

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	07/24/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 8/4/2017

2. COMAR Codification

**Title Subtitle Chapter Regulation**

12	02	27	01-.40
12	12	30	01-.40
12	16	02	01-.40
12	03	01	01-.40

3. Name of Promulgating Authority

Department of Public Safety and Correctional Services

4. Name of Regulations Coordinator

Elizabeth J Bartholomew

Telephone Number

410-585-3604

Mailing Address

6776 Reisterstown Road, Suite 205

<b>City</b>	<b>State</b>	<b>Zip Code</b>
Baltimore	MD	21215

Email

ebartholomew@dpscs.state.md.us

5. Name of Person to Call About this Document

George Gregory

Telephone No.

410-585-3300

Email Address

george.gregory@maryland.gov

**6. Check applicable items:**

☒ New Regulations

☐ Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 01/17/2017.

☒ Repeal of Existing Regulations

☐ Recodification

☐ Incorporation by Reference of Documents Requiring DSD Approval

☐ Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

☐ Yes ☒ No

**8. Incorporation  
by Reference**

☐ Check if  
applicable:  
Incorporation by  
Reference (IBR)  
approval form(s)  
attached and 18  
copies of  
documents  
proposed for  
incorporation  
submitted to  
DSD. (Submit 18  
paper copies of  
IBR document to  
DSD and one  
copy to AELR.)

**9. Public Body  
- Open Meeting**

☐ OPTIONAL - If  
promulgating  
authority is a  
public body,  
check to include  
a sentence in  
the Notice of  
Proposed Action  
that proposed  
action was  
considered at an  
open meeting  
held pursuant to  
General  
Provisions

Article, §3-302(c), Annotated Code of Maryland.  
\_ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

\_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Michael O. Doyle, Assistant Attorney General, (telephone #410-339-7339) on 6/26/17. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Stephen T. Moyer

**Title**

Secretary

**Date**

7/7/17

**Telephone No.**

410-339-5000

**Title 12  
DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES**

**Subtitle 02 DIVISION OF CORRECTION**

**12.02.27 Inmate Discipline**

**Subtitle 12 PATUXENT INSTITUTION**

**12.12.30 Inmate Discipline**

**Subtitle 16 PRETRIAL DETENTION AND SERVICES**

**12.16.02 Resident Discipline**

**Subtitle 03 OPERATIONS**

**12.03.01 Inmate Disciplinary Process**

Authority: Correctional Services Article, §§2-109(c); 3-205; 4-208; and 5-201, Annotated Code of Maryland

**Notice of Proposed Action**

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The Secretary of the Department of Public Safety and Correctional Services proposes to in cooperation with the Commissioner of Correction, Commissioner of Pretrial Detention and Services, and Director of Patuxent Institution, repeal COMAR 12.02.27, COMAR 12.12.30 and COMAR 12.16.02 and re-instate with edits as Regulations .01 — .35 under COMAR 12.03.01 — Inmate Disciplinary Process.

**Statement of Purpose**

The purpose of this action is to combine three separate chapters addressing inmate discipline, each one basically repeating the same practices with minor differences in terminology unique to the respective unit of the Department of Public Safety and Correctional Services (Department). The new chapter clarifies existing procedures, reduces duplication and creates a uniform process for inmate discipline for all applicable Department units.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to George Gregory, Chief Hearing Officer, Inmate Discipline Program, Department of Public Safety and Correctional Services, 6776 Reisterstown Road, Baltimore, MD 21215, or call 410-585-3716, or email to george.gregory@maryland.gov, or fax to 410-764-4182. Comments will be accepted through 30 days from publishing. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2018

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly: This action consolidates and updates Department COMAR reflecting existing practices currently duplicated in three individual Chapters under Title 12. No additional funding is necessary to implement or maintain the proposed action.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations affect the Department of Public Safety and Correctional Services only.

G. Small Business Worksheet:

Attached Document:

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## **Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

**Subtitle 02 Division of Correction**

**Chapter 27 Inmate Discipline — Repeal**

**Subtitle 12 Patuxent Institution**

**Chapter 30 Inmate Discipline — Repeal**

**Subtitle 16 Pretrial Detention and Services**

**Chapter 02 Resident Discipline — Repeal**

## **Subtitle 03 Operations**

### **Chapter 01 Inmate Disciplinary Process**

*Authority: Correctional Services Article, §§2-109(c); 3-205; 4-208; and 5-201, Annotated Code of Maryland*

#### **.01 Purpose.**

A. *The Secretary of Public Safety and Correctional Services (Secretary), the Commissioner of Correction, the Director of Patuxent Institution, and the Commissioner of Pretrial Detention and Services have adopted the following inmate disciplinary regulations that:*

(1) *Establish:*

(a) *The process under which an inmate may be disciplined for non-compliance with a rule, policy, procedure, regulation, or statute or as otherwise provided by law;*

(b) *The duties and responsibilities of Department of Public Safety and Correctional Services (Department) staff under the inmate disciplinary process; and*

(c) *The authority for Department staff to exercise and carry out duties and responsibilities of the inmate disciplinary process.*

(2) *Provide for the:*

(a) *Uniform administration, management, and orderly operation of the facility and Department;*

(b) *Orderly, safe, and secure operation and management by Department staff of Department correctional facilities, detention facilities, home detention program, and the community.*

(c) *Uniform administration of inmate discipline;*

(d) *Management and control of the Department's inmate population;*

(e) *Enforcement of statutes or rules as otherwise provided by law;*

(f) *Security of the facility, Department, and community; and*

(g) *Safety of an inmate, staff, an individual, and the community.*

B. *These regulations do not convey or create enforceable rights, interests or benefits for an inmate.*

#### **.02 Definitions.**

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Assault" means an unlawful or impermissible threat or attempt to do bodily harm to another.*

(2) *"Assigned area" means a location where an inmate is authorized or permitted.*

(3) *"Battery" means the unlawful, unauthorized, or impermissible touching or striking of an individual by another with or without consent.*

(4) *Business Day.*

(a) *"Business day" means an official working day of the week, typically, the days between and including Monday to Friday.*

(b) *"Business day" does not include:*

(i) *State holidays;*

(ii) *Weekends (Saturday and Sunday);*

(iii) *A day on which facility operations or activities are limited or reduced to only necessary or essential services due to security or safety reasons; or*

(iv) *A day on which Department administrative offices are closed.*

(5) *"Calendar day" means a day of a week.*

(6) *"Category of Inmate Rule Violation" means the grouping of inmate rule violations according to the severity of the offense.*

(7) *"CMHC-J" means the Correctional Mental Health Center-Jessup.*

(8) *"Competent" means the defendant is able to:*

(a) *Appreciate and understand the alleged inmate rule violation charged; and*

(b) *Participate in the inmate disciplinary process to resolve the inmate rule violation charged.*

(9) *"Constructive possession" means the defendant has dominion or control over an article, object, asset, substance or property based upon consideration of the following factors:*

(a) *The proximity of the defendant to the article, object, asset, substance, or property;*

(b) *The ability and means of the defendant to possess the article, object, asset, substance, or property;*

(c) *Whether the article, object, asset, substance, or property was within the plain view or within the knowledge of the defendant;*

(d) *The proprietary interest in the place where the article, object, asset, substance, or property was found or rests; or*

(e) *The defendant's participation with others in a common design involving mutual use and enjoyment of the article, object, asset, substance, or property.*

(10) *"Contraband" shall include property, a device, an instrument, an article, a liquid, a substance, or a material that is:*

(a) Defined as non-allowable, or is not authorized by statute, regulation, directive, or policy for an inmate to possess, transfer to another individual, or receive from another individual;

(b) Defined as allowable by statute, regulation, directive, and policy for an inmate to possess, transfer to another individual, or receive from another individual, but that is;

(i) In excess of the amount permitted by the rules of the facility or Department;

(ii) Passed or transferred to another individual without authorization by staff, or the transfer is not permitted by the rules of the facility or Department;

(iii) Possessed in an area or location where an inmate is not permitted by the rules of the facility or Department or by order of staff to possess or use;

(iv) Altered or modified from the original purpose, form, design, use, or content;

(v) Used for a purpose other than that which is permitted; or

(vi) Required to be registered with the facility or Department and is found in the inmate's possession without the required registration under the rules of the facility or Department.

(11) "Controlled dangerous substance (CDS)" means a substance listed in schedules I through V as defined in Criminal Law Article, §§ 5-101(g) and 5-401 through 5-406, Annotated Code of Maryland.

(12) "Cumulative witness" means an individual who can only testify to facts already in evidence or whose proffered testimony would be repetitive to the proffered testimony of another witness already approved by the hearing officer to testify.

(13) "Disrespect" means a physical act, verbal statement, or gesture:

(a) Of insolence that is arrogant, presumptuous, impudent, or insulting in manner; or

(b) That demonstrates a lack of respect, directly or indirectly, toward an individual.

(14) Disruptive Act.

(a) "Disruptive act" means an action that may:

(i) Disturb the peace of the community;

(ii) Interfere with or prevent the orderly operation of a facility or community detail; or

(iii) Interfere with or threaten the security of a facility or the community.

(b) "Disruptive act" shall include, but is not limited to:

(i) Speech that is incendiary in content;

(ii) An unauthorized gathering;

(iii) A demonstration or mass disturbance;

(iv) A group work stoppage;

(v) Misusing, altering, tampering with, or damaging property during an act that interferes with or threatens the security of a facility or the community;

(vi) Setting a fire; or

(vii) Possessing, using, or manufacturing an explosive or flammable device, excluding an unaltered cigarette lighter, match, or pack of matches.

(15) "Escape" means the defendant's:

(a) Unlawful or unauthorized absence or departure from a facility or grounds of a facility to which the inmate is assigned or located;

(b) Unlawful or unauthorized absence or departure from a locked cell or dormitory to which the inmate is assigned or located;

(c) Unlawful or unauthorized absence or departure from a designated area or location while out of the facility and in the community;

(d) Unlawful or unauthorized failure to follow an approved itinerary for travel or movement while in the community or departure from an order, rule, policy, or procedure of the Department or facility for travel or movement while in the community; or

(e) Failure while in the community to return at a specified time to a place of assignment, custody, or confinement.

(16) "Facility representative" means staff designated by the managing official, or a designee, to represent the interests of the facility under the inmate disciplinary process.

(17) "Fraud or misrepresentation" means a false, misleading, or deceptive:

(a) Act;

(b) Statement;

(c) Expression; or

(d) Omission.

(18) "Hearing coordinator" means facility staff designated by the managing official, or a designee, who:

(a) Performs duties assigned by the managing official, or a designee, to assist with the scheduling and coordinating a defendant's appearance before a hearing officer and subsequent disciplinary proceeding;

(b) May act as the facility representative, if directed by the managing official, or a designee, for the defendant's disciplinary proceeding; and

(c) Shall perform other duties assigned by the managing official, or a designee, under the inmate disciplinary process.

(19) "Hearing officer" means an impartial, non-advocate, fact-finder who presides over the defendant's disciplinary proceeding and determines the disposition of an inmate rule violation charged and, if applicable, imposes sanctions.

(20) Horseplay.

(a) "Horseplay" means rough, rowdy, or boisterous play that is consensual and done for amusement or entertainment of all involved parties.

(b) "Horseplay" may not be used by a defendant as a defense to a battery charge where there is evidence of physical contact between the defendant and one or more individuals.

(c) "Horseplay" is determined by the hearing officer as a matter of fact whether physical contact between the defendant and one or more individuals is a battery or horseplay.

(21) "Hostage" means an individual whose freedom of movement is restricted without authority or justification.

(22) "Indecent exposure" means the willful display of the genitals, buttocks, or female breast to another individual as an act of disrespect, vulgarity, or sexual gratification.

(23) "Incident report" is a disposition of an inmate rule violation charged where the defendant and the facility or the defendant and the hearing officer agree that the defendant:

(a) Waives a hearing and hearing rights for the inmate rule violation charged;

(b) Receives no sanction for the inmate rule violation charged; and

(c) Agrees that the Notice of Inmate Rule Violation and the Notice of Inmate Disciplinary Hearing forms documenting the incident report shall be maintained in the defendant's case record file.

(24) "Informal disposition" is a disposition of an inmate rule violation charged where the defendant and the facility or the defendant and the hearing officer agree that the defendant:

(a) Waives a hearing and hearing rights for the inmate rule violation charged;

(b) Receives a sanction in accordance with this chapter; and

(c) Agrees that the Notice of Inmate Rule Violation and the Notice of Inmate Disciplinary Hearing forms documenting the informal disposition shall be maintained in the defendant's case record file.

(25) "Informal resolution" means a process, other than a formal disciplinary proceeding under the inmate disciplinary process, that permits, based on a mutual agreement between the defendant and facility staff, or the defendant and the hearing officer, resolving an inmate rule violation charged through an incident report or informal disposition.

(26) Inmate.

(a) "Inmate" means an individual who is actually or constructively detained or confined in a correctional facility.

(b) "Inmate" unless specifically stated otherwise in this chapter, includes an individual referred to as a:

(i) Non-sentenced resident or detainee in the custody of the Department and confined to a correctional, detention, or transitional facility or home detention program;

(ii) Sentenced resident or detainee in the custody of the Department and confined to a correctional, detention, or home detention facility;

(iii) An Eligible Person or Patuxent youth, or any other individual in the custody of the Department and housed in the Patuxent Institution;

(iv) A juvenile housed in the custody of the Department and confined to a correctional, detention, or home detention facility; and

(v) An individual committed to the custody of the Department, but housed in or confined in another jurisdiction.

(27) "Inmate representative" means a staff member or an inmate assigned to the defendant's housing facility and permitted to represent and assist the defendant during the defendant's disciplinary proceeding under this chapter.

(28) Intimidating, Coercive, or Threatening Language.

(a) "Intimidating, coercive, or threatening language" includes language that is directed toward an individual or property named or un-named that intends to induce fear, or implies or intends to imply harm, the threat of harm, or the use of force.

(b) "Intimidating, coercive, or threatening language." A defendant may not claim the inability to carry out the implied or perceived harm, threat of harm, or use of force as a defense to a charge of using intimidating, coercive, or threatening language under this regulation.

(c) "Intimidating, coercive, or threatening language" includes, but is not limited to, language that:

(i) Seeks compliance with a demand; or

(ii) Intends to deter or prevent an individual from performing or carrying out an act, task, or action.

(d) "Intimidating, coercive, or threatening language" may be expressed or conveyed:

(i) Verbally;

(ii) In writing;

(iii) By gesture;

(iv) By drawing; or

(v) By display or projection of an image.



(29) "Intoxicant" means an unauthorized medication, drug, or substance that has psychotropic or hallucinogenic properties, excluding alcohol, that may or may not also be identified in the Annotated Code of Maryland as a controlled dangerous substance.

(30) "May not" means an absolute prohibition.

(31) "Order" means a command, direction, or instruction given by staff to an inmate.

(32) Plea Agreement.

(a) "Plea agreement" means the defendant and facility representative mutually agree to a mutually satisfactory disposition for each defendant inmate rule violation charged and is subject to approval by the hearing officer.

(b) "Plea agreement" is not binding on a hearing officer and does not require that the hearing officer honor the sanctions recommended as part of a plea agreement reached by the defendant and the facility representative.

(33) "Possess" or "Possession" means actual or constructive dominion or control over:

(a) An article;

(b) An object;

(c) An asset;

(d) A substance; or

(e) Property.

(34) "Preliminary review" means an initial appearance by a defendant during a defendant's disciplinary proceeding before a hearing officer to:

(a) Review the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(b) Review an attachment or other evidence submitted by facility staff or a defendant regarding the inmate rule violation charged;

(c) Determine if the defendant requested representation, a witness, or evidence to present to the hearing officer; and

(d) Determine whether the defendant and the facility are prepared to proceed to the evidentiary phase of the disciplinary proceeding.

(35) "Restitution" means payment by a defendant for the documented expense or cost to the State, an individual, or entity associated with:

(a) An inmate rule violation charged resulting in a finding of guilt or informal disposition;

(b) An illegal, unauthorized, or unreasonable expense incurred due to the act or actions of the defendant; or

(c) The repair or replacement of altered, damaged, destroyed, stolen, or missing property, tools, or equipment incurred due to the act or actions of the defendant.

(36) "Sanitation assignment" means a sanction pursuant to a guilty finding or informal disposition of an inmate rule violation charged where the defendant is assigned to a cleaning task determined by staff for which diminution credits and pay are not authorized.

(37) Security Equipment or Property.

(a) "Security equipment or property" includes, but is not limited to:

(i) Facility, dormitory, or cell housing fixture, device, or item that is for the purpose of inmate control, confinement, or restraint or the security of the facility, Department, or community;

(ii) Bed or bunk bed;

(iii) Desk or chair;

(iv) Staff uniform;

(v) Light fixture;

(vi) Restraint or confinement fixture, device, or item;

(vii) Computer or communication fixture, device, or item;

(viii) State telecommunication device not intended for inmate use;

(ix) Animal used for the operation, security, safety, or control of a location;

(x) Vehicle or mode of transportation used for the operation, security, safety, or control of a location or the transport of an inmate;

(xi) Fixture, component, device, document or form, or item used for the confinement or restraint of an inmate or security and control of an inmate or the operation, security, safety, or control of a location; or

(xii) Tool, component system, item, or furniture used for the operation, security, safety, control, or maintenance of a location.

(b) "Security equipment or property" excludes the following:

(i) Mattresses, pillows, and bed linen;

(ii) Clothing articles;

(iii) Toilet or sink;

(iv) Mirror;

(v) Towel or wash cloth;

(vi) Locker, drawer, or box;

(vii) Clothes hanger;

(viii) Rug or homemade rug.

(38) "Sexual Act" means the actions of two or more individuals engaged in acts involving physical contact for purposes of sexual arousal or gratification and includes, but is not limited to:

- (a) Contact between the penis and the vulva or the penis and the anus;
- (b) Contact between the mouth and the penis, vulva, or anus;
- (c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument;
- (d) Any other intentional touching, either directly on or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation;
- (e) A sexual crime identified under Criminal Law Article, §§3-301 — 312, Annotated Code of Maryland; and
- (f) Kissing, hugging, or other physical contact for sexual arousal or gratification or the abuse of either party.

(39) "Sexual conduct" means a non-physical behavior or act of a sexual nature by an inmate directed toward another individual and includes but is not limited to:

- (a) Sexual advances;
- (b) Requests for sexual favors; or
- (c) Verbal comments, gestures, or actions of a derogatory and offensive sexual nature.

(40) "Special needs inmate" means a defendant whose ability to participate in the inmate disciplinary process is compromised by impaired hearing, speech, cognition, mental health, or proficiency in the spoken or written English language.

(41) Staff.

(a) "Staff" means a permanent, contractual, or temporary employee or other individual under contract or agreement to provide goods or services to the Department or a unit, facility, or inmate.

(b) "Staff" does not include:

- (i) A volunteer; or
- (ii) An intern.

(42) State Property.

(a) "State property" is tangible property owned by the Department or another State agency.

(b) State property includes, but is not limited to, items intended for inmate use such as:

- (i) Inmate uniforms;
- (ii) A desk or chair;
- (iii) A sink or toilet;
- (iv) A locker, drawer, or box;
- (v) Inmate telephone, teletypewriter (TTY) device, or other telecommunication device;
- (vi) Food from dietary other than what is issued as part of a State provided meal; or
- (vii) Food from dietary that is removed from or attempted to be removed from dietary without authorization even if issued as part of a State provided meal.

(43) "Telecommunication device" means:

(a) A device that may be:

- (i) 3G, 4G, or greater or less enabled;
- (ii) Wifi, internet, or e-mail ready; or
- (iii) Enabled to transmit telephonic, electrical, digital, cellular, radio communications, or photographs regardless of whether functional or non-functional;

(b) An accessory or part of a device that may be:

- (i) 3G, 4G, or greater or less enabled;
- (ii) Wifi, internet, or e-mail ready; or
- (iii) Able to transmit telephonic, electrical, digital, cellular, or radio communications or photograph regardless of whether functional or non-functional; or

(c) An item including, but not limited to the following:

- (i) Tablet;
- (ii) Cellular or digital telephone;
- (iii) Video, audio, or photographic device; or
- (iv) Modem equipped device;

(d) Component of or accessory for the items such as but not limited to:

- (i) SIM card;
- (ii) Bluetooth equipment;
- (iii) Charger;
- (iv) Earpiece; or
- (v) Carrying case.

(44) Unauthorized Financial Account.

(a) "Unauthorized financial account" means a financial account that is not permitted by the Department for an inmate to open, access, or otherwise use.

(b) "Unauthorized Financial Account" includes, but is not limited to, the following:

- (i) Check or checking account;

- (ii) Check card or check card account;
  - (iii) Credit card or credit card account;
  - (iv) Green Dot card or Green Dot account numbers;
  - (v) Western Union card or Western Union account numbers;
  - (vi) Pay Pal card or Pay Pal account numbers;
  - (vii) Debit card or Debit card account;
  - (viii) Money order;
  - (ix) Gift card or gift card account numbers;
  - (x) Other financial account not authorized or listed under this chapter; or
  - (xi) Items and documentation related to an unauthorized financial account.
- (c) "Unauthorized financial account" does not include an active or reserve account permitted and maintained under Correctional Services Article, §3-609, Annotated Code of Maryland.

(45) **Weapon.**

- (a) "Weapon" means an instrument, item, article, substance, liquid, tool, or material that:
  - (i) May be used for offensive or defensive combat;
  - (ii) May be used to threaten, harm, or injure an individual; or
  - (iii) May be used for a purpose or reason other than as a weapon, but that could be used as a weapon regardless of whether or not the original character of the instrument, item, article, substance, liquid, tool, or material was altered.

(b) "Weapon" includes an instrument, item, article, substance, liquid, tool, or material that otherwise meets the definition of weapon that an inmate is permitted to possess in an explicitly designated area, but is possessed in an area other than where the instrument, item, article, substance, liquid, tool, or material is not explicitly authorized by staff.

**.03 Inmate Compliance Requirements, and Time and Procedure Requirements — General.**

**A. Inmate Compliance Requirement.**

(1) An inmate shall comply with a rule, policy, procedure, regulation, or statute or other provision of law that may have been enabled by or for:

- (a) A government;
- (b) The Department;
- (c) The facility to which the inmate is assigned;
- (d) An authority where the inmate may be located, in the custody of, assigned to, or housed when outside the facility, in the community, or a location other than in the Department; or
- (e) The program to which the inmate may be assigned or is voluntarily participating.

(2) Inmate compliance under §A(1) of this regulation or non-compliance under §B of this regulation shall be applicable to the inmate at all times in:

- (a) The community;
- (b) The Department;
- (c) A facility;
- (d) A Program; or
- (e) A location or custody and supervision of another entity, agency, or jurisdiction.

**B. Inmate Non-Compliance.**

(1) An inmate found not to be in compliance, as required under §§A(1) and (2) of this regulation, or suspected of, or alleged by staff as having committed an inmate rule violation under Regulation .04 of this chapter shall be subject to:

- (a) The inmate disciplinary process; and
- (b) A sanction in accordance with this chapter when found guilty of the inmate rule violation charged or as part of an informal disposition of an inmate rule violation charged.

(2) The act of soliciting, conspiring to commit or attempting to commit an inmate rule violation, or aiding, assisting, or facilitating the commission of an inmate rule violation, whether under Regulation .04 of this chapter or stated as a facility inmate rule violation, shall:

- (a) Constitute the commission of that inmate rule violation by the inmate; and
- (b) Subject the defendant to the prescribed sanctions for that inmate rule violation charged in accordance with the provisions of this chapter.

**C. Time and procedure requirements in this regulation:**

(1) Establish a standard for staff that provides for the administration and management of inmate discipline in a correctional or detention facility, the home detention program, or in the community under the authority of the Department; and

(2) Neither create nor convey an enforceable inmate:

- (a) Right;
- (b) Entitlement;
- (c) Benefit; or

(d) *Interest.*

(3) *An inmate's disciplinary conviction under the inmate disciplinary process may not be affected or disturbed by the denial, non-compliance with, delay, or failure by staff to carry out, provide for, or meet a time or procedural requirement in this regulation and the inmate rule violation or violation charged may not be dismissed unless the defendant can demonstrate that the violation of the time or procedure requirement:*

(a) *Was not based on good cause; and*

(b) *Substantially harmed the defendant's ability to make a relevant case presentation regarding the inmate rule violation charged.*

(4) *Time or Procedure Violation.*

(a) *A defendant's allegation of harm due to a time or procedure violation not specifically related to the defendant's ability to make a case presentation may not be cause for a dismissal or a not guilty finding of the inmate rule violation charged.*

(b) *Examples of harm that may not affect a disciplinary conviction include, but are not limited to, issues relating to:*

(i) *Time spent on administrative segregation pending a disciplinary proceeding;*

(ii) *Removal from or missed time from a work or program assignment;*

(iii) *Reduced facility privileges;*

(iv) *Security level determinations, transfers, or other case management decisions; or*

(v) *Parole decisions or consideration.*

D. *Contraband may be charged as a single inmate rule violation or in conjunction with other inmate rule violations that may include, but are not limited to:*

(1) *A weapon;*

(2) *An unauthorized substance, drug, intoxicant, alcohol, or control dangerous substance;*

(3) *A telecommunication device;*

(4) *A security item;*

(5) *Tobacco; or*

(6) *Currency.*

E. *An inmate may be charged with and found guilty of multiple inmate rule violations for the same reported conduct.*

F. *Battery.*

(1) *A charge of "battery" under Regulation .04C(3) of this chapter may not be automatically excused by a claim of "self-defense".*

(2) *A hearing officer may permit a claim of "self-defense" to be considered in the disposition of a charge of battery or the administration of sanctions.*

(3) *An inmate is not entitled to a claim of "self-defense" and a hearing officer is not required to accept a claim of "self-defense".*

(4) *An inmate is required to retreat from a threat if at all possible or a claim of self-defense may not be raised.*

G. *A charge of "Refuse" to accept work or housing under regulation .04 §G(2) may not be excused by the defendant's unsubstantiated claim of a perceived danger or threat of harm.*

H. *Consent — Sexual Act and Sexual Conduct.*

(1) *A defense of consent to a charge of a sexual act or sexual conduct may only be considered in an act between a defendant and a Department staff member.*

(2) *If the hearing officer finds that the involved staff member did consent to the sexual act or sexual conduct, the defendant may not be found guilty of an inmate rule violation charged.*

(3) *If the hearing officer finds that the defendant engaged in a sexual act or sexual conduct with the staff member without the staff member's consent, a finding of guilt may be entered.*

(4) *A defense of consent may not be considered when the sexual act or sexual conduct occurs between inmates or inmates and non-Departmental staff.*

#### **.04 Inmate Rule Violation Summary.**

A. *Inmate Rule Violation. — The Department has adopted an inmate rule violation summary to ensure:*

(1) *Staff and inmate knowledge of conduct prohibited by the Department; and*

(2) *Inmate compliance as required by Regulation .03 of this chapter.*

B. *Category of Inmate Rule Violation.*

(1) *For the purpose of organizing inmate rule violations under this regulation and to facilitate understanding by staff and inmates, the Department has established categories of inmate rule violations based on the severity of the offense associated with an inmate rule violation.*

(2) *The categories of inmate rule violations are:*

(a) *Category IA — most severe inmate rule violation;*

(b) *Category IB;*

(c) *Category II;*

(d) *Category III;*

(e) *Category IV; and*

(f) Category V — *least severe inmate rule violation.*

*C. Category IA Inmate Rule Violations. An inmate may not:*

- (1) 100 — *Participate in a disruptive act;*
- (2) 101 — *Commit assault or battery on staff;*
- (3) 102 — *Commit assault or battery on an inmate;*
- (4) 103 — *Commit assault or battery on a person who is neither staff nor an inmate;*
- (5) 104 — *Use intimidating, coercive, or threatening language;*
- (6) 105 — *Possess, use, or manufacture a weapon;*
- (7) 106 — *Escape when assigned maximum or medium security status;*
- (8) 107 — *Escape when assigned minimum security status;*
- (9) 110 — *Possess an implement or article that may be used in an escape;*
- (10) 116 — *Possess, misuse, tamper with, damage, or destroy security devices, equipment, property, detection or monitoring equipment, or fire suppression or alarm devices;*
- (11) 117 — *In any manner, arrange, commit, perform, or engage in a sex act or sexual conduct;*
- (12) 119 — *In any manner, commit or participate in an act of indecent exposure or masturbation;*
- (13) 122 — *Possess a telecommunication device, SIM card, battery charger, carrying case, or other device or article identified with a telecommunication device; or willfully pose for the taking of an unauthorized photograph or video recording or make an unauthorized audio recording;*
- (14) 124 — *Be involved with or participate in willful or negligent homicide; and*
- (15) 125 — *Be involved with or participate in the taking of a hostage;*

*D. Category IB Inmate Rule Violations. An inmate may not:*

- (1) 108 — *Escape when assigned pre-release security status;*
- (2) 109 — *Escape while in the community;*
- (3) 111 — *Possess a drug, controlled dangerous substance, or medication requiring staff observation to ingest, or an intoxicant excluding alcohol;*
- (4) 112 — *Use a controlled dangerous substance, use a medication requiring staff observation to ingest when not prescribed, or use an intoxicant;*
- (5) 113 — *Possess or use paraphernalia that may be for the use of an intoxicant, drug, medication, or controlled dangerous substance;*
- (6) 114 — *Possess a drug, controlled dangerous substance, or medication requiring staff observation to ingest, or an intoxicant, excluding alcohol, in a sufficient quantity, or possess packaging materials, suggesting distribution of or the intent to distribute;*
- (7) 115:
  - (a) *Refuse or fail to provide a required volume of urine necessary for urinalysis testing; or*
  - (b) *Provide a diluted or an adulterated urine specimen for urinalysis testing;*
- (8) 118:
  - (a) *Make application for, obtain, or possess articles or materials for an unauthorized financial account; or*
  - (b) *Use an unauthorized financial account;*
- (9) 120 — *Disobey a specifically cited facility Category IA or IB rule not listed in this regulation as an inmate rule violation;*
- (10) 121 — *Possess tobacco in sufficient quantity or the materials necessary for packaging tobacco, or other related products that suggests an intent to distribute, or distribution of tobacco;*
- (11) 123 — *Possess currency in:*
  - (a) *A facility where currency is not permitted; or*
  - (b) *An amount that is \$50 or greater in excess of the amount the inmate is permitted to possess;*
- (12) 126 — *Knowingly provide false reports, claims, accusations or information related to the Prison Rape Elimination Act (PREA) or use the PREA Hotline other than for the intended purpose.*

*E. Category II Inmate Rule Violations. An inmate may not:*

- (1) 200:
  - (a) *Refuse testing or assessment for the mandatory education program;*
  - (b) *Refuse assignment to or refuse to participate in the mandatory education program; or*
  - (c) *Engage in behavior that causes removal from the mandatory education program;*
- (2) 201:
  - (a) *Refuse testing or assessment for a program designated as a mandatory remediation program;*
  - (b) *Refuse assignment to or refuse to participate in a program designated as a mandatory remediation program; or*
  - (c) *Engage in behavior that causes removal from a program designated as a mandatory remediation program;*
- (3) 202— *Refuse:*
  - (a) *A required medical examination or test;*
  - (b) *To participate in or submit to deoxyribonucleic acid (DNA) sampling collection; or*
  - (c) *To be fingerprinted as required by statute, law, or the Department;*

(4) 203 — *Disobey a specifically cited facility Category II rule not listed in this regulation as an inmate rule violation.*

*F. Category III Inmate Rule Violations. An inmate may not:*

- (1) 300:
  - (a) *Administer a tattoo;*
  - (b) *Receive a tattoo; or*
  - (c) *Possess tattoo equipment, materials, or paraphernalia;*
- (2) 301 — *Possess or use alcohol without authorization;*
- (3) 302 — *Possess equipment, materials, or paraphernalia that may be used in the manufacture of alcohol;*
- (4) 303 — *Refuse to submit to alcohol detection testing;*
- (5) 304 — *Possess, use, hoard, or accumulate medication without authorization;*
- (6) 305 — *Participate in an act that is in violation of a law, statute, ordinance, or provision of law;*
- (7) 306:
  - (a) *Gamble; or*
  - (b) *Possess gambling paraphernalia;*
- (8) 307 — *Participate in an act of extortion, bribery, or coercion;*
- (9) 308:
  - (a) *Steal State property;*
  - (b) *Possess stolen State property;*
  - (c) *Possess State property without permission; or*
  - (d) *Misuse, tamper with, damage, or destroy State property;*
- (10) 309:
  - (a) *Steal the property of an individual or entity;*
  - (b) *Possess stolen property of an individual or entity;*
  - (c) *Possess property of an individual or entity without permission; or*
  - (d) *Misuse, alter, tamper with, damage, or destroy property of another individual or entity;*
- (11) 310 — *Participate in an act not included as an inmate rule violation under this regulation that is in violation of a rule, policy, directive, or regulation of a:*
  - (a) *Department program;*
  - (b) *Facility program; or*
  - (c) *Community program;*
- (12) 311 — *Possess currency in an amount that is \$20 or more in excess of the amount the inmate is permitted, but less than \$50 in excess of the amount the inmate is permitted to possess;*
- (13) 312:
  - (a) *Cause a delay in the reporting of a facility count;*
  - (b) *Interfere with or resist a search of a person, item, area, or location;*
  - (c) *Cause the early return of a community detail due to a violation of the rules;*
  - (d) *Disobey an order to lock in or an order related to mass movement; or*
  - (e) *Commit any inmate rule violation outside of the confinement of a secure facility;*
- (14) 313 — *Disobey a specifically cited facility Category III rule not listed in this regulation as an inmate rule violation;*
- (15) 314:
  - (a) *Demonstrate:*
    - (i) *Disrespect; or*
    - (ii) *Insolence;*
  - (b) *Use vulgar language;*
- (16) 315 — *Possess or pass contraband; or*
- (17) 316 — *Disobey an order.*

*G. Category IV Inmate Rule Violations. An inmate may not:*

- (1) 400 — *Vacant;*
- (2) 401:
  - (a) *Refuse to work, carry out an assigned task, or complete a non-mandatory remediation program assignment; or*
  - (b) *Refuse to accept or carry out a housing assignment;*
- (3) 402:
  - (a) *Enter or be in a location without authorization;*
  - (b) *Leave an assigned location without authorization;*
  - (c) *Be absent from or late reporting to an assigned location without authorization;*
  - (d) *Loiter or linger in a location without authorization; or*
  - (e) *Refuse or fail to obey or follow an order, rule, policy, or procedure regarding inmate movement or travel within or outside of the facility;*
- (4) 403:

- (a) Provide false or misleading information;
  - (b) Alter, misrepresent, or forge a document; or
  - (c) Possess an altered, misrepresented, or forged document;
  - (5) 404 — Possess currency in an amount that is less than \$20 in excess of the amount the inmate is permitted to possess;
  - (6) 405 — Vacant;
  - (7) 406 — Vacant;
  - (8) 407:
    - (a) Provide an unauthorized personal service for an individual or entity; or
    - (b) Participate in or operate an unauthorized business or enterprise;
  - (9) 408 — Vacant;
  - (10) 409:
    - (a) Make an unauthorized telephone call;
    - (b) Use a telephone without authorization;
    - (c) Make or participate in a three way telephone call;
    - (d) Use a telephone for an unauthorized or illegal purpose; or
    - (e) Use a telephone in violation of an order, policy, procedure, regulation, statute, court order, or as otherwise provided by law;
  - (11) 410 — Disobey a specifically cited facility Category IV rule not listed in this regulation as an inmate rule violation; or
  - (12) 411 — Possess tobacco in a limited quantity that may suggest personal use when there is no other evidence to suggest intent to distribute or distribution.
- H. Category V Inmate Rule Violations. An inmate may not:
- (1) 500 — Fail to possess or properly display a required inmate identification badge or card when directed by staff or required by facility rule;
  - (2) 501 — Participate in reckless behavior or horseplay;
  - (3) 502 — Fail to maintain:
    - (a) Personal cleanliness;
    - (b) The cleanliness of the facility or assigned housing area; or
    - (c) The cleanliness of a location other than in the facility; or
  - (4) 503 — Disobey a specifically cited facility Category V rule not listed in this regulation as an inmate rule violation.

**.05 Pre-Disciplinary Proceeding Procedures — Pre-Disciplinary Proceeding Phase — Investigating and Reporting an Inmate Rule Violation.**

**A. Investigation.**

- (1) Staff shall initiate an investigation when there is cause to believe that an inmate is non-compliant and has committed an inmate rule violation.
- (2) As part of the investigation, staff shall attempt to:
  - (a) Determine the facts and circumstances of the event;
  - (b) Identify the inmate's alleged conduct and inmate rule violation committed;
  - (c) Identify a witness who may have factual knowledge of the reported event and alleged inmate rule violation;
 and
  - (d) Identify, secure, and preserve evidence regarding the reported event and the alleged inmate rule violation.
- (3) An investigation under this regulation may include, but not be limited to:
  - (a) A verbal or written event report to the shift supervisor or commander; or
  - (b) An investigation that requires a period of time to:
    - (i) Interview a witness;
    - (ii) Gather evidence;
    - (iii) Determine the facts of the event as to what occurred;
    - (iv) Identify individuals involved; and
    - (v) Select the possible inmate rule violation or violations under Regulation .04 of this chapter to be charged.

**B. Reporting an Inmate Rule Violation.**

- (1) Upon completion of the investigation under §A of this regulation, when staff determines that an inmate allegedly violated an inmate rule or rules under this chapter, staff shall use a Notice of Inmate Rule Violation form to report the inmate rule violation.
- (2) If an inmate is alleged to commit an inmate rule violation, the reporting staff shall, within 1 calendar day of the completion of the required investigation:
  - (a) Complete the reported facts section of the Notice of Inmate Rule Violation form; and
  - (b) Forward the completed Notice of Inmate Rule Violation form to the shift supervisor.

**C. Shift Supervisor Review.**

- (1) Upon receipt of a Notice of Inmate Rule Violation form, the shift supervisor, shall review:
  - (a) The defendant's Notice of Inmate Rule Violation form;
  - (b) Administrative reports submitted in connection with the event; and
  - (c) Attachments or other evidence that may have been submitted by staff regarding the inmate's alleged inmate rule violation.
- (2) After conducting the review, the shift supervisor shall:
  - (a) Return the Notice of Inmate Rule Violation form to reporting staff if the Notice of Inmate Rule Violation form is defective or in error and requires correction, addition, or deletion requiring staff to provide the shift supervisor with the corrected Notice of Inmate Rule Violation form;
  - (b) Determine the inmate rule or rules with which the defendant is to be charged;
  - (c) Make a recommendation to the shift commander that the defendant be housed in administrative segregation pending the outcome of the defendant's disciplinary proceeding, if the shift supervisor believes that the conduct alleged in the reported event or the defendant's disciplinary history constitutes a threat to the:
    - (i) Security of the facility, Department, or community; or
    - (ii) Safety of an inmate, staff, or an individual;
  - (d) Record the inmate rule violation or violations charged in the Notice of Inmate Rule Violation form and:
    - (i) If the defendant is charged with a Category IA, IB, or II inmate rule violation, refer the case to a hearing officer for a formal disciplinary proceeding; or
    - (ii) If the defendant is charged with only a Category III, IV, or V violation, refer the case to a hearing officer for a disciplinary proceeding, or offer the defendant an informal resolution.
- (3) If the shift supervisor recommends placing the defendant in administrative segregation under §C(2)(c) of this regulation, forward the completed Notice of Inmate Rule Violation form to the shift commander for review.

**D. Shift Commander Review.**

- (1) Upon receipt of a recommendation in accordance with §C(3) of this regulation, the shift commander shall review the recommendation and determine if there is cause to believe the defendant is or is not a threat to the:
  - (a) Security of the facility, Department, or community; or
  - (b) Safety of an inmate, staff, or an individual.
- (2) If the shift commander finds there is cause to believe there is a security or safety threat posed by the defendant's reported conduct, inmate rule violation charged, or the defendant's disciplinary history, the shift commander shall approve placing the defendant on administrative segregation housing status and indicate the approval on the Notice of Inmate Rule Violation form.
- (3) Additionally, the shift commander may:
  - (a) Review the defendant's Notice of Inmate Rule Violation form; and
  - (b) Exercise the same options authorized for a shift supervisor under §C of this regulation.

**E. Completion of Review.** — The shift supervisor's review required under §C of this regulation and, if required, a shift commander's review under §D of this regulation shall be completed within 1 calendar day of the date that the last draft of the reported facts section was accepted.

**F. Redrafting Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form.**

- (1) A shift supervisor, shift commander, or facility representative reviewing a Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form may direct the staff submitting the form to make corrections, additions, deletions, or other changes to the form or other documentation submitted with the form prior to or after service of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form on the defendant.
- (2) Except under §F(3) of this regulation, if staff determines that the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form is technically in error or evidentially insufficient after the defendant has been served a copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, staff shall:
  - (a) Prepare a new or revised Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form that supersedes the previously served Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form and:
    - (ii) Correct an error; or
    - (iii) Provide omitted or additional information; and
  - (b) Ensure that the new or revised Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form is served on the defendant in accordance with the service process under this chapter.
- (3) To correct a minor error or omission to a Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form (for example a name or date or the absence of a signature or date) or attach new or additional information, staff may complete a matter of record form, memorandum, or correspondence addressed to and received by the defendant explaining the correction or providing a copy of the new or additional information.

**G. Referral for Informal Resolution.**

- (1) If a shift supervisor, shift commander, facility representative, or hearing officer determine that a defendant charged only with Category III, IV or V violations should be offered an informal resolution, the defendant may be offered either an:
  - (a) Informal disposition with a sanction; or



(b) Incident report without sanction.

(2) The shift supervisor, shift commander, facility representative, hearing officer, or any other staff is not required to offer a defendant charged with only a Category III, IV, or V inmate rule violation an informal resolution.

(3) An informal resolution may be offered any time before the completion of a formal disciplinary proceeding before a hearing officer including, but not limited to, before or during the preliminary hearing or case presentation portion of the disciplinary proceeding before the hearing officer.

(4) A defendant is not required to accept an informal resolution and may reject the offer and request a formal disciplinary proceeding before a hearing officer.

(5) A defendant's acceptance of an offer of an informal resolution shall mean the defendant accepts and agrees with the:

(a) Waiver of the formal disciplinary proceeding under the inmate disciplinary process;

(b) Offer of informal resolution;

(c) Proposed sanction, if applicable;

(d) Placement of the defendant's Notice of Inmate Rule Violation form and Notice of Informal Resolution form in the defendant's case record; and

(e) Waiver of the right to appeal the informal resolution disposition for each inmate rule violation charged.

(6) The defendant's acceptance of a hearing officer's offer of an informal resolution on the audio record of the defendant's disciplinary proceeding shall constitute the defendant's acceptance of and agreement with the offer.

(7) A defendant's refusal to accept an offer of informal resolution shall be the defendant's:

(a) Rejection of the offer of informal resolution; and

(b) Request for the hearing officer to proceed with a formal disciplinary proceeding under the inmate disciplinary process to resolve the inmate rule violation charged.

(8) If the managing official, or a designee, believes the offer of informal resolution made to the defendant is in error, the managing official, or a designee, may remand the matter to the hearing officer assigned to the facility for a review.

(9) A hearing officer receiving a remanded informal resolution shall determine if the informal resolution is in compliance with requirements for informal resolution and if finding that the informal resolution is:

(a) Not permitted, proceed with the defendant's disciplinary proceeding; or

(b) Permitted, affirm the informal resolution and conclude the defendant's disciplinary proceeding.

**.06 Pre-Disciplinary Proceeding Procedures — Service of Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form or Notice of Offer of Informal Resolution Form.**

A. Staff shall serve a defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form before the defendant appears before a hearing officer.

**B. Staff Service Responsibilities.**

(1) Staff assigned to serve a defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form shall:

(a) Serve the applicable forms on the defendant within 24 hours of the final review of the shift supervisor or, if applicable, the shift commander.

(b) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form.

(c) Retain possession of and not provide the defendant with an attachment or other evidence submitted with the Notice of Inmate Rule Violation form, which may include, but may not limited to, a:

(i) Report;

(ii) Document;

(iii) Record;

(iv) Form;

(v) Documented verbal or written statement;

(vi) Photograph;

(vii) Video;

(viii) Telephone conversation; or

(ix) Evidence related to the reported event, the inmate rule violation charged, or reported conduct of the defendant.

(d) Forward an attachment and other evidence submitted with the Notice of Inmate Rule Violation form to, if designated, the facility representative or staff designated by the managing official, or a designee, who shall:

(i) Maintain the attachment and other evidence in a secure location designated by the shift supervisor or, if applicable, the shift commander; and

(ii) Present the attachment and other evidence at the time the defendant appears before the hearing officer for a preliminary review.

(2) When serving a defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form staff, unless prevented by a security or safety issue or a time constraint, shall:

(a) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form and provide the defendant the opportunity to:

(i) Read the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;  
(ii) Request representation or witnesses on the facility's copy of the Notice of Inmate Disciplinary Hearing form;

(iii) Request evidence on the facility's copy of the Notice of Inmate Disciplinary Hearing form; and  
(iv) Sign for receipt of the defendant's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(b) If applicable, make a record of any cause that may prevent service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(c) Sign the name of the staff member performing the service and date as a record of service in the designated section on the facility's copy of the Notice of Inmate Disciplinary Hearing form and Notice of Inmate Disciplinary Hearing form;

(d) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form; and

(e) Return the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to the shift supervisor or, if applicable, the shift commander.

(3) If the defendant is being served with a Notice of an Offer of Informal Resolution form, staff serving the defendant shall permit the defendant to accept or reject the offer of information resolution and sign Notice of an Offer of Informal Resolution form accordingly as a record of the defendant's decision to accept or reject the offer.

(4) If the defendant rejects an offer of informal resolution, staff shall permit the defendant the opportunity to request representation, witnesses, and or evidence on the Notice of Inmate Disciplinary Hearing form.

C. The Defendant Responsibilities at the Time of Service of a Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form or Notice of Offer of Informal Resolution Form.

(1) The defendant shall notify staff serving Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form if the defendant is unable to read or understand the document.

(2) The defendant, at the time of service, shall:

(a) Sign for receipt of the defendant's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form;

(b) Provide notice at service of the defendant's request for representation, a witness, or evidence for the purpose of the defendant's possible case presentation during the formal disciplinary proceeding on the Notice of Inmate Disciplinary Hearing form;

(c) Sign and date the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form in the designated section of the facility's copy; and

(d) Return the facility's copy of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form to the staff serving the document.

(3) Request for Representation, Witness, Evidence.

(a) If the defendant does not request a representative specifically by name, a witness or witnesses specifically by name, and evidence with a specific description of that evidence at the time of service, or does not sign for receipt of Notice of Inmate Disciplinary Hearing form, the defendant is considered to have waived the defendant's right to make the request for a representative, witness or evidence; and

(b) If the defendant does not request as specified under §C(2)(b) or C(3)(a) of this regulation and subsequently makes a request for a representative, a witness, or evidence at the preliminary hearing or formal disciplinary proceeding before a hearing officer, that request may be denied.

D. After service of a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form staff shall return the appropriately endorsed documents to the shift supervisor or, if applicable, shift commander, who shall review the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form and:

(1) Ensure that the service process been properly completed;

(2) Ensure that the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form were not altered by the defendant;

(3) Take the appropriate steps to secure and preserve evidence properly requested by the defendant at service if that evidence is available and under control of the Department; and

(4) Forward the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to staff designated for scheduling the defendant for an appearance before a hearing officer.

E. Delay and Waiver of Service.

(1) Good cause shall permit the delay of the service of the defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form.

(2) Examples of good cause are, but may not be limited to, when the defendant is:

(a) An escapee;

- (b) A patient in a community hospital or medical center;
  - (c) A patient in a facility medical infirmary or unit;
  - (d) Assigned to a mental health housing unit in the community or in the facility; or
  - (e) Placed on staff alert status due to being deemed an immediate risk to the safety or security of staff.
- (3) A defendant may be served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form while the defendant is a medical or mental health patient, if medical or mental health staff in charge of care for the defendant determine the defendant may be served.
- (4) When there is good cause that delays service designated staff shall:
- (a) Serve the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant within 3 business days after the cause for delay of service no longer exists;
  - (b) Make a record of the cause that delayed service; and
  - (c) Inform the hearing officer of the cause for delay if the delay is raised at the defendant's appearance before the hearing officer.
- (5) The defendant's refusal to sign for receipt of service shall be considered a waiver of the Department's obligation for timely service of the defendant with a copy of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form.
- (6) If the defendant does not return at service the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to the staff serving the documents, that action is concluded to be a waiver of the service requirements under this regulation.
- (7) If the defendant becomes disruptive with or poses a security or safety threat to staff serving the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, staff shall conclude under this regulation that the defendant has waived the service process and terminate the service by leaving a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form with the defendant.
- (8) If service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form is waived by the defendant under provisions of §§E(5) — (7) of this regulation, the defendant is considered to have waived the right to request representation, witnesses, or evidence at any point in the inmate disciplinary process.

**.07 Pre-Disciplinary Proceeding Procedure — Hearing Docket.**

- A. The facility managing official, or a designee, shall ensure that:
- (1) Staff is designated to establish a hearing docket to schedule the appearance of a defendant before the hearing officer for a preliminary hearing; and
  - (2) The preliminary hearing is scheduled to occur within 7 business days of service of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant.
- B. Staff may not schedule a defendant's preliminary hearing to occur within 24 hours of service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant, except if the defendant:
- (1) Elects to waive the right to at least 24 hours of notice in order to prepare; or
  - (2) Is scheduled to be released from the custody of the Department before the expiration of the required 24 hour notice, in which case the appearance of the defendant shall be scheduled prior to the defendant's release, with as much time as practicable prior to the scheduled appearance to permit the defendant to prepare a defense regarding the inmate rule violation charged.

**.08 Pre-Disciplinary Proceeding Procedure — Mental Health Hearing Docket.**

- A. If the defendant is assigned to a mental health unit in the facility or in the community, staff designated to schedule a hearing shall hold the defendant's appearance before the hearing officer in abeyance until the defendant is released from the mental health treatment facility, except when mental health staff provide documentation that the defendant is competent to participate in a disciplinary proceeding.
- B. If the defendant is housed in a facility mental health unit for more than 30 calendar days, staff designated to schedule a hearing shall contact the facility's mental health staff and request a determination whether the defendant is competent to participate in a disciplinary proceeding and if mental health staff document that the defendant:
- (1) Is competent to participate in a disciplinary proceeding, the defendant shall be scheduled for appearance before the hearing officer.
  - (2) Was not competent at the time of the alleged inmate rule violation or is not currently competent to participate in a disciplinary proceeding, or is housed in a community mental health unit for more than 30 calendar days:
    - (a) The disciplinary proceeding shall be scheduled in absentia; and
    - (b) The hearing officer shall enter a disposition of "Not Competent" and the disciplinary proceeding shall be concluded.
- C. The hearing officer shall find that there is good cause for staff non-compliance with time or procedure requirements when the defendant is housed in a community or facility mental health unit.
- D. Whether or not the defendant is currently under the care of mental health staff, if there is cause to believe that the defendant may not be mentally competent and is unable to participate in the inmate disciplinary process, the hearing officer shall postpone the disciplinary proceeding and the facility representative or other facility staff shall refer the defendant to the Department's mental health staff to:
- (1) Assess the defendant's mental health status; and

(2) Determine whether the defendant is competent to participate in the disciplinary process.

E. If mental health staff determines that the defendant is not competent to participate in the inmate disciplinary process, the:

(1) Disciplinary proceeding shall be held in absentia; and

(2) Hearing officer shall enter a disposition of "Not Competent" and conclude the disciplinary proceeding.

F. If mental health staff determines that the defendant is competent to participate in the inmate disciplinary process, the hearing officer shall proceed with the disciplinary proceeding.

G. If mental health staff determines that the defendant is competent, and after carefully considering the determination made by mental health staff, the hearing officer disagrees, the hearing officer may still make a finding that the defendant is not competent and, upon making such a finding, enter a disposition of "Not Competent" and conclude the disciplinary proceeding.

#### **.09 Disciplinary Proceeding Procedures Phase — Special Needs Inmate.**

##### **A. Interpreters.**

(1) If raised as an issue by the defendant, the hearing officer shall make a finding as to whether or not the defendant has the need for an interpreter before moving forward with the disciplinary proceeding

(2) The hearing officer may consult with medical and case management, without the defendant present, in order to determine if an interpreter is necessary.

(3) If an interpreter is required:

(a) An inmate may not serve as an interpreter under this chapter.

(b) An interpreter may be:

(i) Staff fluent in the preferred language of the defendant; or

(ii) Provided through a State contracted vendor.

(4) After making arrangements for an interpreter, facility staff shall reschedule the defendant's appearance before the hearing officer.

(5) The hearing officer shall administer an affirmation to the interpreter prior to permitting the individual to assume the role as the defendant's interpreter.

(a) The affirmation given shall be stated by the hearing officer to the proposed interpreter as: "Do you solemnly swear or affirm that you will provide an accurate, complete, and impartial interpretation of all statements made during this proceeding to the best of your knowledge and ability."

(b) After administering the affirmation to the proposed interpreter, the individual shall be required to acknowledge the affirmation in the affirmative prior to the hearing officer permitting that individual to act as the inmate's interpreter.

##### **B. Illiteracy.**

(1) If raised as an issue by the defendant, the hearing officer shall make a finding as to whether the defendant is illiterate before moving forward with the disciplinary proceeding.

(2) The hearing officer may consult with the education department and case management, without the defendant present, in order to determine if the defendant is illiterate.

(3) If the hearing officer determines the defendant is illiterate, the defendant shall be provided with a representative to assist during the disciplinary proceeding.

C. The hearing officer may grant a defendant identified as a special needs inmate under this regulation additional time to prepare or greater procedural latitude in the inmate disciplinary process.

D. A delay in the scheduling of the defendant's disciplinary proceeding due to special accommodations required for a special needs inmate shall be considered to be based on good cause.

#### **.10 Disciplinary Proceeding Procedures — Facility Representative.**

A. A managing official, or a designee, may elect to designate staff to act as the facility representative to represent the facility's interests during a defendant's disciplinary proceeding.

B. The facility representative, with or without consultation with the shift supervisor or commander, may:

(1) Add additional inmate rule violation charges to the Notice of Inmate Rule Violation form and re-serve the Notice of Inmate Rule Violation form on the defendant either before the disciplinary proceeding or in the preliminary phase of the disciplinary proceeding;

(2) Delete or choose not to pursue charges approved by the shift supervisor or commander;

(3) Correct a technical, procedural, evidentiary, or formatting error found in the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form;

(4) Return the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form to the shift supervisor or shift commander for correction or revision;

(5) Offer an informal resolution to the defendant for any Category III, IV, or V inmate rule violation charged;

(6) Enter into a plea agreement with the defendant for presentation to the hearing officer to resolve the inmate rule violation charged;

(7) Make determinations regarding the release or withholding of the identity of a confidential informant or other security sensitive evidence;

(8) Present argument and evidence to the hearing officer in support of the facility's case presentation as to the defendant's inmate rule violation charged;

(9) Require staff to submit additional reports or present staff to testify concerning information relevant to the defendant's inmate rule violation charged as a witness during the facility's case presentation; and

(10) Appeal to the managing official, or a designee, the hearing officer's decision rendered or sanction imposed if there is cause to believe the hearing officer under this chapter acted erroneously.

C. For the purposes of the security and control of a defendant's disciplinary proceeding and safety of staff and inmates participating in a disciplinary proceeding, the facility representative or escort officer shall determine the manner and form in which an inmate participant shall be restrained consistent with Department policy and procedure and the policy and procedures established by the facility in which the inmate participant is housed.

(1) The facility representative or escort officer may employ more restrictive handcuffing or other restraint procedures than are required by the rules of the facility.

(2) The hearing officer may request additional handcuffing or other restraints be used.

#### **.11 Disciplinary Proceeding Procedures — Hearing Officer.**

A. *Hearing Officer.* The hearing officer, as the fact finder, shall be fair and impartial and may:

(1) Interpret Department policy and procedures or the time or procedure requirements under this chapter;

(2) Make applicable rulings at any stage of the disciplinary process based on the hearing officer's interpretation of Department policy and procedures;

(3) Weigh the evidence presented during the evidentiary phase and make findings of fact based upon evidence found credible and reliable by a preponderance of the evidence;

(4) Determine the disposition of each inmate rule violation charged;

(5) Determine the number, period, and effective date of sanctions to be imposed when applicable;

(6) Provide assistance with an investigation or other legal matters that may involve:

(a) The Department;

(b) A law enforcement agency;

(c) The Office of the Attorney General; or

(d) An office of a State or local government agency;

(7) Order the removal of any hearing participant from the location of the disciplinary proceeding if the hearing participant becomes disruptive or becomes a threat to the safety and security of the facility or any other hearing participant; and

(8) Perform other duties as assigned by the hearing officer supervisor or the Secretary, or a designee.

B. *Facility Hearing Officer.* A managing official, or a designee, may designate a facility hearing officer to act as a hearing officer without regard to whether a hearing officer is available to preside over disciplinary proceedings at the facility.

C. *Ex Parte Communication — Permitted.* Unless otherwise stated under this regulation, the hearing officer may:

(1) Elect to discuss a pending case and its evidentiary merits in the absence of the defendant, or, if designated, the facility representative with:

(a) Staff of the Office of the Attorney General;

(b) A law enforcement official;

(c) Staff assigned to the Department's Intelligence and Investigative Division;

(d) The hearing officer supervisor, or a designee; or

(e) The Secretary, or a designee;

(2) Elect to discuss a non-evidentiary matter in the absence of the defendant, or, if designated, the facility representative regarding one or more of the following matters:

(a) Security or safety;

(b) A plea agreement;

(c) An informal resolution;

(d) A postponement request;

(e) A time requirement or procedure of a regulation under this chapter or Department policy or procedure; or

(f) Representation or witness request; or

(3) Elect to, without the defendant present:

(a) Question or take testimony from a witness or confidential informant witness whose identity may not be revealed to a defendant;

(b) Review or examine security sensitive evidence that may include a document, video record, or other security sensitive evidence in the presence of staff necessary for security and safety of the hearing officer, witness, confidential informant, or security sensitive evidence.

#### **.12 Disciplinary Proceeding Procedures — Preliminary and Evidentiary Phases — Written Record and Audio Recording.**

A. The hearing officer shall be responsible for a record of the defendant's disciplinary proceeding when the defendant is before the hearing officer.

*B. The hearing officer shall ensure that both a written record and audio recording are used to document and record a defendant's appearance before the hearing officer.*

*C. The written and audio record shall only be considered a record of the Department exclusively for the:*

- (1) Use of staff in the conduct of the Department's daily business;*
- (2) Record retention requirements of the Department; and*
- (3) Statutory requirements of the Annotated Code of Maryland regarding documenting the defendant's case record as to the defendant's disciplinary history.*

*D. The audio record of the defendant's disciplinary proceeding may not be considered to be an entitlement, a right, or for the benefit of a defendant.*

*E. Audio Recording.*

*(1) The inability to record a defendant's disciplinary proceeding shall preclude the hearing officer from conducting the defendant's disciplinary proceeding.*

*(2) When the defendant's disciplinary proceeding cannot be audio recorded and the defendant's disciplinary proceeding may not proceed, the hearing officer shall:*

- (a) Advise the defendant that the disciplinary proceeding cannot be audio recorded and the inmate's disciplinary proceeding may not proceed;*
  - (b) Postpone the defendant's disciplinary proceeding; and*
  - (c) Advise the facility staff to reschedule the defendant's disciplinary proceeding when circumstances permit.*
- (3) The postponement of the defendant's disciplinary proceeding due to an inability to audio record the defendant's disciplinary hearing:*
- (a) Shall be considered good cause for the delay of the defendant's disciplinary proceeding; and*
  - (b) May not support the dismissal of an inmate rule violation charged.*

*F. Written Record.*

*(1) The written record is a summary of the defendant's disciplinary proceeding and may not be considered a full transcript.*

*(2) A hearing officer's failure to completely document the written record may not be the basis for a reversal of the hearing officer's findings of fact or disposition of an inmate rule violation charged.*

### ***.13 Disciplinary Proceeding Procedures — Inmate Waiver of Appearance.***

*A. If a defendant elects not to appear before the hearing officer or to participate in the disciplinary proceeding, the defendant is considered to waive:*

- (1) The defendant's preliminary review;*
- (2) The opportunity to claim a denial of a due process right or claim a violation of a time or procedure requirement applicable to this chapter pursuant to statute, law, or policy;*
- (3) The ability to attend and participate in all stages of the disciplinary proceeding under the inmate disciplinary process;*
- (4) The opportunity to make a case presentation and present evidence;*
- (5) The opportunity to make a presentation regarding appropriate sanctions, if applicable;*
- (6) The post-disciplinary procedures under this chapter; and*
- (7) Any and all rights, claims, or procedures normally available to the defendant under the authority of a statute, law, policy, or procedure applicable to the inmate disciplinary process.*

*B. The hearing officer may determine that the defendant waived an appearance before the hearing officer and participation in the disciplinary proceeding if the defendant:*

- (1) Submits a Waiver of Appearance form or written statement informing the hearing officer of the defendant's decision not to appear or participate;*
- (2) Poses a threat to the security of the facility or the safety of an inmate, staff, or an individual;*
- (3) Delays appearance before the hearing officer or willfully delays reporting to the location of the defendant's disciplinary proceeding;*
- (4) Refuses to obey instructions or resists or interferes with the duties of staff prior to an appearance before the hearing officer or after reporting to the location of the defendant's disciplinary proceeding;*
- (5) Violates security procedures for the escort of the defendant to or at the location of the defendant's disciplinary proceeding;*
- (6) Elects to depart voluntarily from the location of the defendant's disciplinary proceeding prior to the conclusion of the disciplinary proceeding;*
- (7) Becomes disruptive prior to the appearance before the hearing officer or after arriving at the location of the defendant's disciplinary proceeding;*
- (8) Exhibits conduct that poses a threat to the security of the facility or location of the defendant's disciplinary proceeding; or the safety of an inmate, staff, or an individual; or*
- (9) Requires removal from the location of the defendant's disciplinary proceeding at the direction of the hearing officer or staff.*

*C. If a defendant elects not to appear before the hearing officer, elects not to participate in the defendant's disciplinary proceeding, or is removed or not permitted to participate in the defendant's disciplinary proceeding, the hearing officer shall:*

- (1) Continue with the defendant's disciplinary proceeding in the absence of the defendant; and*
- (2) Render a disposition for each inmate rule violation charged.*

*D. When determining that the defendant's right to participate in the defendant's disciplinary proceeding is voluntarily or involuntarily waived by the defendant, the hearing officer may accept:*

- (1) A Waiver of Appearance form or a written statement signed by:*

*(a) The defendant or staff having direct knowledge of the defendant's decision not to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or*

*(b) Staff having direct knowledge of the defendant's conduct that supports a determination that the defendant has involuntarily waived the defendant's right to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or*

- (2) Sworn testimony from staff having direct knowledge of the defendant's:*

*(a) Decision not to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or*

*(b) Conduct that supports a determination that the defendant has involuntarily waived the defendant's right to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or*

*(3) Statements made by the defendant in the hearing officer's presence or observations of the defendant's conduct made by the hearing officer.*

#### ***.14 Disciplinary Proceeding Procedures — Preliminary Review.***

##### ***A. Preliminary Review.***

*(1) The matters that may be addressed by the hearing officer, facility representative, if designated, or the defendant at the preliminary review may include, but may not be limited to, one or more of the following:*

*(a) The inmate rule violation or violations charged;*

*(b) A representation request;*

*(c) A witness request;*

*(d) An evidence request;*

*(e) A postponement request;*

*(f) A time or procedure requirement;*

*(g) The form of the Notice of Inmate Rule Violation or Notice of Inmate Disciplinary Hearing;*

*(h) Any issues with or arising from the manner of service of process of the documents under §A(1)(g) of this regulation;*

*(i) An attachment or other evidence review;*

*(j) Determinations regarding security sensitive evidence or confidential witnesses;*

*(k) A plea agreement;*

*(l) An informal resolution; and*

*(m) A plea by the defendant to the inmate rule violation or violations charged.*

*B. If during or at the conclusion of the preliminary phase of the inmate disciplinary proceeding, a defendant elects not to or fails to raise any matter listed under §A(1) of this regulation, the defendant is concluded to have waived the opportunity to make a motion regarding the matter.*

*C. During the preliminary review, the hearing officer shall ensure that a description of an attachment or other evidence submitted by staff as to the inmate rule violation charged is reviewed and summarized for the record of the defendant's disciplinary proceeding except that security sensitive evidence may not be read into the record or released to a defendant or other inmate.*

*D. If the hearing officer determines that the factual content of the Notice of Inmate Rule Violation form, or any attachment, report, or evidence attached to or referred to in the Notice of Inmate Rule Violation form, if found to be credible and reliable, would constitute an inmate rule violation not charged by staff, the hearing officer:*

*(1) May notify the participants in the preliminary review that the additional inmate rule violation may be charged;*

*(2) May inquire if the facility representative, if designated, or other facility staff intends to add the applicable inmate rule violation, and, if added, ensure that the record of the disciplinary proceeding reflects the additional inmate rule violation charged; and*

*(3) Shall, if raised by a participant in the preliminary review, permit the request for a postponement of the disciplinary proceeding for a reasonable time so the party to the preliminary review making the request may further prepare the case in regard to the additional inmate rule violation charged.*

*E. At the conclusion of the preliminary review, the hearing officer shall inquire if the defendant and facility representative, if designated, or facility staff is prepared to proceed with an evidentiary portion of the disciplinary proceeding.*

(1) If the defendant or the facility representative, if designated, or facility staff is not prepared to proceed, the hearing officer shall provide the defendant or the facility representative, if designated, or facility staff an opportunity to address the issue.

(2) The hearing officer may, without the request of any other hearing participant, postpone a disciplinary proceeding.

(3) The hearing officer shall determine the merits of the moving participant's request for a postponement.

(4) When the hearing officer does not find that a postponement of the disciplinary proceeding is warranted, the hearing officer shall proceed with the disciplinary proceeding.

(5) If a defendant's disciplinary proceeding is postponed, staff shall reschedule the defendant's disciplinary proceeding as soon as circumstances permit.

(6) The postponement of the defendant's disciplinary proceeding shall be considered good cause for the delay and may not be considered cause for dismissal of an inmate rule violation charged.

(7) Failure to request a postponement shall be deemed a waiver of the right to request and be granted a postponement.

(8) When a previously postponed case is resumed, the hearing officer shall determine whether to continue the defendant's previous disciplinary proceeding or whether circumstances require a de novo or new preliminary or evidentiary proceeding.

#### **.15 Disciplinary Proceeding Procedures — Preliminary Phase — Dismissing an Inmate Rule Violation Charged.**

A. A hearing officer may only elect to dismiss an inmate rule violation charged based on cause established under this regulation.

B. Time or Procedural. A hearing officer may dismiss an inmate rule violation charged if the defendant established that a time or procedural violation requiring dismissal of an inmate rule violation charged under this chapter has occurred and meets the requirements for a dismissal under §C of Regulation .03 of this chapter.

C. Lack of Evidence or Failure to Make a Prima Facie Case. After reviewing a report, an attachment, or other evidence submitted by the facility representative, if designated, or facility staff, the hearing officer may dismiss an inmate rule violation charged for lack of evidence if the hearing officer determines that the facts as stated in a report, an attachment, or other evidence considered in the light most favorable to the facility and inferences resulting from those facts do not support a finding that the defendant committed the inmate rule violation charged.

D. Technical Defect or Error.

(1) A non-evidentiary defect or error in drafting of either a defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form may not be considered a cause under this regulation to support dismissal of an inmate rule violation charged.

(2) A possible non-evidentiary defect or error may include, but not be limited to, one or more of the following:

- (a) An incorrect inmate rule violation charged;
- (b) An incorrectly cited date or time reference;
- (c) An incorrect inmate control or state identification number or name;
- (d) A missing signature on any form;
- (e) The absence of a shift supervisor or shift commander review; or
- (f) A failure of service on the defendant.

(3) To correct the defect or error, the hearing officer shall inform the facility representative, if designated, or facility staff of the defect or error identified and the need for correction.

(4) After correction, the facility representative, if designated, or facility staff shall:

- (a) Provide the defendant with notice consistent with §F of Regulation .05 of this chapter; and
- (b) Schedule the defendant for an appearance before the hearing officer.

(5) The identification of a defect or error shall be considered good cause to suspend the inmate disciplinary process until the defect or error is corrected.

E. Failure to Serve the Notice of Inmate Rule Violation Form or Notice of Inmate Disciplinary Hearing Form.

(1) If raised during the preliminary review that the defendant did not receive service of the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, the hearing officer shall determine whether the defendant received service.

(2) A hearing officer may rely on one or more of the following in order to determine whether staff complied with service requirements of this chapter:

(a) The defendant's presentation regarding the claim of not being served a copy of the defendant's Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form;

(b) The record of service as stated on the facility's copy of the defendant's Notice of Inmate Disciplinary Hearing form or Notice of Inmate Disciplinary Hearing form or Department data records;

(c) Testimony of staff serving the defendant with the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form; or

(d) Rebuttal presentation, if presented by the facility representative, if designated, or facility staff, to the defendant's presentation under this regulation.



(3) The failure of the defendant to be served with the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form prior to the defendant's appearance before the hearing officer may not, under this regulation, be considered a cause to support the dismissal of an inmate rule violation charged.

(a) If the hearing officer determines that staff failed to meet service requirements, the hearing officer shall notify the facility representative, if designated, or facility staff of the non-compliance with service requirements and direct staff to comply service requirements.

(b) If the hearing officer determines that staff did comply with service requirements, the hearing officer shall proceed with the disciplinary proceeding.

(c) If the defendant waives the service process, the hearing officer shall proceed with the disciplinary proceeding.

(4) The failure of staff to serve the defendant with the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form shall be considered good cause for the delay of a time or procedure requirement under the inmate disciplinary process.

#### **.16 Disciplinary Proceeding Procedures — Preliminary Review — Defendant Request for Representation.**

A. A defendant referred to the hearing officer for a disciplinary proceeding may elect to request representation to assist the defendant during the disciplinary proceeding.

(1) If a defendant requests representation for the inmate disciplinary process and the request is subsequently approved:

(a) All responsibilities established under this chapter for the defendant during the preliminary hearing, case presentation, and sanctioning phase of the disciplinary proceeding become the defendant's representative's responsibilities;

(b) The defendant agrees that the defendant's representative is the agent of the defendant;

(c) The defendant, on review, is bound by the decisions, actions, and presentation of the defendant's representative.

##### **B. Defendant Representation Request.**

(1) When a defendant is served with the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list the name of the defendant's requested representative in the section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for the name of the representative.

(2) The defendant's failure to list the name of the requested representative at the time of service shall be a waiver of defendant's opportunity for representation.

C. Upon the appearance of the defendant before the hearing officer for a preliminary review of the defendant's Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the hearing officer shall determine if the:

(1) Inmate did list the name of a requested representative at service; and

(2) Individual listed is permitted to represent the defendant according to requirements of this regulation.

D. The facility representative, if designated, or facility staff may make an objection to the defendant's requested representative.

(1) If an objection is raised, the hearing officer shall:

(a) Permit the facility representative, if designated, or facility staff to state the reason or cause the defendant's requested representative is not eligible to represent the defendant;

(b) Permit the defendant an opportunity to address the facility representative's, if designated, or facility staff's objection to the defendant's requested representative; and

(c) After reviewing the facility representative's, if designated, or facility staff's objection and the defendant's response, determine if the objection is sustained or overruled and advise the facility representative, if designated, or facility staff and defendant of the decision.

(2) If the facility representative's, if designated, or facility staff's objection is sustained, the defendant may request that the hearing officer postpone the disciplinary proceeding to permit the defendant an opportunity to obtain another representative or to permit the defendant more time to prepare to proceed without representation.

(3) If the disciplinary proceeding is postponed due to an issue with a defendant's representative and a subsequent request for a defendant representative is denied or the defendant's approved representative is unprepared, the hearing officer shall find that the defendant has waived the right to request representation and the hearing officer shall proceed with the defendant's disciplinary proceeding.

(4) The hearing officer is not obligated to grant a postponement requested by the defendant in accordance with provisions of this regulation.

E. The appearance of a defendant's requested representative at a disciplinary proceeding is voluntary on the part of the requested representative.

F. If a requested representative declines to appear at the defendant's disciplinary proceeding or represent the defendant at the disciplinary proceeding, the hearing officer may not compel a requested representative to appear at the defendant's disciplinary proceeding or act as the defendant's representative.

G. The hearing officer shall only permit a willing individual to appear as the defendant's representative who is:

(1) An inmate;

(a) Assigned to the general population of the facility where the defendant's disciplinary proceeding is to take place; and

(b) Permitted under this regulation and by the managing official, or a designee, to represent the defendant;

(2) A staff member:

(a) Employed at the facility where the defendant's disciplinary proceeding is to take place; and

(b) Permitted under this regulation and by the managing official, or a designee, to represent the defendant; or

(3) A protective custody inmate:

(a) Approved by the managing official, or a designee, to represent another protective custody defendant; and

(b) Assigned to the facility where the defendant's disciplinary proceeding is to take place.

H. A hearing officer may not permit an individual requested to be a defendant's representative if the requested individual is:

(1) Banned as a defendant representative by the Secretary, Deputy Secretary, Executive Director, Field Support Services, managing official, or a respective designee;

(2) Identified as a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual;

(3) Assigned to disciplinary or administrative segregation, cell restriction, or medical or mental health housing or status;

(4) A protective custody inmate requested to represent a defendant who is not assigned to protective custody;

(5) An attorney or paralegal;

(6) A visitor to the facility; or

(7) In a location where staff escort or vehicular transportation to the defendant's disciplinary proceeding is required.

I. If the defendant does not request representation at service and subsequently requests representation at the defendant's appearance before a hearing officer, the hearing officer may elect to permit the request for representation only if:

(1) The requested individual is permitted under this regulation to represent a defendant;

(2) The requested individual is present at the time and location where the defendant's disciplinary proceeding is to take place;

(3) There is no request for postponement by the requested representative; and

(4) The defendant's representative and the defendant are prepared to proceed with and participate in the defendant's disciplinary proceeding.

J. If the defendant requested representation at service and is subsequently informed that the requested representative declined to represent the defendant or is unavailable and the defendant requests the opportunity to obtain another representative and a postponement to obtain representation, the hearing officer may:

(1) Permit the request and postpone the defendant's disciplinary proceeding for one calendar day; or

(2) Deny the defendant's request and proceed with the defendant's disciplinary proceeding.

K. The hearing officer when permitting a postponement under §J(1) of this regulation may not grant a subsequent postponement request if the defendant does not obtain representation.

L. If an approved defendant's representative makes an appearance at the defendant's disciplinary proceeding, the defendant's representative is obligated to remain at the defendant's disciplinary hearing until released by the hearing officer.

M. If the defendant's representative, during the defendant's disciplinary proceeding, voluntarily elects not to continue as the defendant's representative or is removed from the disciplinary proceeding due to the representative's conduct or threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual, the hearing officer shall:

(1) Conclude that the defendant has waived representation; and

(2) Continue the defendant's disciplinary proceeding with no consideration for a postponement.

N. Defendant Preparation.

(1) The facility is not required to:

(a) Permit the defendant access to the defendant's representative in preparation for the defendant's disciplinary proceeding; and

(b) Make special arrangements for the defendant or the defendant's representative to have access to materials to prepare for the defendant's case presentation.

(2) The hearing officer may not grant a postponement solely to allow the defendant and the defendant's representative time to confer concerning the inmate disciplinary process.

#### **.17 Disciplinary Proceeding Procedures — Preliminary Review — Witness Request.**

A. The defendant charged with an inmate rule violation or, if designated, the facility representative or facility staff may make a request that an individual appear as a witness to testify during the case presentation phase of the defendant's disciplinary proceeding.

B. Defendant Request for a Witness.

(1) When served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list the name of the defendant's requested witness in the section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for the name of a witness.

(2) The defendant's failure to list a requested witness by name shall be a waiver of the opportunity to request a witness.

C. A facility representative, if designated, or facility staff shall be responsible for informing the hearing officer of the facility's witness request during the preliminary review.

D. A hearing officer may request the testimony of a witness at any point in the disciplinary proceeding.

E. During the preliminary review of the defendant's Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the hearing officer shall consider a defendant's request for a witness.

(1) The hearing officer shall solicit a proffer from the defendant to determine the relevancy of the testimony in relation to the inmate rule violation charged.

(2) Based on the given proffer, a hearing officer shall permit a witness to testify if the witness' testimony is:

(a) Relevant;

(b) Not repetitive or cumulative to evidence already in the record of the disciplinary proceeding or to the proffered testimony of another witness; and

(c) Not a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

(3) A witness otherwise allowed under this regulation may be denied if there is reasonable belief that the witness's testimony would constitute a threat to security of the facility, Department, or community, or safety of an inmate, staff, or other individual.

F. The testimony of a witness may be taken in person, via video conferencing, or via conference call.

#### **.18 Disciplinary Proceeding Procedures — Preliminary and Evidentiary Phases — Confidential Informant Information.**

A. An individual providing information regarding the defendant's inmate rule violation charged may be identified as a confidential informant witness when there is cause to believe that identifying the individual to the defendant is a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

B. A hearing officer may not reveal the identity of a confidential informant witness.

C. If a hearing officer is provided with testimony, a written statement, or a report referring to information received from a confidential informant witness, the hearing officer:

(1) May not share the testimony or documented statement of the confidential informant witness with a defendant or the defendant's representative;

(2) May not reveal the identity of the confidential informant witness to the defendant or the defendant's representative;

(3) May not permit the confidential informant witness to be called as a requested witness at the defendant's disciplinary proceeding by a defendant, defendant's representative, if designated, the facility representative, or facility staff; and

(4) May provide to the defendant or defendant's representative an oral summary of the confidential informant witness's testimony or documented statement that is not specific in detail so as to identify the confidential informant witness.

D. The facility representative, if applicable, or staff may provide the defendant with a written summary of the confidential informant witness's testimony or documented statement that is not specific in detail so as to identify the confidential informant witness.

E. The hearing officer shall consider the information provided by the confidential informant witness to determine the credibility and reliability of the information provided.

F. Information provided by a confidential informant witness shall be concluded to be sensitive and maintained in a sealed record for only staff with a need to know to access the information or the identity of the confidential informant witness.

G. The identity of a confidential informant witness or any information that may identify a confidential informant witness, may not be released to any agency that maintains records that are a matter of public record without a court order or authorization from the Office of the Attorney General, Secretary, or a designee.

H. When the hearing officer concludes that an individual identified by staff as a confidential informant witness does not meet the requirements to be classified as a confidential informant witness, the following shall apply:

(1) The hearing officer shall postpone the disciplinary proceeding.

(2) The hearing officer shall inform the facility representative, if designated, or facility staff of the hearing officer's conclusion.

(3) The facility representative, if designated, or facility staff shall inform the managing official, or a designee, of the hearing officer's conclusion.

(4) If the managing official, or designee, agrees with the hearing officer, facility staff shall schedule the defendant for an appearance before a hearing officer and reveal the identity of the witness.

(5) If the managing official, or a designee, disagrees with a hearing officer's conclusion, the managing official, or designee, may appeal the hearing officer's decision to the Secretary, or a designee.

(6) Upon receipt of the Secretary's, or a designee's, decision regarding the appeal under §H(5) of this regulation, the facility representative, if designated, or facility staff shall schedule the defendant for an appearance before a hearing officer and all hearing participants, including the hearing officer, shall abide by the decision of the Secretary, or a designee.

**.19 Disciplinary Proceeding Procedures — Preliminary Review — Review of Attachment or Other Evidence Requests.**

A. An attachment or other evidence submitted by staff with or independently of the Notice of Inmate Rule Violation form shall be concluded to be evidence regarding the defendant's inmate rule violation charged.

B. In the interest of security of the facility, Department, or community or safety of an inmate, staff, or an individual, a defendant may be limited in or restricted from examining or possessing an attachment or other evidence.

C. To prevent and avoid accidental, unauthorized, or erroneous release to a defendant, defendant's representative, or loss or misplacement of evidence, staff shall retain custody of the attachment or other evidence until the defendant's appearance before the hearing officer.

D. Staff may not provide the defendant with a copy of an attachment or other evidence when the defendant is served with the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form.

E. When the defendant appears before the hearing officer for the preliminary review, the hearing officer, while conducting the preliminary review, shall advise the defendant or defendant's representative, of an attachment or other evidence that was submitted by the staff in regard to the inmate rule violation charged.

F. If requested by the defendant, or defendant's representative, the hearing officer shall conduct a review of the attachment or other evidence during the preliminary review to determine if there is cause to believe that the attachment or other evidence is security sensitive and may not be examined or possessed by a defendant or defendant's representative.

G. If the hearing officer determines an attachment or other evidence is not security sensitive the defendant or defendant's representative:

(1) May request to review the attachment or other evidence;

(2) Shall comply with the facility's existing rules or procedures for requesting a copy of an attachment or other evidence; and

(3) May not use a request for a copy of an attachment or other evidence as the basis to request a postponement or a delay in the defendant's disciplinary proceeding.

H. If the hearing officer determines that an attachment or other evidence submitted is security sensitive or may pose a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual if revealed to a defendant or defendant's representative, the hearing officer:

(1) Shall conclude the attachment or other evidence is a sealed record and not subject to the examination or possession by a defendant or defendant's representative;

(2) Shall inform the defendant or defendant's representative that the attachment or other evidence is security sensitive and may not be revealed to the defendant or the defendant representative;

(3) May not disclose to the defendant or defendant's representative the content of the attachment or other evidence deemed to be security sensitive; and

(4) May verbally provide the defendant or defendant's representative with a brief summary of the content of an attachment or other evidence as long as the summary does not compromise the content of the evidence identified as security sensitive.

I. If, after reviewing an attachment or other evidence, any hearing participant is not prepared to proceed, the hearing officer may grant a postponement.

J. If the disciplinary proceeding is postponed:

(1) The delay of the defendant's disciplinary proceeding may not be considered a cause to dismiss the inmate rule violation charged; and

(2) Staff shall reschedule the defendant's disciplinary proceeding as soon as circumstances permit.

K. Defendant Request for an attachment or other evidence.

(1) When served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list a detailed description of a request for an attachment or other evidence in the appropriate section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for evidence requests.

(2) The defendant's failure to give a detailed description of the attachment or other evidence requested shall be deemed a waiver of the defendant's opportunity to make the request.

L. The hearing officer may approve an attachment or other evidence requested by the defendant or defendant's representative only if the hearing officer finds that the request was made at service and deemed appropriate under this regulation.

(1) The hearing officer may not compel the production of an attachment or other evidence when denied by an entity, staff, or an individual in control of the requested attachment or other evidence that is identified as security sensitive.

(2) The hearing officer shall deny a request for an attachment or other evidence made by the defendant or defendant's representative that is deemed:

(a) Irrelevant to the merits of the defendant's disciplinary proceeding;

(b) Cumulative to a factual matter or evidence to be presented or already in the record of the defendant's disciplinary proceeding; or

(c) A threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

(3) The hearing officer may not permit a request for or inspection of an attachment or other evidence that includes, but may not be limited to, a security:

(a) Document not classified for examination by an inmate;

(b) Record not classified for examination by an inmate;

(c) Post order not classified for examination by an inmate;

(d) Emergency plan;

(e) Photograph not classified for examination by an inmate;

(f) Video monitoring record;

(g) Property, equipment, item, or device;

(h) Directive not classified for examination by an inmate;

(i) Testing equipment or the testing equipment supplies; or

(j) Confidential statement or notation regarding security sensitive information.

(4) The hearing officer shall deny a request to inspect evidence deemed to be contraband that includes, but may not be limited to:

(a) A tool;

(b) A drug or medication;

(c) Alcohol;

(d) A weapon;

(e) A controlled dangerous substance;

(f) A cellular telephone;

(g) Tobacco, or currency; or

(h) Escape or drug paraphernalia.

(5) If the hearing officer determines that an examination of security sensitive or contraband evidence is required, the hearing officer shall conduct the examination outside the presence of the defendant, defendant representative, or any other inmate.

(6) When the hearing officer determines that an examination of a security or video record is required, the hearing officer shall conduct the review outside the presence of the defendant, defendant representative, or any other inmate.

#### *M. Security Sensitive Information Presentation.*

(1) When investigating a defendant's conduct in an event, staff shall determine if a record, report, document, an attachment, or other evidence related to the defendant's conduct is security sensitive.

(a) To determine if information is security sensitive, staff shall consider if divulging the information establishes a potential threat to the security operations, intelligence gathering, investigation methods and techniques of the facility, Department, or public safety or an individual providing security sensitive information.

(b) If making a determination that information is security sensitive, staff may consider that the information:

(i) Was provided by an inmate, confidential informant witness, or individual whose identity, if revealed, may pose a threat to the safety of that inmate, confidential informant witness, or individual or security of the facility, Department, or community;

(ii) Would reveal the method, technique, or factual details of a security or intelligence investigation;

(iii) Would reveal the method, quality, design, and field of view or coverage by the facility security monitoring equipment or systems;

(iv) Could reveal facility security staffing plans, emergency plans, or operations; or

(v) Was obtained by a law enforcement agency, a State or federal intelligence office or unit, or the Department's Intelligence and Investigative Division.

(c) In cases where staff have cause to believe that releasing information arising from an investigation of the defendant's conduct in an event would compromise security operations or intelligence gathering, or investigation methods and techniques of the facility or Department, or the safety of the public or an individual providing information regarding the investigation, staff shall inform the hearing officer that the information is security sensitive and not release the security sensitive information or evidence to the defendant, defendant's representative, or other inmate.

(2) When the hearing officer concludes that an attachment or evidence is not security sensitive, but facility staff disagrees, the following shall apply:

(a) The hearing officer shall postpone the defendant's disciplinary proceeding.

(b) The hearing officer shall inform the facility representative, if designated, or facility staff of the hearing officer's conclusion.

(c) The facility representative, if designated, or facility staff shall inform the managing official, or a designee, of the hearing officer's conclusion.

(d) If the managing official, or a designee, agrees with the hearing officer that the attachment or evidence is not security sensitive and may be released to the defendant or defendant's representative, facility staff shall schedule the defendant for a disciplinary proceeding and reveal the attachment or other evidence deemed to be not security sensitive.

(e) If the managing official, or a designee, disagrees with a hearing officer, the managing official, or a designee, may appeal the hearing officer's decision to the Secretary, or a designee.

(f) Upon receipt of the Secretary's, or a designee's, decision regarding the appeal, the facility representative, if designated, or facility staff shall schedule the defendant for a disciplinary proceeding and all hearing participants, including the hearing officer, shall abide by the decision of the Secretary, or a designee.

(3) *Presentation of Security Sensitive Information at a Disciplinary Proceeding.*

(a) *The hearing officer:*

(i) May not provide detail regarding investigation methods or techniques used to obtain the security sensitive information, the specific content of security sensitive information, or the source providing the security sensitive information; and

(ii) May summarize the content of the security sensitive information that specifically relates to the inmate rule violation charged as long as that summary does not compromise the security sensitive nature of the factual details of the information being reviewed.

(b) The content and details of information obtained through the facility security video monitoring system may be summarized for the defendant or defendant's representative; however, the hearing officer may not reveal the specific capabilities or limitations of the facility's security monitoring system.

(c) The hearing officer may provide the defendant or defendant's representative with specific content information from a document the defendant authored.

(d) The hearing officer may not provide the defendant or defendant's representative with information for review that is identified as being a:

(i) Directive not classified for examination by an inmate;

(ii) Policy not classified for examination by an inmate;

(iii) Procedure not classified for examination by an inmate;

(iv) Photographic record not classified for examination by an inmate; or

(v) Material, file, record, or document not classified for inmate examination or by this regulation.

(e) The hearing officer may summarize for the defendant or defendant's representative security sensitive information deemed relevant to the outcome of the defendant's disciplinary proceeding as long as that summary does not reveal the specific content of the information under review.

(f) If the hearing officer is presented with security sensitive information obtained from a confidential informant witness during the defendant's disciplinary proceeding, the hearing officer may not reveal any information that may disclose the identity of the confidential informant witness.

(4) When issuing a written decision that includes security sensitive information, the hearing officer shall summarize for the record the security sensitive information considered in rendering the decision as to the inmate rule violation charged and ensure that the summary does not reveal the specific details of the security sensitive information.

(5) *Post Hearing Procedures.*

(a) The managing official, or a designee, may review security sensitive information when conducting a review of the hearing officer's decision as to the inmate rule violation charged.

(b) Staff shall preserve the security sensitive information, by ensuring that the security sensitive information is not included in the defendant's case record file.

(c) Security sensitive information may not be released to another State agency without a court order or authorization from the Office of the Attorney General, Secretary, or a designee.

*N. Security Monitoring Video Record.*

(1) If the reported event that is the subject of the inmate rule violation charged was recorded by the facility's security monitoring system:

(a) The defendant or defendant's representative is required to request at the time of service that the video record be preserved and made available for the hearing officer to review as part of the defendant's case presentation and the request made at service is required to be renewed during the preliminary phase of the defendant's disciplinary proceeding; or

(b) The facility representative, if designated, or facility staff may request during the preliminary phase of the defendant's disciplinary proceeding that the hearing officer view the video record as part of the facility's case presentation.

(2) If the video has been preserved and is available for inspection, the hearing officer shall conduct a review, without examination by any inmate, of the requested video recording.

***.20 Disciplinary Proceeding Procedures — Preliminary Phase — Defendant Plea.***

*A. Before concluding the preliminary phase of the defendant's disciplinary proceeding, the hearing officer shall request a plea from the defendant as to each inmate rule violation charged.*

***B. The Plea.***

*(1) When entering a plea for each inmate rule violation charged, the defendant may enter only one of the following for each inmate rule violation charged:*

- (a) Guilty;*
- (b) Not Guilty;*
- (c) Not Competent; or*
- (d) No plea.*

*(2) Guilty Plea. If the defendant enters a guilty plea to the inmate rule violation charged, the hearing officer, before accepting the guilty plea, shall determine the defendant understands that the guilty plea is:*

- (a) A waiver by the defendant of the inmate disciplinary process and appeal rights;*
- (b) An admission by the defendant that the defendant committed the inmate rule violation charged; and*
- (c) An affirmation that the defendant's guilty plea is voluntary.*

*(3) If the hearing officer accepts the plea of guilty, the hearing officer shall proceed to the sanction phase of the defendant's disciplinary proceeding.*

*(4) Once the hearing officer accepts the guilty plea, the defendant is considered to:*

*(a) Waive a claim that there was a delay, an error, or a denial of a time or procedural requirement applicable to the inmate disciplinary process;*

*(b) Admit to committing the inmate rule violation charged;*

*(c) Waive a claim that there was a due process or statutory requirement violation applicable to the inmate disciplinary process;*

*(d) Waive a claim of an evidentiary error; and*

*(e) Waive a claim that the conviction is not supported by substantial evidence.*

*(5) The hearing officer upon accepting the defendant's guilty plea to an inmate rule violation charged shall determine the sanction, period of the sanction, and effective date of the sanction to impose.*

*(6) If the hearing officer does not accept the guilty plea, the hearing officer shall proceed with the case presentation phase of the defendant's disciplinary proceeding.*

*(7) Not Guilty Plea. If the defendant enters a not guilty plea for an inmate rule violation charged, the hearing officer shall:*

*(a) Conclude the defendant denies committing the inmate rule violation charged;*

*(b) Enter the not guilty plea in the written and audio records of the defendant's disciplinary proceeding; and*

*(c) Proceed with the case presentation phase of the defendant's disciplinary proceeding.*

*(8) Not Competent. If the defendant enters a plea of Not Competent, the hearing officer or facility representative, if designated, or facility staff shall postpone the case, if necessary, and contact the facility's mental health staff and request that staff determine whether the defendant is competent to participate in the disciplinary proceeding and whether the defendant was competent to understand and control the alleged behavior at the time of the offense.*

*(9) No Plea. If the defendant does not enter a plea to an inmate rule violation charged, the hearing officer shall enter a Not Guilty plea on behalf of the defendant and proceed in accordance with §B(7) of this regulation.*

***C. Plea Agreement.***

*(1) The hearing officer or facility representative, if designated, or facility staff and the defendant, or defendant's representative may enter into a plea agreement to resolve the inmate rule violation charged.*

*(2) The use of a plea agreement is discretionary and voluntary, and the plea agreement is not required to be offered or accepted by the hearing officer, staff, or defendant.*

*(3) The use of a plea agreement permits the facility representative, if designated, facility staff, shift supervisor or shift commander, hearing officer, or the defendant or defendant's representative to propose a plea agreement to resolve the inmate rule violation charged that shall include:*

*(a) A guilty plea or acceptance of an informal resolution by the defendant to one or more of the inmate rule violations charged; and*

*(b) The sanction, period of the sanction, and effective date of the sanction applicable to the inmate rule violation found guilty or disposed of informally.*

*(4) The facility representative, if designated, facility staff, shift supervisor or shift commander, or hearing officer is not obligated to offer a plea agreement to or consider a proposed plea agreement by the defendant or defendant's representative.*

*(5) The hearing officer is not obligated to accept all or part of the proposed plea agreement including the defendant's guilty plea, sanction, or period of sanction to be imposed for the inmate rule violation charged.*

*(a) The hearing officer is not obligated to accept the sanction recommended; and*

*(b) The hearing officer may accept the guilty plea, but increase the period of the sanction recommended and add additional sanctions.*

*(6) A plea agreement may be offered at any time before or during the preliminary hearing or before or during the case presentation portion of the disciplinary proceeding.*

## ***.21 Pre-Disciplinary Proceeding Procedures — Case Presentation***

*A. The defendant or the defendant's representative or the facility representative, if designated, or facility staff may present evidence and argument as part of the presenting party's case presentation during the evidentiary phase of the defendant's disciplinary proceeding.*

*(1) The defendant's refusal or failure to appear before the hearing officer or the defendant's removal from the defendant's disciplinary proceeding shall be considered a waiver of the defendant's opportunity to make a case presentation during the evidentiary phase of the defendant's disciplinary proceeding.*

*(2) The defendant or the defendant's representative or the facility representative and not the hearing officer, are responsible for presenting evidence requested by the defendant or the defendant's representative or the facility representative or call approved witnesses as part of the presenting party's case presentation during the evidentiary phase of the defendant's disciplinary proceeding.*

*(3) If the defendant or the defendant's representative or the facility representative, if designated, or facility staff do not present the requested evidence or call an approved witness during the presenting party's case presentation prior to the hearing officer closing the evidentiary record of the defendant's disciplinary proceeding, the opportunity to present evidence or call the witness is considered to be waived.*

*B. The facility representative may make an evidentiary case presentation on behalf of the facility as part of a defendant's disciplinary proceeding for an inmate rule violation charged for consideration by the hearing officer.*

*C. If a facility representative was not designated, the hearing officer shall consider the report found in the defendant's Notice of Inmate Rule Violation form, an attachment, or other evidence that may have been submitted by staff as to the inmate rule violation charged as the facility's evidentiary case presentation.*

*D. The defendant's representative or, in the absence of a representative, the defendant, may elect to make an evidentiary case presentation in response to the inmate rule violation charged for consideration by the hearing officer.*

### ***E. Testimony.***

*(1) Testimony of a witness permitted by the hearing officer shall be under an oath administered by the hearing officer.*

*(2) Before a permitted witness testifies, the hearing officer shall use the following oath to swear in the witness at the defendant's disciplinary proceeding: "Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to give at this disciplinary proceeding shall be the truth, the whole truth, and nothing but the truth?"*

*(3) The witness is required to provide an affirmative response to the oath before the witness begins to testify.*

*(4) The hearing officer may limit the scope of testimony presented by or questioning of a requested witness:*

*(a) If it is determined that the testimony may pose a risk to the security of the facility, Department, or community or safety of an inmate, staff, or an individual; or*

*(b) If the testimony by or questioning of the requested witness is:*

*(i) Irrelevant to the merits of the defendant's disciplinary proceeding; or*

*(ii) Cumulative to a factual matter or evidence already in the record of the defendant's disciplinary proceeding.*

*(5) A hearing officer may elect to call a witness or view evidence not requested by either hearing participant in order to clarify:*

*(a) Evidence presented;*

*(b) A fact in evidence; or*

*(c) A policy, procedure, or practice.*

*(6) A witness may not be compelled by the hearing officer to make an appearance, testify, or answer a question asked.*

*(7) If the witness refuses to appear, testify, or answer a question asked, the hearing officer may not dismiss the rule violation charged due to the failure of the witness to appear, testify, or answer a question asked.*

*(8) If the witness who has refused or failed to testify is a staff member, the hearing officer may, but is not required to, draw a negative inference from the refusal to testify.*

*(9) The facility representative, the defendant and the hearing officer may question a witness giving testimony except that if the defendant has a representative, only the representative, and not the defendant, may question a witness giving testimony.*

### ***F. Inmate Medical Information Presentation.***

*(1) A defendant's request for the defendant's own medical records as evidence shall be concluded to be the defendant's authorization for staff to obtain and disseminate the medical record requested by the defendant and to include that medical record in the case record.*

*(2) The failure of the defendant to list the requested defendant medical record as an evidence request at service of the Notice of Inmate Rule Violation form and Notice of Disciplinary Hearing form shall be concluded to be a waiver of the opportunity to request the medical record.*

*(3) A defendant may not review another inmate's medical record.*

*(4) Upon the making of a proffer by the defendant that another inmate's medical record would contain relevant and non-cumulative evidence, the hearing officer may view the evidence in camera without releasing the information to the defendant.*



(5) Upon approval of the managing official, a staff member shall have access to an inmate's medical record if the record contains evidence that is relevant to the case, and disclosure of the medical record to the staff member is necessary for an investigation or a disciplinary proceeding.

(6) The hearing officer may:

(a) By e-mail or conference call, request facility medical unit staff to provide inmate medical information deemed relevant and necessary by the hearing officer for the purposes of the defendant's disciplinary proceeding; and

(b) Review an inmate medical record if the hearing officer determines that review of a medical record is necessary for the disposition of the inmate rule violation charged regardless of whether the inmate who is the subject of the medical record has signed a written release of the inmate's medical information.

G. The hearing officer may:

(1) Prior to rendering a decision as to the inmate rule violation charged, consider if the defendant has a disciplinary conviction history for each inmate rule violation charged; and

(2) Consider the disciplinary conviction history in determining whether the defendant committed the inmate rule violation charged; but

(3) May not render a decision as to the defendant's inmate rule violation charged based solely on the defendant's disciplinary conviction history or the lack thereof.

H. Prior to closing the record, the hearing officer may consider any information available to the hearing officer in an official database maintained or used by the Department such as, but may not be limited to:

(1) The Offender Based State Correctional Information System (OBSCIS);

(2) Offender Case Management System (OCMS);

(3) Criminal Justice Information System (CJIS);

(4) Any telecommunication provider to the Department;

(5) The SafetyNet including the Department's policies and procedures;

(6) Any inmate's electronic case file or hard copy base file; or

(7) Department memoranda, regulations, directives, notices, or bulletins.

I. The hearing officer is permitted to take official or administrative notice of facts without the benefit of adversarial presentation of evidence.

(1) The hearing officer shall advise the parties of the findings of fact of which the hearing officer has taken official or administrative notice.

(2) The hearing participants shall be given an opportunity to rebut, through argument, any relevant facts that the hearing officer would otherwise presume to exist under the doctrine of official or administrative notice.

J. The defendant's representative or, in the absence of a representative, the defendant and the facility representative may raise objections.

(1) When considering an objection, the hearing officer may:

(a) Allow the opposing party the opportunity to comment on the merits of the objection raised; and

(b) Consider the merits of the objection.

(2) The hearing officer shall inform all parties of the hearing officer's decision to sustain or overrule the objection raised.

K. Facility Case Presentation.

(1) The facility bears the burden to prove that it is more likely than not that the defendant committed the inmate rule violation charged.

(2) The facility's case presentation as to the inmate rule violation charged may include, but may not be limited to:

(a) Argument on the merits of evidence that may be or was presented at the defendant's disciplinary proceeding for the inmate rule violation charged;

(b) Presentation of evidence;

(c) Testimony by the facility representative; or

(d) Calling or questioning a witness.

(3) If designated, the facility representative shall:

(a) Make the case presentation for the facility; and

(b) Include in the facility's case presentation:

(i) The event report found in the Notice of Inmate Rule Violation form; and

(ii) If applicable, an attachment or other evidence submitted by staff regarding the inmate rule violation charged.

(4) In the absence of the facility representative, the hearing officer shall accept as the facility's case presentation:

(a) The report found in the defendant's Notice of Inmate Rule Violation form; and

(b) If applicable, an attachment or other evidence submitted by staff regarding the inmate rule violation charged.

(5) The facility, and not the hearing officer, has the burden of presenting evidence or calling a permitted witness as part of the facility's case presentation prior to the hearing officer closing the evidentiary record.

(6) The failure of the facility to present requested evidence or call a permitted witness prior to the hearing officer closing the evidentiary record shall be concluded to be a waiver of the opportunity to present the requested evidence or call a witness.

(7) The failure of the facility representative to question a witness at the time the witness is called or after giving testimony, prior to the witness being excused, shall be concluded to be a waiver of the opportunity to question that witness.

*L. Defendant Case Presentation.*

(1) The defendant may make an evidentiary case presentation in accordance with this regulation.

(2) The defendant is not obligated to make an evidentiary case presentation; and

(3) The failure of the defendant to make an evidentiary case presentation may not be considered as an adverse inference toward the defendant or concluded to be an admission of guilt.

(4) If the defendant has designated a representative, only the representative may question witnesses and make arguments.

(5) The defendant's evidentiary case presentation may include:

(a) Argument on the evidentiary merits of evidence that was presented by the facility or on the inmate rule violation charged;

(b) Presentation of evidence;

(c) Testimony, if volunteered, by the defendant; and

(d) Presenting witness testimony.

(6) The defendant is not obligated to testify as part of the defendant's evidentiary case presentation.

(7) If the defendant testifies as part of the defendant's evidentiary case presentation and is questioned by the hearing officer or the facility representative, the defendant is obligated to and shall respond to the question asked.

(8) The hearing officer may draw an adverse inference to the defendant's evidentiary case presentation if the defendant, after giving testimony:

(a) Refuses or fails to answer a question asked; or

(b) Evades answering a question asked.

(9) The defendant, and not the hearing officer, has the burden of presenting requested evidence or calling a requested and permitted witness as part of the defendant's case presentation prior to the hearing officer closing the evidentiary record.

(10) The failure of the defendant to present requested evidence or call a requested witness during the defendant's case presentation prior to the hearing officer closing the evidentiary record shall be concluded to be a waiver of the opportunity to present the requested evidence or call a requested witness.

(11) The failure of the defendant to question a witness at the time the witness is called or after giving testimony prior to the witness being excused shall be concluded to be a waiver of the defendant's opportunity to question the witness.

*M. Non-Staff Witness Request.*

(1) The appearance of an individual as the requested witness, who is not identified as staff, is voluntary and that individual may not be compelled to:

(a) Appear;

(b) Give testimony; or

(c) Answer a question asked.

(2) A requested non-staff witness may not be permitted if the individual requires a staff escort or transportation by vehicle to the location of the defendant's disciplinary proceeding.

(3) A requested non-staff witness may be permitted to testify, at the discretion of the hearing officer, by telephone conference call.

*N. Staff Witness Request.*

(1) When approved by the hearing officer, staff is required to appear, testify, and respond directly to questions asked by the defendant or defendant's representative, the facility representative, or the hearing officer.

(2) The hearing officer may direct staff not to answer a question and may direct a hearing participant to ask a different question if the hearing officer determines the question asked is:

(a) Irrelevant;

(b) Cumulative or repetitive; or

(c) Argumentative or abusive.

(3) If the staff witness requests the opportunity to review a report or other evidence prior to or after being asked a question, the hearing officer shall permit staff the opportunity to review the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, a report, an attachment, or other evidence prior to answering a question.

(4) If staff refuse or fail to make an appearance, testify, or answer a question asked, the hearing officer may:

(a) Conclude that the witness willfully elected not to appear, testify, or answer the question asked; and

(b) Draw an adverse inference to the facility's case presentation as to the inmate rule violation charged.

*O. Security Sensitive Testimony.* If testimony of a requested witness is determined to be security sensitive, the hearing officer, in order to preserve the security and safety of the witness:

(1) May take testimony from the witness in-person or by telephone conference call without the defendant, defendant's representative, or facility representative present;

(2) May, if safety and security permit, provide the defendant, the defendant's representative, or the facility representative with a general summary of the security sensitive testimony taken from the witness, but may not provide factually detailed content of the testimony deemed security sensitive; and

(3) May, if safety and security require, only advise the defendant, the defendant's representative, or the facility representative that, for the purposes of the record of the defendant's disciplinary proceeding, the testimony is security sensitive and may not be revealed.

**P. Telephone Conference Call — Witness Testimony.**

(1) The hearing officer may elect, for convenience of the witness or hearing participants, or to ensure that the hearing is held in a timely manner, to use a telephone conference call to take testimony from a requested witness.

(2) The hearing officer shall, prior to the giving of testimony, advise the individual testifying that the testimony is audio recorded.

**Q. Rebuttal Presentation and Closing Argument.**

(1) The hearing officer, at the conclusion of the defendant's case presentation, shall provide the facility representative the opportunity to rebut the evidentiary case presentation of the defendant by presenting additional evidence and calling a witness.

(2) The hearing officer may provide the defendant and the facility representative the opportunity to make a closing argument.

R. If the defendant waived the defendant's disciplinary proceeding, the hearing officer shall conclude that the defendant waived the opportunity to make an evidentiary case presentation.

S. Prior to closing the evidentiary record, the hearing officer shall inquire of both the defendant or defendant's representative and the facility representative whether the case presentation of both parties has concluded.

T. At the conclusion of the case presentation by both the defendant or defendant's representative and the facility representative, the hearing officer shall advise the hearing participants that the evidentiary record of the defendant's disciplinary proceeding is closed.

U. If the hearing officer determines there is no other matter to be considered, that has not already been presented or addressed, the hearing officer may close the evidentiary record and proceed to the fact finding and decision phase of the defendant's disciplinary proceeding without the consent of the parties.

**.22 Disciplinary Proceeding Procedures — Fact Finding and Decision Phase — Rendering the Decision.**

A. After closing the case presentation portion of the defendant's disciplinary proceeding, the hearing officer shall weigh and consider the evidence presented during the defendant's disciplinary proceeding and:

(1) Determine from the evidence presented, which evidence is credible and reliable;

(2) Determine from the credible and reliable evidence the findings of fact as to the inmate rule violation charged; and

(3) Render a decision as to whether the defendant did or did not commit the inmate rule violation charged based on the findings of fact.

B. When rendering the decision as to the inmate rule violation charged, the hearing officer shall decide if the evidence determined to be credible and reliable:

(1) Proves more likely than not that the defendant did commit the inmate rule violation charged, in which case the hearing officer shall enter a guilty decision for the inmate rule violation charged; or

(2) Does not prove more likely than not that the defendant committed the inmate rule violation charged, in which case the hearing officer shall enter a not guilty decision for the inmate rule violation charged.

C. When entering the decision, the hearing officer shall:

(1) Enter the applicable decision for each inmate rule violation charged; and

(2) Inform the defendant or defendant's representative and the facility representative of the decision for each inmate rule violation charged.

D. When the hearing officer finds that a report submitted as evidence during the disciplinary proceeding is factually credible and reliable, the report may be the sole basis for the hearing officer to render the disposition of an inmate rule violation charged.

**.23 Disciplinary Proceeding Procedures — Sanction Phase — Imposing a Sanction.**

A. If the hearing officer renders a decision that the defendant is guilty of the inmate rule violation charged, the hearing officer shall permit the defendant or defendant's representative and the facility representative the opportunity to present arguments on the possible sanction or sanctions for the inmate rule violation for which the defendant was found guilty (If the defendant is represented, the representative, and not the defendant, shall present the argument for or against sanctions).

B. The hearing officer shall inform the defendant or defendant's representative and the facility representative of the:

(1) Sanction imposed; and

(2) Period and effective date of the sanction imposed.

C. A Sanction imposed becomes effective on the date determined by the hearing officer.

D. A sanction may include:

(1) Disciplinary segregation housing;  
(2) Cell or bunk restriction;  
(3) Revocation of earned good conduct or special project credits, or both, that may:  
(a) Be applied to a sentenced inmate; and  
(b) Except as provided in Regulation .25 of this chapter, be applied to a non-sentenced defendant later sentenced regardless of when the conduct underlying the inmate rule violation charged occurred or when the sanction was imposed.

- (4) Suspension of an inmate privilege established by the Department or facility;  
(5) Restitution;  
(6) Reprimand; or  
(7) Sanitation assignment.

E. The hearing officer when imposing a sanction or the period of the sanction may consider either aggravating or mitigating factors associated with the inmate rule violation resulting in a guilty finding or informal disposition to either enhance or reduce the severity of the sanction and or period of the sanction.

F. The hearing officer prior to imposing a sanction and period of the sanction shall weigh and consider the defendant's inmate rule violation history as documented by the defendant's case record covering the:

- (1) Current period of incarceration; and  
(2) Previous period or periods of incarceration prior to the current incarceration.

G. Except as provided in Regulation .25 of this chapter, all sanctions, including loss of earned credits, may be applied to the current term of confinement even if the conduct underlying the conviction occurred on a previous term of confinement or while the defendant was classified as a pre-trial inmate.

H. A sanction being served by a defendant shall be suspended and subsequently resumed at the time when the defendant:

(1) Has been released from the custody of a Department correctional facility upon expiration of sentence, release on mandatory supervision, parole, or by order of court, and is later returned to the custody of a Department correctional facility due to a new or outstanding court commitment or on warrant for a mandatory supervision or parole violation;

(2) Was temporarily out of custody due to an escape, erroneous release, or medical or mental health admission and is later returned to the custody of a Department correctional facility; or

(3) Is under the custody and supervision of another jurisdiction or agency due to security reasons, on a detainer, or writ, and is later returned to the custody of the Department.

#### **.24 Determination of Defendant's Adjustment History — Credits and Segregation.**

A. When imposing the sanction of revocation of credits and disciplinary segregation, the hearing officer shall determine the appropriate sanction by using the defendant's adjustment history.

B. If a defendant is found guilty of the inmate rule violation charged, the hearing officer shall:

- (1) Review the Adjustment History Sentencing Matrix, established under Regulation .27 of this chapter;  
(2) Identify the category of the inmate rule violation of which the defendant was found guilty;  
(3) Determine by a database maintained by the Department or the defendant's case record the defendant's adjustment history;

(4) Plot the credits that may be revoked or the days of segregation that may be imposed based on the intersection of the category of the inmate rule violation of which the defendant was found guilty and the defendant's adjustment history; and

(5) Determine if the sanction for revoking credits and the number of days of disciplinary segregation is recommended or mandatory.

C. Plotted Sanction Cell.

(1) The plotted sanction may be stated as either a:

- (a) Specific number of credits or days; or  
(b) Range with the minimum to maximum number of credits or days that may be imposed.

(2) Except for provisions under §E of this regulation, only sanctions stated in the Adjust History Sentencing Matrix for revoking credits or assigning segregation are to be imposed.

D. Adjustment History. The Adjustment History Sentencing Matrix identifies a defendant's level of adjustment history based on previous inmate rule violations as follows:

(1) First Offense, if the current inmate rule violation is the first guilty finding on record in any category of inmate rule violation under any incarceration; or

(2) Second Offense, if the current inmate rule violation is the second guilty finding on record in any category of inmate rule violation under any incarceration; or

(3) Third Offense, if the current inmate rule violation is the third or greater guilty finding on record in any category of inmate rule violation under any incarceration.

E. Overriding an Adjustment History Matrix Sanction.

(1) If the hearing officer disagrees with the sanction plotted using the Adjustment History Sentencing Matrix, the hearing officer may override the adjustment history level of the defendant to another level (First, Second or Third Offense).

(2) An override under this regulation may be for the purpose of enhancing or reducing the severity of the sanction determined by the Adjustment History Sentencing Matrix due to an aggravating or mitigating factor, whereby the hearing officer may:

- (a) Waive the adjustment history level as determined by the Adjustment History Sentencing Matrix; and
- (b) Select an alternative adjustment history level from the Adjustment History Sentencing Matrix.

(3) An override to enhance the severity of the sanction may be based on one or more of the following aggravating or mitigating factors:

- (a) A prior guilty finding for the same inmate rule violation as the current guilty finding;
- (b) Threat to security or safety of an individual or the facility;
- (c) An attempt to introduce contraband into a facility;
- (d) Refusal to submit to a required medical examination or test, submit to DNA sampling, or a refusal to be fingerprinted; or
- (e) The need for progressive discipline.

(4) An override to reduce the severity of a sanction may be based on one or more of the following mitigating factors:

- (a) No prior guilty finding for the current inmate rule violation;
- (b) The period of time since the last conviction on record;
- (c) The lesser severity of the current guilty finding;
- (d) The defendant's mental health status at the time the inmate rule violation occurred;
- (e) The need for progressive discipline; or
- (f) The defendant's acceptance of responsibility for the current inmate rule violation for which the defendant was found guilty.

(5) The hearing officer may not override an adjustment history sentencing matrix sanction stated in a sanction cell by suspending the sanction and imposing a period of probation.

(6) If employing an override under this regulation, the hearing officer shall identify in the written and audio record of the defendant's disciplinary proceeding, the aggravating or mitigating factor used to impose the sanction.

F. A sanction once imposed may not be affected by a later modification of the defendant's disciplinary adjustment history record.

#### **.25 Adjustment History Sentencing Matrix — Revocation of Credits.**

A. Earned credits may only be revoked as a sanction imposed for an inmate rule violation of which the defendant was found guilty.

B. If sanctioning authorized under this regulation permits revoking diminution credits and the inmate rule violation occurred while the defendant was confined in a Department correctional facility in pre-sentence status, the hearing officer may:

- (1) Revoke diminution credits awarded for good conduct during the month that the inmate rule violation occurred;
- (2) Revoke diminution credits awarded for good conduct in addition to the credits awarded during the month that the inmate rule violation occurred, if the hearing officer determines that an aggravating factor warrants the revocation of additional credits; and
- (3) Not revoke diminution credits earned for participation in special projects or work assignments.

C. The hearing officer, in accordance with §B of this regulation, shall revoke earned credits as a sanction in accordance with the Adjustment History Sentencing Matrix, as established under Regulation .27 of this chapter for all Category IA, IB, and II inmate rule violations.

D. The hearing officer, in accordance with §B of this regulation, may

- (1) Revoke earned credits as a sanction in accordance with the Adjustment History Sentencing Matrix, established under Regulation .27 of this chapter for Category III, IV, or V violations;
- (2) Impose an alternative sanction established under Regulation .28 of this chapter; or
- (3) Impose as a sanction a combination of revoking credits and alternative sanctions.

E. If a defendant is found guilty of multiple inmate rule violation charges involving more than one category of inmate rule violations that occurred during a single reported event, the hearing officer shall, if the inmate rule violations charged result in guilty findings:

- (1) Include a Category II Inmate Rule Violation, revoke all available earned credits; or
- (2) Do not include a Category II Inmate Rule Violation, only revoke the number of earned credits based on the one inmate rule violation resulting in a guilty finding that is from the most severe category of the inmate rule violations.

F. Except for provisions under §B of this regulation, if a defendant's good conduct credit balance is insufficient to cover the number of earned credits revoked imposed as the sanction, the deduction for the negative balance of earned

credits due shall be applied by staff, in whole or in part, against the balance of the defendant's special project credits on record.

G. Revocation of earned credits may be imposed independently of or in conjunction with:

- (1) Disciplinary segregation; or
- (2) Alternative disciplinary sanctions.

**.26 Adjustment History Sentencing Matrix — Imposing Disciplinary Segregation.**

A. Disciplinary Segregation Sanction.

(1) The hearing officer shall indicate the effective date for the disciplinary segregation sanction imposed.

(2) If the defendant is on administrative segregation pending the outcome of the defendant's disciplinary proceeding or was on administrative segregation pending investigation of the event that is the basis of the inmate rule violation charged for which the defendant was found guilty, the defendant shall be credited for the period served on administrative segregation from the date of placement only toward:

- (a) Cell restriction; or
- (b) Disciplinary segregation if imposed as a sanction.

(3) If the defendant was not on segregation prior to the defendant's disciplinary proceeding, the effective date for the disciplinary segregation sanction imposed shall be the same date of the defendant's disciplinary proceeding and begin immediately.

(4) Disciplinary segregation sanctions may not be imposed consecutively.

B. Disciplinary segregation may be imposed independently of or in conjunction with:

- (1) Revocation of earned credits; or
- (2) Alternative disciplinary sanctions.

**.27 Adjustment History Sentencing Matrix.**

Category Inmate Rule Violation	Defendant Adjustment History Levels		
	First Offense	Second Offense	Third+ Offense
IA	Credits 60—90 Seg 0—60	90—180 0—90	180—365 0—180
IB	Credits 30—60 Seg 0—30	60—90 0—60	90—180 0—90
II	Credits ALL CREDITS Seg 0	ALL CREDITS 0	ALL CREDITS 0
III	Credits 0—15 Seg 0—15	15—30 0—30	30—60 0—60
IV	Credits 0—5 Seg 0	5—15 0	15—30 0
V	Credits 0 Seg 0	0 0	0 0

**.28 Alternative Disciplinary Sanctions and Informal Disposition Sanctions.**

A. Privilege Suspension.

(1) Suspension of a defendant's Department or facility inmate privileges may be imposed as a sanction for an inmate rule violation of which the defendant was found guilty or as part of an offer of informal disposition.

(2). Suspension of Department or facility inmate privileges is based on the judgment of the hearing officer or staff offering the informal disposition.

(3) The hearing officer or staff may suspend a defendant's Department or facility inmate privileges as a sanction for the period specified under this regulation.

(4) Staff may:

- (a) Only impose a sanction as part of an informal disposition agreed to by the defendant; and
- (b) Not impose a sanction while the defendant is pending a disciplinary proceeding.

(5) A defendant may be placed on administrative segregation pending a disciplinary proceeding for safety or security reasons.

*B. Informal Disposition or Alternative Disciplinary Sanctions.*

*(1) An informal disposition sanction or alternative disciplinary sanction is separate and distinct from the revoking of earned credits and disciplinary segregation as a sanction.*

*(2) The hearing officer or staff when offering a defendant an informal disposition shall include a sanction from the sanctions listed under §C of this regulation.*

*(3) The hearing officer may impose an alternative disciplinary sanction listed under §D of this regulation for the defendant's inmate rule violation resulting in a guilty finding.*

*(4) An alternative disciplinary sanction may be imposed independently of or in conjunction with:*

*(a) Another alternative disciplinary sanction;*

*(b) Revoking earned credits; or*

*(c) Disciplinary segregation.*

*C. Informal Disposition Sanctions. The following may be imposed as a sanction under an informal disposition:*

*(1) Reprimand;*

*(2) Sanitation assignment for a specific period up to but not to exceed 15 calendar days;*

*(3) Restitution;*

*(4) Suspension of any of the following privileges:*

*(a) Radio, compact disc or tape player, digital music player, video game player, television, telephone, or commissary, privileges excluding personal hygiene and legal correspondence items, for a specified period up to but not to exceed 30 calendar days;*

*(b) Catalog privileges for a specified period up to but not to exceed 180 calendar days;*

*(c) Visitation privileges, except legal and clergy, for a specified period up to but not to exceed 30 calendar days;*

*(d) A specified Department or facility inmate privilege not included in this regulation for a specified period up to but not to exceed 30 calendar days; or*

*(5) Cell restriction for a specified period up to but not to exceed 15 calendar days.*

*D. The following may be imposed as a sanction under an alternative disciplinary sanction:*

*(1) Reprimand;*

*(2) Sanitation assignment for a specified period up to but not to exceed 30 calendar days;*

*(3) Restitution;*

*(4) Suspension of any of the following privileges:*

*(a) Radio, compact disc or tape player, television, telephone, or commissary, excluding personal hygiene and legal correspondence items, privileges for a specified period up to but not to exceed 60 calendar days;*

*(b) Catalog privileges for a specified period up to but not to exceed 365 calendar days;*

*(c) Visitation privilege, except legal and clergy, for a specified period up to but not to exceed 60 calendar days; or*

*(d) A Department or facility privilege not included in this regulation for a specified period up to but not to exceed 60 calendar days; or*

*(5) Cell restriction for a specified period up to but not to exceed 30 calendar days.*

*E. Cell restriction under this regulation:*

*(1) Shall include a requirement that the defendant is restricted to a designated location and prohibited from participation in all Department or facility inmate privileges and activities to include recreation and commissary; but*

*(2) May not prohibit the defendant from participation in:*

*(a) Work, program, or school assignments;*

*(b) Meals as scheduled by the facility;*

*(c) Shower periods as scheduled and permitted by the facility staff for an inmate designated cell restriction status;*

*(d) Visitation periods as scheduled and permitted by the facility's rules;*

*(e) Facility passes as scheduled and permitted by facility staff;*

*(f) A religious service as scheduled and permitted by the facility's rules;*

*(g) Case management, medical, or psychological appointments as scheduled and permitted by facility staff; and*

*(h) Commissary purchases of personal hygiene and legal correspondence items permitted by the facility's rules.*

*(3) Cell restriction and segregation may not be served or imposed concurrently.*

**.29 Mandatory Suspension — Visitation Privileges.**

*A. Visitation Privilege Suspension.*

*(1) Except for legal and clergy visitation, suspension of a defendant's visitation privileges under this regulation is mandatory.*

*(2) The hearing officer shall suspend a defendant's visitation privileges as a sanction if the inmate rule violation resulting in a guilty finding involves one or more of the inmate rule violations listed under §C of this regulation.*

*B. Period of Visitation Privilege Suspension.*

(1) The period of suspension of a defendant's visitation privileges imposed as a sanction is determined by the number of occurrences of the inmate rule violations listed under §C of this regulation.

(2) First Occurrence. The mandatory suspension of the defendant's visitation privileges shall be imposed for a period of 3 months if the inmate rule violation resulting in a guilty finding involves one or more of the inmate rule violations listed under §C of this regulation.

(3) Second Occurrence. If after a first occurrence of one or more of the inmate rule violations listed under §C of this regulation a defendant is again found guilty of one or more of the inmate rule violations listed under §C of this regulation, the defendant's visitation privileges shall be suspended for a period of 6 months.

(4) Third or Greater Occurrence. If after a second occurrence of visitation privilege suspension a defendant is again found guilty of an inmate rule violation that involves one or more of the inmate rule violations listed under §C of this regulation, the defendant's visitation privileges shall be suspended for a period of 1 year.

(5) The start date of the visitation privilege suspension shall be the date the sanction is imposed.

C. An inmate rule violation requires the mandatory suspension of visiting privileges if the current finding of guilt:

(1) Is for a Category IA Violation;

(2) Is related to an attempt to introduce contraband into a facility; or

(3) Is for a violation related to the inmate visiting privilege.

D. Restoration of Inmate Visitation Privileges. A managing official may vacate or modify a period of a defendant's suspension of visitation privileges at any time that is imposed as:

(1) A mandatory sanction under this regulation; or

(2) An alternative sanction.

### **.30 Disciplinary Proceeding Procedures — Post Disciplinary Proceeding Phase — The Hearing Officer's Decision and Case Record.**

A. Hearing Officer's Decision.

(1) The hearing officer, at the conclusion of a defendant's disciplinary proceeding shall prepare a written decision documenting the decision rendered.

(2) The hearing officer's written decision regarding the defendant's disciplinary proceeding shall include:

(a) Preliminary matters raised by hearing participants during the preliminary hearing;

(b) A summary of the evidence and testimony presented during the case presentation by the defendant, if applicable the defendant's representative, if applicable facility representative, or facility staff;

(c) A summary of the evidence found credible and reliable;

(d) The findings of fact made by the hearing officer;

(e) The disposition of each inmate rule violation charged;

(f) The sanction and period of the sanction imposed for each inmate rule violation resulting in a guilty finding;

and

(g) If applicable, documentation for the informal resolution accepted by the defendant.

B. Service of the Decision. Upon receipt of the hearing officer's written decision, facility staff shall serve the defendant with a copy of the hearing officer's decision within 3 business days following the date of the hearing officer's decision.

C. The facility representative, if designated, or designated facility staff shall follow the process established by the managing official, or a designee, for the defendant's housing facility for distribution of the hearing officer's decision that includes:

(1) Advising appropriate staff of the hearing officer's decision and sanctions, if applicable; and

(2) Returning documents, records, and physical evidence regarding the defendant's concluded disciplinary proceeding to the designated file or storage location.

D. Inmate Case Record.

(1) Staff shall be responsible for maintaining and documenting a case record of the defendant's disciplinary history.

(2) The defendant's case record shall include the following information:

(a) A guilty decision;

(b) A not guilty decision;

(c) A Not Competent decision;

(d) An informal resolution;

(e) A dismissal of the inmate rule violation charged;

(f) The facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(g) The written record of the disciplinary proceeding; and

(h) An attachment or other evidence that was considered at the disciplinary proceeding, except if the items are determined to be security sensitive or confidential as provided in this chapter.

(3) Except for security sensitive information, and subject to Correctional Services Article, § 3- 602, Annotated Code of Maryland, a defendant's case record may be reviewed by:

(a) Facility staff or Department staff;



(b) *The Department Intelligence and Investigative Division;*  
(c) *A law enforcement agency;*  
(d) *An attorney or an individual authorized in writing by the defendant;*  
(e) *Staff of the Parole Commission or the Division of Parole and Probation;*  
(f) *An individual or agency authorized by the Secretary, or a designee, or statute or as otherwise provided by law;*

(g) *Staff of the Office of the Attorney General;*  
(h) *Staff of the Inmate Grievance Office;*  
(i) *Staff of the Office of Administrative Hearings; and*  
(j) *Staff of a State's Attorney's Office.*  
(4) *Security sensitive information may only be released with authorization from the Secretary, or a designee, to:*  
(a) *Department staff on a need to know basis;*  
(b) *The Department's Intelligence and Investigative Division;*  
(c) *A law enforcement agency;*  
(d) *An individual or agency authorized by the Secretary, or a designee, or as otherwise provided by law;*  
(e) *Staff of a State's Attorney's Office; and*  
(f) *Staff of the Office of the Attorney General.*  
(5) *Staff shall ensure that the defendant's case record is maintained under the requirements of the Correctional Services Article for the retention of inmate case record information.*

**E. Audio Record.**

(1) *The audio recording of the defendant's disciplinary proceeding is a record of the Department that is for the:*  
(a) *Internal operations and administrative functions of the Department; and*  
(b) *Administration and management of the Department's business.*  
(2) *An audio record may not be considered a right, interest, benefit, or an entitlement for the defendant.*  
(3) *Staff shall ensure that the audio record of a defendant's disciplinary proceeding is maintained under the requirements of the Correctional Services Article for the retention of inmate case record information.*  
(4) *A copy of an audio record may be requested and provided as required under COMAR 12.11.02 Public Information Requests, but will only be released if permitted under Correctional Services Article, §3-602, Annotated Code of Maryland.*  
(5) *An audio recording is not considered to be part of the administrative record of a disciplinary proceeding that is forwarded to the Inmate Grievance Office or the Office of Administrative Hearings in an inmate grievance.*  
(6) *A fee in the amount of \$5 for the cost of copying an audio record shall be charged to the interested party requesting a copy of an audio recording of a disciplinary proceeding.*

**.31 Disciplinary Proceeding Procedures — Post Disciplinary Proceeding Phase — Appeal of the Hearing Officer's Decision or Sanction.**

**A. Appeal by the Defendant.**

(1) *A defendant may only appeal the:*  
(a) *Sufficiency of the evidence presented as part of the defendant's disciplinary proceeding;*  
(b) *Interpretation of the law, rules, policy, procedures, or regulations applicable to the defendant's disciplinary proceeding; or*  
(c) *Sanction imposed as a result of the defendant's disciplinary proceeding.*  
(2) *A defendant shall file an appeal in writing with the managing official of the facility where the defendant is housed within 15 calendar days of the date the defendant received the hearing officer's decision.*  
(3) *If the defendant fails to file a written appeal with the managing official or the managing official does not receive the defendant's appeal within the 15 calendar days of the date of the hearing officer's decision, the defendant is:*  
(a) *Considered to have waived the opportunity to appeal under this regulation; and*  
(b) *Not considered to have exhausted administrative remedies available to the defendant.*  
(4) *If the defendant is transferred to another facility other than the facility where the defendant's disciplinary proceeding occurred within the 15 calendar days, the defendant may file the appeal with the managing official of either facility.*  
(5) *The managing official of the sending facility shall forward the appeal to the facility that receives the defendant.*  
(6) *The defendant shall give notice of the transfer and appeal to the managing official of the receiving facility.*

**B. Appeal by the Facility.**

(1) *If designated, a facility representative, or in the absence of a representative, facility staff may appeal:*  
(a) *The hearing officer's decision; and*  
(b) *If applicable, sanctions imposed.*  
(2) *An appeal shall be in writing and delivered to the managing official within 5 calendar days of the date of the hearing officer's decision.*

*C. Appeal to the Inmate Grievance Office. A defendant may appeal the managing official's decision to the Inmate Grievance Office as provided under COMAR 12.07.01.05 and 12.07.01.08.*

*D. Appeal - Guilty Plea.*

*(1) If a defendant entered a guilty plea to an inmate rule violation charged and the hearing officer accepted and entered the plea into the record of the defendant's disciplinary proceeding, the defendant may file an appeal based on only the following claims:*

*(a) The process or procedures by which the defendant entered the guilty plea regarding the inmate rule violation charged was in error or the guilty plea was procedurally not permitted; and*

*(b) If imposed, the hearing officer's sanction was in error or procedurally not permitted.*

*(2) A defendant filing an appeal of a guilty plea may not raise a claim that:*

*(a) The hearing officer's decision was arbitrary or capricious, clearly erroneous, or not based on substantial evidence;*

*(b) The hearing officer relied on evidence that was insufficient or considered in error;*

*(c) There was a denial or violation of a due process, statutory, time, or procedure requirement applicable to this chapter; or*

*(d) There was a denial by staff or the hearing officer of a representative, a witness, or evidence requested.*

*E. Appeal — Waiver of Appearance.*

*(1) If a defendant waived the defendant's appearance before a hearing officer and in the defendant's absence the hearing officer proceeded with the defendant's disciplinary proceeding and found the defendant guilty of the inmate rule violation charged, the defendant may file an appeal that is limited to a claim that the:*

*(a) Process by which the hearing officer concluded that the defendant waived an appearance was in error;*

*(b) Hearing officer's decision regarding the inmate rule violation charged for which the defendant was found guilty was arbitrary, capricious, or clearly erroneous;*

*(c) Hearing officer's decision regarding the inmate rule violation charged for which the defendant was found guilty relied on evidence that was in error, insufficient, or procedurally not permitted; or*

*(d) Sanction imposed regarding the inmate rule violation charged for which the defendant was found guilty was in error or procedurally not permitted.*

*(2) A defendant who waived an appearance before the hearing officer may not raise a claim that there was a:*

*(a) Denial of a due process, statutory, time, or procedure requirement applicable to this chapter; or*

*(b) Denial of a representative, a witness, or evidence regarding the disciplinary proceeding.*

*F. The time period for a defendant to file an appeal expires at the end of the 15th calendar day after the date the defendant was served with the hearing officer's decision.*

***.32 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Managing Official's Review.***

*A. Review by the Managing Official.*

*(1) The managing official, or a designee, shall conduct a review of the defendant's disciplinary proceeding.*

*(2) The managing official may assign a designee to conduct the required review.*

*(3) The managing official, or designee, shall review a defendant's disciplinary proceeding before the hearing officer even if the ultimate disposition is an informal resolution.*

*(4) The informal resolution offered by staff and accepted by the defendant are not required to be reviewed.*

*(5) A managing official's, or a designee's, review is a review on the record and not a de novo or new hearing.*

*(6) The managing official may not:*

*(a) Reconsider the evidence in the record of the disciplinary proceeding;*

*(b) Substitute the managing official's, or a designee's, judgment for that of the hearing officer's or make de novo or new fact findings as to the inmate rule violation charged; and*

*(c) Render a de novo or new decision in lieu of the decision by the hearing officer.*

*(7) The managing official, or a designee, shall document the review in the written record of the disciplinary proceeding.*

*(8) The managing official, or a designee, shall complete the review of the hearing officer's decision and sanction, if imposed, regarding the inmate rule violation charged within 30 calendar days of the date the defendant received the hearing officer's decision, but after the 15 calendar day time period for the filing of an appeal by the defendant has elapsed.*

*(9) The managing official, or a designee, may conduct an immediate review of the hearing officer's decision without waiting for the expiration of the defendant's appeal period:*

*(a) When the disposition of one or more of the inmate rule violations is:*

*(i) A dismissal;*

*(ii) A Not Guilty finding;*

*(iii) A finding that the defendant is or was Not Competent; or*

*(iv) An informal resolution accepted by the defendant; or*

*(b) The managing official, or a designee, reduces a sanction imposed by the hearing officer.*

*(10) The managing official, or a designee, may remand the hearing officer's decision to the hearing officer for written clarification by the hearing officer of the decision or sanction regarding the:*

- (a) *Disciplinary proceeding procedures;*
- (b) *Evidence weighed and considered;*
- (c) *Findings of fact;*
- (d) *Decision as to the inmate rule violation charged; and*
- (e) *Sanction, if imposed.*
- (11) *The time and procedure requirements for the managing official's review:*
  - (a) *Shall be suspended pending the managing official's, or a designee's, remand; and*
  - (b) *May not resume until the managing official, or a designee, receives the hearing officer's written response.*
- B. Authority and Action of the Managing Official.**
  - (1) *A managing official, or a designee, conducting the review of the hearing officer's decision shall:*
    - (a) *Review the record of the disciplinary proceeding and determine from that record if a reasonable individual could have reached the decision rendered by the hearing officer based on the evidence presented at the disciplinary proceeding;*
    - (b) *Consider an alleged time or procedural violation under this chapter, when raised in an appeal by the defendant, facility representative or facility staff; and*
    - (c) *Determine if the sanctions imposed were in compliance with the requirements of this chapter.*
  - (2) *The managing official, or a designee, when conducting the review of the hearing officer's decision regarding an inmate rule violation resulting in a guilty finding and, if imposed, the sanction, may, without explanation:*
    - (a) *Affirm the hearing officer's decision and, if imposed the sanction;*
    - (b) *Vacate the guilty finding and the sanction imposed regardless of the category of the inmate rule violation charged or procedural requirement of this chapter, and enter an incident report in the defendant's case record as the disposition for the inmate rule violation charged;*
    - (c) *Vacate the guilty finding and the sanction imposed and enter a Not Guilty disposition in the defendant's case record for the inmate rule violation charged;*
    - (d) *Vacate the guilty finding and the sanction imposed and enter a Not Competent disposition in the defendant's case record for the inmate rule violation charged; or*
    - (e) *Affirm the hearing officer's decision, but elect to modify the sanction imposed for the inmate rule violation resulting in a guilty finding by:*
      - (i) *Reducing the sanction period imposed by the hearing officer regardless of whether the reduced sanction is in compliance with or below the minimum sanction or sanction period required by a regulation of this chapter; or*
      - (ii) *Reducing an informal disposition with sanction to an incident report with no sanction.*
  - (3) *The managing official, or a designee, may not increase the sanctions imposed by the hearing officer.*
  - (4) *The managing official, or a designee, may appeal the hearing officer's decision to the Secretary, or a designee, and request the Secretary, or a designee, to reverse the hearing officer's decision and remand the inmate rule violation charged for a de novo or a new disciplinary proceeding when the managing official, or a designee, concludes the hearing officer's decision was erroneous due to one or more of the following circumstances:*
    - (a) *An arbitrary or capricious decision;*
    - (b) *A clearly erroneous decision;*
    - (c) *An erroneous interpretation of a policy, time requirement, or procedure;*
    - (d) *The decision relied on evidence alleged or found to be fraudulent or a misrepresented;*
    - (e) *The decision was rendered without consideration of evidence that was either presented or not presented at the defendant's disciplinary hearing;*
    - (f) *The sanction was not in compliance with minimum requirements of regulations in this chapter; or*
    - (g) *A disposition of Not Competent was entered and there is new evidence that the defendant is competent to participate in the disciplinary proceeding or was competent at the time of the offense.*
  - (5) *The managing official's, or a designee's, recommendation for reversal and new disciplinary proceeding shall include the reason for the appeal.*
  - (6) *The time period and procedure requirements for the managing official's, or a designee's, review under this regulation shall:*
    - (a) *Be suspended pending the managing official's, or a designee's, appeal to the Secretary, or a designee; and*
    - (b) *Resume on the date the Secretary's, or a designee's, written decision regarding the managing official's, or a designee's, appeal is received by the managing official, or a designee.*
- C. Notification of the Managing Official's Review.**
  - (1) *Staff shall serve the documentation of a completed managing official's, or a designee's, review on the defendant within 30 calendar days of the date the defendant was previously served the hearing officer's decision.*
  - (2) *If the defendant does not receive the managing official's, or a designee's, review under the 30 calendar day time requirement the:*
    - (a) *Review process is considered to be complete; and*
    - (b) *Hearing officer's decision and sanction, if imposed, is affirmed.*

**.33 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Remanding the Inmate Rule Violation Charged.**

A. Only the Secretary, or a designee, or a court of proper jurisdiction may disturb the decision concerning an inmate rule violation charged and:

- (1) Reverse the decision of the hearing officer regarding the inmate rule violation charged; and
- (2) Remand the case for a de novo or a new disciplinary proceeding under this regulation.

B. The managing official, or a designee, when conducting a review of the hearing officer's decision or a decision previously reviewed by a managing official, or a designee, may, without regard for a procedure or time requirement under this chapter:

- (1) Appeal the hearing officer's decision regarding the inmate rule violation charged to the Secretary, or a designee, regardless of the date of the decision or if previously reviewed by a managing official; and
- (2) Request the Secretary, or a designee, to reverse the hearing officer's decision and remand the inmate rule violation charged for a de novo or a new disciplinary proceeding under this regulation.

C. The Secretary, or a designee, upon receipt and review of the managing official's, or a designee's, appeal may approve or disapprove the managing official's, or a designee's, recommendation to reverse the hearing officer's decision and remand the case for a de novo or a new disciplinary proceeding under this regulation:

- (1) If the Secretary, or a designee, disapproves the managing official's, or a designee's, recommendation, the:
  - (a) Secretary, or a designee, shall notify the managing official, or a designee, that the hearing officer's decision is affirmed; and
  - (b) Managing official, or a designee, shall notify the defendant of the Secretary's, or a designee's, decision.
- (2) If the Secretary, or designee, approves the managing official's, or a designee's, recommendation, the:
  - (a) Hearing officer's decision is considered to be reversed; and
  - (b) Inmate rule violation charged is to be scheduled for a de novo or a new disciplinary proceeding.

D. When the disciplinary proceeding is remanded for a de novo disciplinary proceeding, the managing official, or a designee, shall:

- (1) Notify the defendant of the Secretary's, or a designee's, decision;
- (2) Ensure that the defendant is scheduled for a remanded disciplinary proceeding;
- (3) Notify staff that the disciplinary proceeding is heard de novo unless ordered otherwise by the Secretary, or a designee; and
- (4) Ensure that the remanded disciplinary proceeding is not heard by the original hearing officer of record unless otherwise ordered by the Secretary, or a designee.

E. Rehearing Procedure.

(1) Within 7 business days of the managing official's, or a designee's, notification of a Secretary's order or order of a court that the inmate rule violation charged was remanded for a de novo or a new disciplinary proceeding under this regulation, staff shall:

- (a) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form regarding the remanded inmate rule violation charged;
- (b) Provide the defendant the opportunity to request representation, a witness, or evidence at service; and
- (c) Schedule the defendant for a disciplinary proceeding.

F. Except for the 7 business day time frame for service of the remand order on the defendant, the time and procedure requirements of this chapter shall govern the disciplinary proceeding and post disciplinary proceeding phases conducted as a remanded hearing in accordance with this regulation.

G. The managing official, or a designee, may appeal the hearing officer's decision of the remanded disciplinary proceeding in accordance with the procedures under this chapter.

H. The defendant may appeal the hearing officer's decision of the remanded disciplinary proceeding in accordance with the procedures under this chapter.

#### **.34 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Review by the Secretary.**

A. The Secretary, or a designee, has the:

- (1) Authority and discretion to modify, suspend, or terminate the inmate disciplinary process consistent with due process; and
- (2) Final authority to interpret the time and procedure requirements of the inmate disciplinary process.

B. The Secretary, or a designee, without regard for a time or procedure requirement established under this chapter, may review a disciplinary proceeding or hearing officer's decision regarding the inmate rule violation charged.

C. The Secretary, or a designee, without regard for a time or procedure requirement established under this chapter, may take an action regarding a disciplinary proceeding or hearing officer's or staff's decision regarding the inmate rule violation charged that includes, but is not limited to:

- (1) Remanding the inmate rule violation charged for:
  - (a) A de novo or new inmate disciplinary proceeding; or
  - (b) Other action permitted under this chapter;
- (2) Modifying or vacating a sanction imposed regarding the inmate rule violation found guilty or an informal disposition;
- (3) Reversing a decision regarding the inmate rule violation charged found guilty, not guilty, dismissed, not competent, or due to an informal resolution;

*(4) Reducing a decision regarding the inmate rule violation charged or an informal disposition to an incident report; or*

*(5) Vacating the decision regarding the inmate rule violation charged found guilty, not guilty, dismissed, not competent, or reduction to an informal resolution.*

**.35 Video Conferencing.**

*The Department may, for the purposes of the inmate disciplinary process, use video conferencing or other electronic media or technology.*