended sanction will not be viewed as one of the sanctions imposed for the new offense;
 - c. Order the confiscation and return of property that belongs to another offender, staff member, or other person, which is found in an offender's possession without proper authorization;
 - d. Order the confiscation and forfeiture of contraband money and property, in accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence."
- 2. If the disciplinary coordinator finds the offender guilty of the rule violation, the offender will be informed of the evidence relied upon for such finding, the basis for the sanction(s) imposed, and the opportunity to appeal. Such findings will be documented in the

appropriate sections of the “Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)” form ([DOC 060125C-1](#)).

3. A finding of guilt on the “Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)” form must be documented by a written statement by the disciplinary coordinator and a copy provided to the offender. The reasons must point out the essential facts upon which inferences were based, mentioning what evidence the disciplinary coordinator relied on. (4-4245, 4-ACRS-6C-03)The statement regarding the evidence relied upon for the finding of guilt must specify the offending behavior of the offender. The finding of guilt utilizing a chemical abuse test should indicate for which drug the offender tested positive, as well as identify any contraband found and/or field-tested.
4. The original, complete “Offense Report”, less confidential material, will be forwarded to the facility’s records office for proper notation on the “Consolidated Record Card” ([DOC 060211H](#)), and inclusion in the offender’s commitment folder, computerized record and trust fund account, as required, following the facility head’s review. (4-4245, 4-ACRS-6C-03)

D. Review of Disciplinary Actions

The facility head/district supervisor or designee will review all disciplinary actions within seven (7) days after imposition of sanctions and may affirm, dismiss, modify the sanctions, or remand (4-4247). A modification/amendment of a charge requires completion of the “Amendment of Rule Violation” form (DOC 060125G). Modification of a sanction may not increase the sanction(s) imposed and a modification/amendment of a charge may not increase the charge to a higher class violation.

1. The offender will receive a completed copy of the “Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)” form ([DOC 060125C-1](#)). (4-4245, 4-ACRS-6C-03)
2. During the review of the “Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)” form, the facility head/district supervisor or designee may remand a finding of not guilty or may order the reinstatement of an “Offense Report” that has been dismissed only if approved in writing by the division manager. A statement must be included in the order remanding or reinstating an “Offense Report” why the actions being ordered.
3. An “Offense Report” is not final until the facility head/district supervisor or designee signs off on the “Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)” form.

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4. Administrative action, such as transfer or assignment to another program or job, assignment to a different facility or security level, or a change in class level by the classification committee will not be construed as a sanction as they are the normal incidents of incarceration.
5. Upon completion of disciplinary action resulting in a finding of guilt, which has been reviewed by the facility head/district supervisor or designee, notice will be forwarded to the unit team for immediate classification action as required.

E. Dismissal of a Charge or Finding of Not Guilty

1. Should the disciplinary coordinator dismiss the charge or find the offender not guilty, and no order remanding was issued, the disciplinary report will not be placed in the offender's field file and will not be used to discipline the offender. (4-4246)
2. The "Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)" form ([DOC 060125C-1](#)) must be maintained in the facility file for two years from the date of the incident and then destroyed.
3. The acts committed by the offender will not be used in the classification process without a finding of guilt.

VII. Class X Violations and Class A and B Violations in Which Restitution is Being Sought

A. Offender Disciplinary Hearing

Disciplinary hearings of rule violations will be conducted by an impartial disciplinary hearing officer who has had no direct involvement. (4-4240) Attorney representation is not allowed at the hearing. A written record will be made of the decision and the supporting reasons.

1. The disciplinary hearing will commence within seven days from the time the disciplinary hearing officer receives the "Offense Report" from the disciplinary coordinator. (4-4230, 4-4238)
2. Postponement or continuance of the hearing may be granted in writing for a reasonable period of time for reasonable cause utilizing the "Disciplinary Hearing Postponement (Class X)" form ([DOC 060125O](#), attached). (4-4239) A copy of the "Offender Disciplinary Hearing Docket" ([DOC 060125E](#), attached) may be attached to the "Disciplinary Hearing Report."
3. Any delay in the hearing will be documented, giving an approximate date and time of the rescheduled hearing. This will be attached to the

“Disciplinary Hearing Report (Class X or Violation Involving Restitution)” ([DOC 060125C](#)) and a copy provided to the offender. (4-4239) Documentation regarding the postponement/delay in the disciplinary hearing is only necessary if exceeding the seven day time frame.

4. If the offender has been transferred, the receiving facility may agree to hold the disciplinary hearing. Witness statements will be provided as necessary by the sending facility. All documentation will be made available by the sending facility at the hearing.
5. The entire disciplinary hearing will be digitally recorded with a digital recorder unless the offender pleads guilty or waives the hearing. Each hearing will be recorded separately. The digital recording will be the audio record of the hearing. These recordings will be maintained at least 90 days from the date of decision of the administrative review authority.
6. Only evidence presented during the hearing may be considered when determining guilt or innocence. (4-4244, 4-ACRS-6C-03) The disciplinary hearing officer is responsible for weighing the evidence presented, weighing the credibility of all witnesses, and, if the disciplinary hearing officer finds that the offender is guilty, determining the appropriate sanction(s) to impose in accordance with [Attachment A](#) entitled “Acts Constituting Rule Violation.” An offender’s prior disciplinary record and the evidence presented during the hearing may be considered when determining the sanction(s) for an offense. (4-ACRS-6C-04) An offender’s prior disciplinary record may be considered as evidence of habit or pattern of behavior in similar incidents, and can be used when considering the credibility of the offender.
7. Any evidence the offender has not seen, but has been made aware of, prior to the hearing may be presented during the hearing and the offender will be offered the opportunity to view it. Such action will be documented in writing by the hearing officer or verbally acknowledged during the hearing.
8. Original disciplinary reports regarding dismissed disciplinary actions will be maintained in the files maintained by the facility head for a period of two years from the date of the incident, then destroyed.

B. Disciplinary Hearing Guidelines Conducted Via Telephone

1. In appropriate circumstances, the hearing may be conducted by speakerphone hookup whereby all parties are able to hear and communicate at all times.

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2. The offender will be identified to the disciplinary hearing officer by a staff member at the holding facility.
3. The telephone hearing will be noted on the "Disciplinary Hearing Report" form.
4. Actions requiring offender signature will be acknowledged by the disciplinary hearing officer by audio record.
5. Copies of the findings will be forwarded to the offender upon completion of the "Disciplinary Hearing Report."
6. Time limits for an offender to appeal begin upon the offender's receipt of a completed copy of the "Disciplinary Hearing Report."

C. Presence of Offender During a Hearing

1. The offender will normally be present throughout the hearing, with the exception of the period of deliberation and when confidential information is reviewed. (4-4241)
2. Should the behavior of the offender warrant removal from the hearing or denial of attendance, such removal or denial will be documented and attached to the "Disciplinary Hearing Report" form. The hearing will proceed without the offender present. (4-4241)
3. If the offender refuses to attend the hearing, it will be documented and the disciplinary hearing officer will impose sanctions without a hearing, as the refusal to attend constitutes a waiver by the offender to an opportunity for a hearing or an appeal. (4-4241)

D. Finding

1. Upon a finding of guilt, the offender will be informed of the evidence relied upon for such finding, the basis for the sanction(s) imposed, and the opportunity to appeal. Such findings will be documented in the appropriate sections of the "Disciplinary Hearing Report" form.
2. A finding of guilt on the "Disciplinary Hearing Report" form must be documented by a written statement by the disciplinary hearing officer and a copy provided to the offender. The reasons must point out the essential facts upon which inferences were based, mentioning what evidence upon which the disciplinary hearing officer relied. (4-4245, 4-ACRS-6C-03)The statement regarding the evidence relied upon for the finding of guilt must specify the offending behavior of the offender. The finding of guilt utilizing a chemical abuse test should indicate for which drug the offender tested positive, as well as identify any contraband found and/or field-tested.

3. The sanction(s) will be imposed as outlined in the allowable range of sanctions as listed in [Attachment A](#) entitled "Acts Constituting Rule Violation." Assessment of sanctions may be tailored to individually address the behavior of each offender. There are no mandatory sanctions. (4-ACRS-6C-04)
4. The allowable sanctions may be suspended for a specified period not to exceed 90 days. There will be no partial suspension of a single sanction. If the offender is found guilty of another offense during the period of the suspended sanction, the suspension will be revoked by the disciplinary hearing officer to run consecutive to the new sanction(s). A revoked suspended sanction will not be viewed as one of the sanction(s) imposed for the new offense. Failure to revoke a suspended disciplinary sanction involving a loss of earned credits will be corrected by a records officer or sentence administration auditor when the error is discovered during an audit. A sanction of disciplinary segregation may be excused if the offender is transferred based upon his receipt of a disciplinary misconduct.
5. The original, complete "Offense Report", less confidential material and the hearing tape, will be forwarded to the facility's records office for proper notation on the "Consolidated Record Card" ([DOC 060211H](#)), and inclusion in the offender's commitment folder, computerized record and trust fund account, as required, following the facility head's review. (4-4245, 4-ACRS-6C-03)

E. Review of Disciplinary Actions

The facility head/district supervisor or designee will review all disciplinary actions within seven (7) days, after completion of the hearing or imposition of sanctions and may affirm, dismiss, modify the sanctions, or order a rehearing (4-4247). A modification/amendment of a charge requires completion of the "Amendment of Rule Violation" form ([DOC 060125G](#)). Modifications of a sanction may not increase the sanction(s) imposed and a modification/amendment of a charge may not increase the charge to a higher class violation.

1. The offender will receive a completed copy of the "Disciplinary Hearing Report" form. (4-4245, 4-ACRS-6C-03)
2. During the review of the "Disciplinary Hearing Report" form, the facility head/district supervisor or designee may order a rehearing of a finding of not guilty or may order the reinstatement of an "Offense Report" that has been dismissed only if approved in writing by the Division Manager. A statement must be included in the order for a rehearing or reinstatement of an "Offense Report" of what is to be reheard and why the rehearing/reinstatement is being ordered.

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3. An "Offense Report" is not final until the facility head/district supervisor or designee signs off on the "Disciplinary Hearing Report (Class X or Violation Involving Restitution)" form ([DOC 060125C](#)).
4. Administrative action, such as transfer or assignment to another program or job, assignment to a different facility or security level, or a change in class level by the classification committee will not be construed as sanctions as they are the normal incidents of incarceration.
5. Upon completion of disciplinary action resulting in a finding of guilt, which has been reviewed by the facility head/district supervisor or designee, notice will be forwarded to the unit team for immediate classification action as required.

F. Finding of Not Guilty

1. Should there be a finding of not guilty, and no rehearing was ordered, the disciplinary report will not be placed in the offender's field file and will not be used to discipline the offender. (4-4246)
2. The disciplinary report must be maintained in the facility file for two years from the date of the incident and then destroyed.
3. The acts committed by the offender will not be used in the classification process without a finding of guilt.

VIII. Appeal Process

A. Due Process Review by the Facility Head/District Supervisor (4-4248, 4-ACRS-6C-03)

1. The offender will have 15 days after receipt of the decision of a finding of guilt to submit an appeal to the facility head/district supervisor of the facility conducting the hearing/disposition. The appeal will not be submitted by any other person. The facility head/district supervisor must complete the appropriate review within 30 days of its receipt and the offender will receive a completed copy. (4-4248) In conducting a due process review, the facility head or district supervisor will respond to each due process issue raised by the offender. The facility head or district supervisor must not have any direct involvement in the disciplinary proceeding.
2. The appeal form must be written in blue or black ink only. No pencil, other color ink, or highlighting will be accepted. The appeal may contain no extraneous markings, doodling, or borders. The margins will be kept free from language or markings of any type.

3. Any offender submitting an appeal will specifically state the grounds for the appeal. Issues not raised are waived. Offenders will use the appropriate "Offender Misconduct Appeal Form" ([DOC 060125L](#), attached) or ([DOC 060125L-1](#), attached). All instructions contained in the procedure and on the form will be followed by the offender, or the facility head or district supervisor will inform the offender the appeal will not be answered due to improper filing. If permitted by the facility head or district supervisor, the offender must properly resubmit an appeal within 10 days of receipt of notice of the error(s).
4. Rehearings must be conducted within 15 days from the date of the order, unless circumstances dictate otherwise. The same disciplinary hearing officer can conduct the rehearing, unless it was determined that the disciplinary hearing officer was directly involved in the incident. The severity of the sanction(s) and the number of sanctions will not be increased from the original hearing. A copy of the first "Disciplinary Hearing Report" will be attached to and accompany the rehearing paperwork. Once conducted, documentation of the rehearing or order of dismissal will be maintained at the facility. The facility conducting the rehearing will be responsible for answering the due process review.
5. For offenders found guilty of an offense, the "Disciplinary Coordinator's Report" ([DOC 060125B](#)), "Disciplinary Hearing Report (Class X or Violation Involving Restitution)" ([DOC 060125C](#)), "Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)" ([DOC 060125C-1](#)), "Offense Report" form ([DOC 060125A](#)), all evidentiary material, a copy of the appeal and completed due process review form or appeal review form and the digital recording of the disciplinary hearing will be maintained at the facility.
 - a. The original of the entire "Offense Report" and all related material, to include the appeal, will be maintained at the facility.
 - b. All "Offense Report" copies will be maintained in storage for two years by the facility and the originals will always be made a permanent part of the DOC offender commitment document folder. (4-4240, 4-4245)
6. There is no mailbox rule regarding disciplinary appeals. The offender's appeal must be received in the facility head's office or district supervisor's office within the required time frame.
7. If there has been no response from the facility head or district supervisor within 30 days of submission, the offender may initiate the grievance process as specified in [OP-090124](#) entitled "Offender Grievance Process." The offender may grieve only that his appeal

has not been answered within the specified time frame and may not include the issues raised in the misconduct appeal.

8. If the offender does not follow the instructions on the form or file an appeal in accordance with this procedure, the facility head or district supervisor will inform the offender the appeal will not be answered due to improper filing. The offender will be given only one opportunity by the facility head or district supervisor to correct any procedural errors made by the offender when submitting the appeal. A corrected appeal must be received by the facility head or district supervisor within ten (10) days of receipt by the offender of notice of the error(s). If the offender fails to correct the error(s) when advised of such, the appeal will be deemed to have been waived by the offender. This process does not apply to an appeal found to be out of time.
9. For Class A and Class B violations, the response from the facility head or district supervisor is final and, unless remanded, no further review will be permitted.
10. If the offender appeals the finding of guilt of the facility head/district supervisor's decision of Class X violations and Class A and B violations in which restitution is imposed, the administrative review authority will notify the facility by email that all of the following paperwork must be available at the designated website within three working days: the "Disciplinary Coordinator's Report" ([DOC 060125B](#)), the "Disciplinary Hearing Report" ([DOC 060125C](#)), the "Offense Report" ([DOC 060125A](#)), all evidentiary material, a copy of the appeal and completed due process form, and the digital recording of the disciplinary hearing.

B. Appeal to the Administrative Review Authority (Class X Violations and Class A and B Violations if Restitution Was Imposed)

1. Only offenders found guilty of Class X misconduct and Class A and B violations if restitution was imposed may appeal the final decision of the facility head/district supervisor to the administrative review authority within 15 days of receipt of the due process review by mailing it to:

Administrative Review Authority
Department of Corrections
P.O. Box 11400
Oklahoma City, Oklahoma 73136-0400

2. The offender may appeal the response to the misconduct by the facility head or district supervisor based upon probable error committed by the facility head or district supervisor in the decision such as would be grounds for reversal. The offender must clearly state the error committed, including the specific element of due

process that was not provided by the facility head or district supervisor.

3. When submitting an appeal to the administrative review authority, the offender will submit only the "Misconduct/Grievance Appeal to Administrative Review Authority" ([DOC 060125V](#), attached) to the administrative review authority. The appeal will not be submitted by any other person. Multiple pages may not be reduced in size and placed on one page or be affixed together to count as one page. The offender may utilize only the back of the appeal form to provide extra comments. Each appeal will be submitted in a separate envelope.
4. The administrative review authority will review the appeal within 30 days of receipt by affirming, dismissing, modifying the decision or remanding with instructions. The decision of the administrative review authority is final. If a rehearing is ordered by the administrative review authority, the rehearing should be conducted within 15 days from the date of the order unless circumstances dictate otherwise. A copy of the first "Disciplinary Hearing Report" form will be attached to and accompany the rehearing paperwork. Once conducted, documentation of the rehearing or order of dismissal will be maintained at the facility. The facility conducting the rehearing will be responsible for answering the due process review.
5. The administrative review authority's response will be sent to the facility head/district supervisor. The offender will be provided the administrative review authority's response. The facility will process and record each response according to privileged mail procedures.
6. Should the offender be unavailable (e.g., transfer or out witness), a notation of such fact will be made on the form and a copy will be mailed to the offender through the facility head of the confining facility.
7. Offenders will be charged a \$2.00 processing fee for each misconduct appeal submitted to the administrative review authority in accordance with 57 O.S. § 566.4.I. Offenders will not be refused access to the administrative review authority because of their financial status. If there are not enough funds to cover the cost, the amount will be collected as soon as funds become available. After answering the appeal, the administrative review authority will submit a copy of the appeal form to the facility trust fund officer at the facility where the offender is currently housed, for the \$2.00 fee to be entered into the system as "Legal Co-Pay." In the event relief is granted, no fee will be assessed.
8. If the offender does not follow the instructions on the form or file an appeal in accordance with this procedure, the administrative review authority will inform the offender the appeal will not be answered due to improper filing. The offender will be given only one opportunity by

the administrative review authority to correct any procedural errors made by the offender when submitting the appeal. A corrected appeal must be received by the administrative review authority in ten (10) days of receipt by the offender of notice of the error(s). If the offender fails to correct the error(s) when advised of such, the appeal will be deemed to have been waived by the offender. This process does not apply to an appeal found to be out of time.

C. Judicial Appeal

Following disposition by administrative review authority of a misconduct appeal with a finding of guilt resulting in the revocation of earned credits, the offender may file a petition designated by the administrator of courts to the Oklahoma County District Court for judicial review. The petition must be filed within 90 days (57 O.S. §564.1).

IX. Submitting a Disciplinary Appeal Out of Time (Only Class X Violations and Class A and B Violations in Which Restitution is Sought)

A. Denial of Appeal

1. Once a disciplinary appeal has been denied by the facility head or district supervisor and the administrative review authority due to the appeal not being submitted in a timely manner, the offender may make one request to submit a disciplinary appeal out of time by completion of the "Request to Director to Submit a Misconduct/Grievance Appeal Out of Time" form ([DOC 060125T](#), attached).
2. The request may only be submitted to the administrative review authority and must be received within 15 days of the date of denial of the untimely disciplinary appeal by the facility head or district supervisor or the administrative review authority.
3. The offender must prove by substantial evidence that he/she did not submit the disciplinary appeal in a timely manner through absolutely no fault of his/her own.
4. If the request to submit an untimely disciplinary appeal is granted, the offender will be directed to resubmit the disciplinary appeal with the facility head or district supervisor within 15 days of the administrative review authority's decision. If denied relief by the facility head or district supervisor, the offender may appeal the decision to the administrative review authority within 15 days of the date the facility head or district supervisor denied relief.
5. Offenders will be charged a \$2.00 processing fee for each request to submit an appeal out of time to the administrative review authority. Offenders will not be refused access to the administrative review

authority because of their financial status. If there are not enough funds to cover the cost, the amount will be collected as soon as funds become available.

- a. After answering the request, the administrative review authority will submit a copy of the appeal form to the facility trust fund officer at the facility where the offender is currently housed for the \$2.00 fee to be entered into the system as "Legal Co-Pay."
- b. In the event there is just cause to file out of time and the appeal is accepted, no fee will be assessed.

X. Notification of Pardon and Parole Board Authorities

A. Parole Consideration

Should the affected offender be scheduled for parole consideration within 60 days following the occurrence of any offense, the facility head will ensure a photocopy of the "Offense Report" and "Disciplinary Hearing Report" is forwarded to the Pardon and Parole Board with the docket date indicated at the top. The Pardon and Parole Board will be verbally notified if a Class X misconduct conviction occurs within seven days prior to a parole board appearance.

B. Appeal Process

If the "Offense Report" is later dismissed during the appeal process, the Pardon and Parole Board will be notified if the "Offense Report" has been reported to that agency.

XI. Dismissal of the "Offense Report" (4-4246)

A. Expungements of Records

Upon receipt of the written notification regarding dismissal of an "Offense Report", the facility head/district supervisor will ensure the following occurs:

1. All copies of the report are removed from the offender field file and commitment document folder and destroyed. The original of the dismissed "Offense Report" and all attachments, evidence, etc., will be maintained in a file at the facility for two years with access limited to the facility head, disciplinary coordinators, Inspector General, General Counsel or Special Report writers to be used in responding to offender lawsuits or preparing for criminal prosecution.
2. All notations of the "Offense Report" are to be deleted from the disciplinary records portion of the "Consolidated Record Card," local records or picture cards, and from any computer record. This

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excludes the “Facility Misconduct Report Record” ([DOC 060125D](#), attached), which will be maintained for statistical purposes.

B. Restoration of Revoked Earned Credits

If any earned credits were revoked as a result of a determination of guilt in the disciplinary hearing, those earned credits will be restored to the offender’s record.

XII. Program Removal Hearing for Offenders in Programs Supervised by Probation and Parole

- A. For those offenders remaining on the Electronic Monitoring Program (EMP), the procedures outlined in “Program Removal Hearings” will be utilized.
- B. For those offenders assigned to the Global Positioning Satellite (GPS) Program, the procedures outlined in the “Program Removal Hearings Procedures for Those Offenders Assigned to EMP or GPS Programs” form ([Attachment C](#), attached), will be utilized.
- C. Disciplinary hearing officers are encouraged to utilize the “Program Removal Hearing Guide” ([Attachment C](#)) during the hearing.
- D. Following the Program Removal Hearing and upon receipt of the “Program Rule and Condition Violation Hearing Action” form ([DOC 060125K](#), attached), the offender will have 15 days to submit an appeal to the facility head/district supervisor.
 - 1. Any offender submitting an appeal will specifically state the grounds for the appeal. Issues not raised are waived. Offenders will use the “Offender’s Rule and Condition Violation Appeal Form for Class X Misconducts” ([DOC 060125Q](#), Page 1 of 2, attached). All instructions contained in the procedure and on the form will be followed by the offender or the appeal will be returned.
 - 2. If allowed, the offender must properly resubmit the appeal within ten (10) days of receipt.
- E. The facility head/district supervisor will complete a response within 30 days of receipt on the “Offender’s Rule and Condition Appeal Form Due Process Review For Class X Misconducts” ([DOC 060125Q](#), Page 2 of 2, attached), and the offender will receive a completed copy. In responding, the facility head or district supervisor will respond to each due process issue raised by the offender.

XIII. Deferred Hearing Process (4-ACRS-3A-07, 4-ACRS-6C-01, 4-ACRS-6C-04)

Those offenders who have no prior disciplinary convictions in the previous 12 months, may be eligible to have pending disciplinary actions administered through

the deferred hearing process in place of the standard hearing process outlined in this procedure.

- A. No offender having a pending deferred offense who is charged with an additional rule violation will be eligible for an additional deferred hearing under this process.
- B. The deferred hearing process is located in [Attachment D](#) (attached) entitled "Deferred Disposition Process for Rule Violation."
- C. To initiate the deferred hearing process, the offender will be served with a copy of the "Notice of Deferred Disposition Process for Misconduct Rule Violation" form ([DOC 060125S](#), attached).

XIV. Authority to Intervene

A. Intervention of Disciplinary Action

The director or the director's designee retains authority to intervene in any disciplinary action at any stage.

XV. Reporting Requirements

A. Misconduct Reporting

- 1. Each facility/district will designate a staff member to enter all "Offense Report's" with a finding of guilt into the Offender Management System (OMS).
- 2. The facility head/district supervisor or designee will maintain the "Facility Misconduct Report Record" ([DOC 060125D](#)) for statistical purposes. All "Offense Report's" will be entered onto the "Misconduct Report Record."

XVI. Variations of Normal Procedures for Offenders Housed at Contract Facilities

- A. All contract facilities (including private prisons, private halfway houses, and county jails) that house DOC offenders pursuant to a contract/interlocal agreement with DOC must comply with this operating procedure and the contract/interlocal agreement for enforcing discipline. The contract facility will have physical control and the power to exercise disciplinary authority in accordance with the disciplinary process outlined in this procedure over DOC offenders housed at the contract facility.
- B. Administration of a disciplinary sanction must comply with the requirement for due process.

XVII. References

P-030100 entitled "Provisions of Services/Offender Rights and Responsibilities"

OP-030134 entitled "Chemical Abuse Testing"

OP-040109 entitled "Control of Contraband and Physical Evidence"

OP-040110 entitled "Search and Seizure Standards"

OP-040204 entitled "Segregation Measures"

OP-060212 entitled "Maintenance and Access of Offender Records"

OP-090124 entitled "Offender Grievance Process"

OP-100101 entitled "Training and Staff Development"

57 O.S. § 138, 510 (8)

57 O.S. § 564.1

57 O.S. § 566.4.I.

Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974)

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972)

Young v. Harper, 117 S.Ct. 1148 (1997)

Sandin v. Conner, 115 S.Ct. 2293 (1995)

Waldron v. Evans, 861 P.2d 311 (Okla Crim. 1993)

Canady v. Reynolds, 880 P.2d 391 (Okla Crim. 1994)

Dunn v. Ramsey, 936 P.2d 347 (Okla Crim. 1997)

Wilson v. Jones, 430 F.3d 1113 (10th Circuit, 2005)

Ali v. Taylor, 528 Fed.Appx. 918 (10th Circuit, 2013)

XVIII. Action

Each facility/unit head is responsible for developing local procedures.

The appropriate division manager is responsible for compliance with this procedure.

The General Counsel is responsible for the annual review and revisions.

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Any exceptions to this procedure will require prior written approval from the director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-060125 entitled "Department Offender Disciplinary Procedures" dated October 16, 2012

Deleted: Operations Memorandum No. OP-060125 Addendum-01 dated March 25, 2013

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 060125A	“Department of Corrections Offense Report”	Attached
DOC 060125B	“Disciplinary Coordinator’s Report”	Attached
DOC 060125C	“Disciplinary Hearing Report (Class X or Violation Involving Restitution)”	Attached
DOC 060125C-1	“Disciplinary Disposition Report (Class A and B Offenses and Class X Guilty Pleas)”	Attached
DOC 060125D	“Facility Misconduct Report Record”	Attached
DOC 060125E	“Disciplinary Hearing Docket”	Attached
DOC 060125F	“Response from Director or Designee”	Attached
DOC 060125G	“Amendment of Rule Violation”	Attached
DOC 060125H	“Record of Delivery of Copies of Evidence to Offender”	Attached
DOC 060125I	“Witness Discretionary Action Record”	Attached
DOC 060125J	“Notice of Rule and Condition Violation”	Attached
DOC 060125K	“Program Rule and Condition Violation Hearing Action”	Attached
DOC 060125L	“Offender Misconduct Appeal Form for Class X Misconducts”	Attached
DOC 060125L-1	“Offender’s Misconduct Appeal Form for Class A and B Misconducts”	Attached
DOC 060125M	“Disciplinary Process Consultation Log”	Attached
DOC 060125N	“Change of Plea Form (Class X)”	Attached
DOC 060125O	“Disciplinary Hearing Postponement (Class X)”	Attached

DOC 060125P	“Review of Evidence”	Attached
DOC 060125Q	“Offender’s Rule and Condition Violation Appeal Form for Class X Misconducts”	Attached
DOC 060125R	“Mental Health Recommendations Regarding Offender Discipline”	Attached
DOC 060125S	“Notice of Deferred Disposition Process for Misconduct Rule Violation”	Attached
DOC 060125T	“Request to Director to Submit a Misconduct/ Grievance Appeal Out of Time”	Attached
DOC 060125U	“Assignment of Staff Representative”	Attached
DOC 060125V	“Misconduct/Grievance Appeal to Administrative Review Authority”	Attached
DOC 060211H	“Consolidated Record Card”	OP-060211
<u>Attachments</u>	<u>Title</u>	<u>Location</u>
Attachment A	“Acts Constituting Rule Violation”	Attached
Attachment B	“Disciplinary Hearing Guide”	Attached
Attachment C	“Program Removal Procedures For Those Offenders Assigned To PPCS, SSP, EMP or GPS Programs”	Attached
Attachment D	“Deferred Disposition Process For Rule Violation”	Attached