

State of Iowa Department of Corrections

Policy and Procedures

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Chapter 3: INSTITUTIONAL OPERATIONS

Sub Chapter: RULES & DISCIPLINE

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1. PURPOSE

To establish the framework by which staff utilize formal disciplinary action for violation of specified major rules. This policy lists major rule infractions and describes the procedures for writing, serving, and investigating major reports, as well as the major report hearing and appeal procedures.

2. POLICY

As described more fully in IDOC Policy **IO-RD-01** *Overview and Philosophy of Incarcerated Individual Discipline*, it is the policy of the IDOC to use appropriate disciplinary action in the management of incarcerated individual violations of IDOC and institutional rules, regulations, policies, and procedures. Where the use of informal action or minor disciplinary report procedures are not appropriate or insufficient to achieve correctional goals, the major report process shall be used. **(PREA 115.78(a))**

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3. DEFINITIONS

The following definitions will be used in the various disciplinary policies and procedures established by the IDOC and its institutions.

- A. Administrative Law Judge (ALJ) - The primary disciplinary hearings officer appointed by the Director of the IDOC in accordance with **Iowa Code § 903A**. The Director of the IDOC shall also appoint alternates for each institution in accordance with the Iowa Code. The appointed ALJ or alternates shall hear all cases that are subject to the provisions of **Iowa Code § 903A, 904.505 and 610A.3** and any other applicable Iowa Code sections. It is the duty of the ALJ and alternates to impose the sanction(s) including establishing the exact earned time/good time days to be forfeited. When the ALJ is absent, unavailable, or prohibited under this policy from hearing a particular matter, the hearing shall be conducted by another ALJ. An appointed ALJ may hold hearings at any IDOC institution.

- B. Aggravating Factors - If the ALJ determines that the factors or circumstances of an offense are more serious than the charged offense, the sanction may be upgraded to the next class. The ALJ shall specify in writing the aggravating circumstances warranting a change in sanction. Aggravating factors may include, but are not limited to, history of violence, use of weapon, severity of injury, significant impact to institutional operations, repeat infractions, acting in complicity with others, and premeditation.
- C. Attempt - An incarcerated individual attempts to commit an offense when the incarcerated individual acts to affect an offense although the offense is not accomplished. An incarcerated individual may be charged with attempt to violate any rules listed in this policy.
- D. Class of Offense - The class of an offense determines the range of authorized sanction(s) that can be imposed by the ALJ for violation of rules listed in this policy. **(PREA 115.78(b))**
- E. Complicity - An incarcerated individual shall be responsible for the offense of another person if the incarcerated individual commands, induces, procures, or aids another person to commit the offense.

No incarcerated individual shall be liable for the conduct of another person if the incarcerated individual makes reasonable efforts to prevent the commission of the offense prior to the commission or the incarcerated individual withdrew from participation before the commission of the offense.

The failure of the institution to charge or convict the other person shall not be a defense under this section.

Any action by the accused incarcerated individual, which causes another person to violate a rule, may be considered a violation by the accused incarcerated individual.

- F. Dangerous Contraband – The term includes, but is not limited to, altering of authorized property (such as razors) for purposes of a weapon; diagrams, directions, drawings for explosive devices, or other weapons; a firearm, knife, bludgeon or other weapon, device, instrument, material, or substance, whether animate or inanimate, which is readily capable of causing or inducing fear of death or serious physical injury, or any flammable substance or incendiary device. The term also includes possession or use of any prohibited communication device.

- G. Dangerous Drugs and Intoxicants - The terms include, but are not limited to, alcohol, amphetamines, benzodiazepines, methamphetamines, barbiturates, cocoa leaves, cocaine, opiates, (including opium, morphine, heroin, Demerol, diluadid, codeine, apomorphine, buprenorphine (Suboxone), etc.), peyote, LSD, psilocybin, DMT, THC and cannabis (a.k.a. marijuana), including all parts of the plant cannabis sativa L., and any volatile substance inhaled or ingested for its mood-altering effect, such as cleaning fluid, glue, lacquer, petroleum distillates, bug spray, etc. The term also includes synthetic or artificial forms of intoxicants, including any form of "K2" or "spice," whether or not such synthetic or artificial intoxicants are illegal to possess under federal or state law. The term also covers any prescription drugs.
- H. Earned Time/Good Time Loss - The terms earned time and good time shall refer to the reduction in time credits given to incarcerated individuals under the Iowa Code, as amended, and any other current or prior section of the Iowa Code that specifies the reduction in time credits that apply to a particular incarcerated individual's sentence. The use of one of those terms in this policy or in any disciplinary document includes one or both of those terms as appropriate.
- I. Electronic device - A computer (including a desktop, laptop, notebook, or tablet computing device), mobile phone, device for storing and playing music or video files, camera, file storage device (including flash drives and portable hard drives), and any other device capable of electronically storing, recording, or transmitting any electronic file.
- J. Electronic file – Recorded data stored or capable of being stored on an electronic device. The term includes image, music, audio, video, text, spreadsheet, word processing, database, email, gaming, and other similar file, as well as any executable program file. The term includes a file stored in a semi-permanent manner, such as on a hard drive or flash drive, and a file temporarily created during the running of any computer program or electronic device.
- K. Iowa Corrections Offender Network (ICON) - The computer system used by IDOC staff members to record information relating to the disciplinary process and to generate documents, such as disciplinary notices, hearing decisions, and appeal decisions.
- L. Intentionally - An incarcerated individual acts intentionally with respect to a result or to conduct described by this guideline when the incarcerated individual's conscious objective is to cause that result or engage in that

conduct. An incarcerated individual may be presumed to intend the natural consequences of the incarcerated individual's act.

- M. Major Infraction - Any rule violation, which, in the judgment of a supervisor or staff member observing or learning of the violation, has serious incarcerated individual and institutional management implications. Major infractions shall be handled through the formal disciplinary process, referral for prosecution, or both.
- N. Minor Infraction - Any rule violation that is less serious than a major infraction. Minor infractions shall be handled through informal disciplinary action or the minor report process established in Policy **IO-RD-02**, *Informal Corrective Action and Minor Disciplinary Reports*. In addition, in accordance with the provisions of this policy, an ALJ may classify any violation alleged in a major disciplinary notice as a minor infraction.
- O. Mitigating Factors - If the ALJ determines that the factors or circumstances of an offense constitute a less serious offense than the charged offense, the sanctions/offense class may be reduced if circumstances warrant.
- P. Incarcerated individual - Includes all persons assigned to an institution of the IDOC.
- Q. Possesses - To knowingly exercise physical control over an object or electronic file.
 - 1. Knowledge shall be based on the presence of an object found on an incarcerated individual's person or placed somewhere by the incarcerated individual. For electronic files, knowledge shall be based on the presence of an electronic file in an electronic device that is on the incarcerated individual's person, is located in a password protected file folder only accessible by the incarcerated individual, or was placed somewhere by the incarcerated individual.
 - 2. Knowledge shall be rebuttably presumed when an object, including an electronic device containing an electronic file, is found anywhere else in an incarcerated individual's domicile or assigned areas. This presumption may be countered by evidence that the incarcerated individual was not responsible for the object's presence in the incarcerated individual's domicile or assigned area. For an electronic file, the presumption may also be countered by evidence that someone else put the electronic file on the incarcerated individual's electronic device or in a password protected file folder without the knowledge or approval of that incarcerated individual.

3. An incarcerated individual is also considered to possess any substance for which the incarcerated individual tests positive based on a urine, blood, breath, saliva, or similar test.
- R. Prohibited Communication/Electronic Device - Includes any cellular or mobile phone, pager, personal digital assistant (PDA), radio, or other communication device capable of communicating to persons, other communication devices, or computers inside or outside of the institutional grounds. The term also includes any camera, video camera, or audio recorder.
- S. Reckless - An incarcerated individual's conduct is reckless when the safety of persons or property is willfully or wantonly disregarded.
- T. Security Issue - Any act which causes or has the potential to cause significant disruption to the operation of the institution, effect the peace and tranquility of the institution, or create danger for the public, staff, and/or incarcerated individuals.
- U. Security Item – Any object used by staff to secure an institution, vehicle, incarcerated individual, or any location temporarily housing an incarcerated individual. Such items include all locks and locking devices, security and cell lights, fire alarms, smoke detectors, fire suppression devices, communication devices, handcuffs and other restraints, monitored tools, uniforms, information storage and retrieval devices, computers, laptops, tablets, telephones, and mobile communication devices, OC and other spray containers or devices, tasers and other electronic devices used to limit or contain incarcerated individual movement, and weapons.
- V. Serious or Dangerous Violence - Includes killing, sexual assault, assault, kidnapping, rioting, arson, or the attempt to do any of those actions.
- W. Serious Physical Injury - Any physical injury which creates or could create a substantial risk of death or which causes death, serious or protracted impairment of health, or protracted loss or impairment of any major bodily function.
- X. See IDOC Policy **AD-GA-16** for additional Definitions.

4. PROCEDURES

NOTE: If, at any time in the process of writing, investigating, or hearing a major report, it is noted that a document and/or procedure is incorrect, the process shall be stopped and the process reinitiated.

A. Preparing the Disciplinary Report

1. As soon as a staff member or other person given authority over incarcerated individuals by the Warden or Director becomes aware that a major infraction has occurred, the staff member or other person with authority should, if possible, direct the incarcerated individual to take corrective action. If the sanction is insufficient or circumstances warrant, the staff member or other person with authority observing the incident or learning of the infraction shall prepare a Disciplinary Notice using the ICON Disciplinary Notice form.

In some cases involving potential serious violations committed by one or more incarcerated individuals, staff members may conduct a security or evidentiary investigation into the potential violations prior to the writing of a Disciplinary Notice. In such cases, the writing of any Disciplinary Notice may be delayed until the investigation is completed. The Associate Warden/Security or designee shall be kept informed about any on-going investigations and shall make sure that the writing of any Disciplinary Notices is not unreasonably delayed.

Nothing in this policy requires that a disciplinary notice be dismissed if more than 24 hours elapses from the incident until an incarcerated individual receives a written copy of the disciplinary notice.

2. A separate statement on the *Witness Statement (IO-RD-03 F-1)* should be submitted by each employee who witnessed the incident or has knowledge of the incident.
3. The Disciplinary Notice shall be available to the Shift Supervisor, and shall contain details of the infraction, including the following:
 - a. Specific rule(s) allegedly violated.
 - b. Date and time of the infraction.
 - c. Location of offense.
 - d. Incarcerated individual(s) involved, and witnesses, if any.

- e. Adequate details of the infraction to substantiate the charge, including type and disposition of contraband or physical evidence, (where the evidence is being held, etc.) unusual behavior by the incarcerated individual, etc.
- f. A description of immediate action taken, including any force used by incarcerated individual or staff.
- g. If appropriate, a notice that confidential information was used to prepare the Disciplinary Notice. Must include reason why confidential information was withheld.
- h. The names of staff witnesses to the incident, unless confidential. If the writer of the Disciplinary Notice relied on information from other staff members to write the report, the Notice should specifically mention what information came from which staff member, unless such information is confidential.
- i. The name of the reporting staff member. The name of the reporting staff member on an ICON generated document shall be deemed to constitute an electronic signature for that staff member.
- j. In instances of a positive urinalysis (UA) test, the notice advises that the violating substance has been ingested within the time period associated with the particular test used and the particular substance involved.

(5-ACI-3C-08)

4. The Shift Supervisor or designated staff member shall:

- a. Review the disciplinary report to ensure that all necessary and relevant information is included. **(5-ACI-3C-22)**
- b. Assist the author to complete or rewrite the disciplinary report when necessary so that it includes all relevant and necessary information. **(5-ACI-3C-07)**
- c. Determine using the criteria in IDOC Policy **IO-RD-01**, *Overview and Philosophy of Incarcerated Individual Discipline*, whether the incident described in the disciplinary

report should remain as a major report or should be handled using a minor report or informal action.

If a major report is appropriate, then the disciplinary report shall be approved on ICON. If a major report is not appropriate, then the Shift Supervisor or designated staff shall inform the report writer of that decision and indicate what other steps should be taken. If the report is "reduced" on ICON, then the Shift Supervisor or designated staff shall make sure that the appropriate minor report or informal action is taken in accordance with the provisions of Policy **IO-RD-02**, *Informal Corrective Action and Minor Disciplinary Reports*.

5. The Shift Supervisor or designated staff member shall promptly begin a review of an incident described in a Disciplinary Notice to determine if any other correctional, treatment, or security actions are needed or if additional major or minor disciplinary reports should be written. Such review may be delayed if exceptional circumstances exist. The review should be completed as soon as practical.
6. If a Disciplinary Notice is approved after the investigative review, then an investigation as described in section (C) shall be commenced as soon as practicable.
7. Within 24 hours following an incident, the Shift Supervisor or designated staff member shall make an initial determination whether a crime may be involved solely for the purpose of requiring the investigator or designated staff member to advise the incarcerated individual of the incarcerated individual's rights. **(5-ACI-3C-09)**
8. If appropriate corrective action is achieved, or if other facts indicate that no infraction occurred, a disciplinary report may be dismissed by the Shift Supervisor or other designated official. The reasons for such a dismissal should be recorded within ICON. The Warden may dismiss a major report at any time.
9. The incarcerated individual may be placed in more secure housing at this stage, based on the degree of risk if the incarcerated individual remains in a general population housing unit. When an incarcerated individual is placed in investigative segregation status, the supervisor ordering investigative segregation status shall forward a written memo to the Associate Warden/Security for review within 72 hours of the incarcerated individual's detention. Staff shall also follow the

procedures in IDOC Policy **10-HO-05**, *Administrative Segregation*, regarding Administrative Segregation (Ad. Seg.). **(5-ACI-3C-10)**

10. The Associate Warden/Security shall be responsible to insure that the writing, serving, and investigation of a disciplinary notice is done promptly and without unnecessary delays, especially for incarcerated individuals placed into segregation.

The unit manager of a segregated housing unit or other designated staff member shall notify the Associate Warden/Security or designee regarding the following delays so that the Associate Warden/Security can take steps to eliminate any unnecessary delays in the disciplinary process:

- a. If an incarcerated individual has been in segregation for three days without a disciplinary notice being written.
- b. If an approved disciplinary notice has not been served on an incarcerated individual within three days of the disciplinary notice being approved.
- c. If an investigation into an approved disciplinary notice has not been completed within three days after the notice was served to an incarcerated individual.
- d. Follow-up notifications shall be given regarding the above events every three days after the original notification is given.

B. The Disciplinary Notice (the “Major Report”)

1. Providing the incarcerated individual with a copy of the Disciplinary Notice form generated by ICON (the “major report”) shall serve as notice of alleged misconduct and, if a possession violation, Notice of Confiscation of the evidence. **(5-ACI-3C-11)**
2. A disciplinary notice need not contain information that could jeopardize individual safety or institutional security.
3. Factual statements in the narrative of a disciplinary notice may be based on reliable hearsay from staff members or other persons.
4. Staff should be careful not to inadvertently disclose information sources that should remain confidential. Do not include the name of an incarcerated individual in a disciplinary notice if (i) the

incarcerated individual provided information against a second incarcerated individual and (ii) knowledge by the second incarcerated individual of the first incarcerated individual's identity may subject the first incarcerated individual to negative consequences by the second incarcerated individual or someone associated with the second incarcerated individual.

C. Investigation

1. This section applies only to the major report investigation which takes place following the writing and serving of the disciplinary notice. It does not apply to an investigation taking place before, and resulting in, the disciplinary notice.

The major report investigation of an approved disciplinary notice should begin promptly. The major report investigator conducting this investigation should not be a staff person involved in the reported violation as a witness to the alleged violation, as the report writer, or as the member of an investigative team that investigated the matter before the disciplinary notice was written. The major report investigator may provide evidence as to whether there are any mitigating or aggravating factors. Staff members who investigate approved disciplinary notices need not be full-time investigative staff. A major report investigation need not be redone if the person doing the major report investigation was not a direct witness to an incident, but finds out during the major report investigation that an incarcerated individual wants to call that person as a witness.

2. The major report investigator shall interview the incarcerated individual and any other persons who may have information regarding the incident as soon as is practical. The incarcerated individual shall be provided with a copy of the Disciplinary Notice from ICON and that shall serve as the written notice of the specific rule violation and details of the charges against the incarcerated individual. Although an incarcerated individual may save comments for the hearing, the major report investigator should encourage the incarcerated individual to make a statement about the matter so that the major report investigator may prepare a complete record for the hearing. Written statements should be taken from witnesses and recorded on the *Witness Statement (IO-RD-03 F-1)* and, when appropriate, incident or additional disciplinary reports should also be prepared. The Disciplinary Notice shall serve as the witness statement of the reporting person. An incarcerated individual's

hearing waiver also waives the right to a 24-hour delay between the serving of a disciplinary notice and the ALJ's hearing decision.

3. If the major report investigator determines that the number of witnesses named by the incarcerated individual would substantially burden the major report investigation and that some of the witnesses would be cumulative or irrelevant, the major report investigator may limit the number interviewed provided that the major report investigator records the reason for doing so in ICON. The major report investigator should encourage the incarcerated individual to prioritize witnesses in this situation.
4. Failure of the accused incarcerated individual to name witnesses to be interviewed by the major report investigator may limit future opportunities of an incarcerated individual to have a statement taken from such witnesses, unless the taking of a statement is directed by the ALJ or other reviewing institution official. The following reasons may support additional interviews:
 - a. The identity or existence of the witness was unknown prior to the incarcerated individual's interview with the investigator.
 - b. That substantial prejudice shall result without such witness being contacted for a statement.
 - c. Aggravating or mitigating factors.
5. The incarcerated individual may present to the major report investigator documentary evidence relative to the incarcerated individual's defense.
6. Information may also be gathered as appropriate to the incident on environmental conditions, physical evidence, and other pertinent aspects of the incident. Neither major report investigators nor other staff shall be required to perform any type of polygraph test at an incarcerated individual's request.
7. The major report investigator shall provide the ALJ with a written record including the statements of the incarcerated individual and any witnesses, physical evidence, and other related information.
8. The ALJ may interview the major report investigator.

9. The ALJ may review the Disciplinary Notice, the major report investigation materials and physical evidence prior to conducting a hearing. If the ALJ determines during that preliminary review that the record does not contain all required information (e.g. witness statements requested by the incarcerated individual), the ALJ may contact the appropriate staff members directly and ask them to provide the appropriate information for the record. The ALJ may also issue a formal continuance to receive that information either before or during the hearing.
10. The incarcerated individual may waive the right to be present at a hearing. If such a waiver is made by the incarcerated individual, a decision shall be rendered by the ALJ based on documentary and physical evidence, if any, contained as a part of the disciplinary report and investigation. Such a waiver shall result in the incarcerated individual's forfeiture of appearing at the hearing and of any appeal rights. The major report investigator shall use *Hearing Waiver Form (IO-RD-03 F-5)* or similar form to record an incarcerated individual's hearing waiver. An incarcerated individual's hearing waiver also waives the right to a 24-hour delay between the serving of a disciplinary notice and the ALJ's hearing decision. (5-ACI-3C-12)
11. The major report investigator should make sure that the following information is part of the record provided to the ALJ to review:
 - a. When video or audio records (e.g., telephone calls or investigative interviews) are part of the evidence, a completed *Summary of Media Evidence Form (IO-RD-03 F-6)* should be completed by a person who has reviewed the recording. In lieu of that form, a detailed witness statement or other document may be used, provided that it contains the same type of information as in the form. A summary of media evidence may be treated as being confidential or non-public if the information in it would create a substantial risk of harm to individual safety or institutional security.
 - b. When a handwriting analysis is made, the documents used in the comparison should be provided. In addition, a document describing at least 8 points of similarity between the samples should be included.
 - c. When O-Mails, letters, or other documents are used as evidence, some documentation of the important or relevant

passages is to be provided. Highlighting copies of the documents can be used to provide that documentation.

D. Hearing Process

Note: If the incarcerated individual believes a procedural error has occurred in the discipline process, the incarcerated individual must address the issue at the hearing and/or through the appeal process.

1. The ALJ shall schedule the disciplinary hearing for a disciplinary report no sooner than 24 hours after an incarcerated individual receives a written copy of the disciplinary notice (the "24-hour notice" period) to allow an incarcerated individual to prepare for the hearing, unless the accused incarcerated individual waives the 24-hour notice/preparation period in writing. The hearing should be held, within seven working days (weekends and holidays excluded) following the date on which the incarcerated individual received the Disciplinary Notice unless the ALJ determines that: **(5-ACI-3C-13)**
 - a. The incarcerated individual is not available for a hearing due to medical or mental health reasons, or is away from the institution for a court appearance.
 - b. The incarcerated individual can show cause for further investigation.
 - c. The ALJ continues the hearing for further investigation or other cause.
 - d. The incarcerated individual's behavior presents an imminent threat to staff safety.
 - e. Holding a hearing could or would undermine criminal investigation or prosecution by the County Attorney or other prosecuting attorney.
 - f. A public health, weather, or other emergency, or any quarantine situation, makes holding a hearing within the seven-day time period impracticable.
 - g. The hearing deadline will be automatically extended by two working days (holidays excluded) without the need for a continuance if during the last two days of the pre-hearing period (i) an incarcerated individual is transferred from one

institution to another, (ii) an emergency declared by the governor, director, warden, or designee impacts the operation of an institution, or (iii) illness, injury, accident, or other unexpected incident prevents an ALJ from being able to work.

2. If the ALJ determines that a delay in the hearing is appropriate for one of the above reasons, the ALJ should document the continuance in the hearing record. A copy of any continuance shall be given to an incarcerated individual in person or through the institutional mail when practicable. **(5-ACI-3C-14)**
3. The ALJ may hold a hearing beyond the seven working day period or automatic extension period, even if no continuance was issued, unless the ALJ finds that the additional delay significantly compromised the ability of the incarcerated individual to offer a defense to the allegation in the disciplinary notice.
4. The rules and time limits governing major reports and ALJ hearings may be altered in the following cases.
 - a. In emergency situations, such as a riot or disturbance, the Warden may order temporary suspension of these rules. Such an order should be immediately reported in writing as soon as practicable to the Director of IDOC. When disciplinary action is taken during a suspension, the incarcerated individual is entitled to a rehearing of the alleged rule infraction with full procedural protections when the emergency has ended, unless the particular hearing was conducted in full compliance with this policy.
 - b. The time limits governing the hearing and appeal process, including the 24-hour hearing preparation period and the 24-hour initial appeal time limit, may be shortened if the Warden or designee determines compelling reasons or exigent circumstances justify the shortening of the time limits. The ALJ's hearing decision or the appeal decision by the warden or designee should note the reasons for any shorter procedural time limits. In addition, the loss of an incarcerated individual's earned time credits may be imposed immediately upon the issuance of an ALJ hearing decision if compelling reasons or exigent circumstances, including the imminent discharge of an incarcerated individual's prison sentence, are found by the warden or designee to exist and justify such immediate loss. All or part of any such immediate time loss

may be restored by the warden or designee in an appeal decision.

5. The ALJ shall regularly review the documented status of any continued hearing or any pending hearing decision to determine whether a further delay is justified. If a continuance delays a hearing until the existence of a specific event, such as (i) completion of lab tests, (ii) completion of criminal proceedings, (iii) an incarcerated individual's return to prison from court, (iv) determination by a mental health professional that an incarcerated individual who was unable to participate in a hearing or investigation can now participate, (v) limitations connected to a public health emergency that impacts the State, a particular institution, or housing unit, or (vi) other similar matters, then no further documentation besides the continuance is needed. The ALJ should hold a hearing as soon as practicable after the issues that created the need for a continuance occur or are resolved.
6. Member(s) of the treatment and/or security staff may be asked to participate in or observe disciplinary hearings. The responsibility of the ALJ is the adjudication of disciplinary matters, except that no individual may serve as an ALJ if directly involved in the matter as a witness, investigator, or reporting staff member.
7. The disciplinary process does not allow incarcerated individuals to confront or cross-examine witnesses. Thus, incarcerated individuals have no right to hear or receive copies of witness statements, unless the ALJ determines that sharing of non-confidential information is appropriate. Because of the concerns for the safety of incarcerated individual witnesses, all incarcerated individual witness statements not shared by an ALJ are considered non-public documents that should not be available to other incarcerated individuals at any time.
8. The incarcerated individual and staff assistant, if designated, shall be permitted to offer evidence related to the disciplinary report including the presentation of documentary evidence or written witness statements. The ALJ may allow specific witnesses only as necessary to ensure a fair hearing. If specific evidence is rejected, the ALJ shall indicate the reasons in writing. The ALJ may request additional witness statements in order to make sure that the record is complete. **(5-ACI-3C-17)**
9. In the event the incarcerated individual desires to have any witness appear in person at the disciplinary hearing, the incarcerated

individual must notify the investigator and identify the specific witnesses and the names of the witnesses at the time of the investigation. Allowing a witness to testify in person at a disciplinary hearing is a decision of the ALJ.

10. The disciplinary process is an administrative remedy. Thus, the incarcerated individual shall not have a right to use outside legal counsel during the hearing or appeal process. The ALJ is required to provide staff assistance for incarcerated individuals where the complexity of the issue makes it unlikely that the incarcerated individual shall be able to collect and present the evidence, where the incarcerated individual's capacity does not allow adequate comprehension of the case, or where the incarcerated individual is unable to adequately comprehend English. **(5-ACI-3C-18)**
11. If an incarcerated individual is in a special needs or mental health status at the time of the incident, the investigator must obtain a statement from a mental health professional as to the incarcerated individual's responsibility for the incarcerated individual's conduct as stated in the report. The ALJ shall make a record of this statement. If the mental health professional or a doctor indicates that an incarcerated individual should not be held responsible for the incarcerated individual's conduct, the ALJ shall dismiss a disciplinary notice without conducting an in-person hearing. **(PREA 115.78(c))**
12. Where confidential information is involved, the ALJ shall, when possible, view the evidence prior to meeting with the accused incarcerated individual.
13. The ALJ shall make findings after meeting with the incarcerated individual in accordance with procedures for the use of confidential information described below if the ALJ uses or relies on the confidential information.
14. The ALJ shall hear the facts of the alleged violations, weigh the evidence, and make a ruling as to the disposition of the case using only information available to the ALJ through the hearing process. An ALJ can make decisions based on direct and circumstantial evidence and reasonable inferences from the evidence. ALJs shall be impartial. **(5-ACI-3C-19)**
15. The ALJ shall conduct the hearing on a Disciplinary Notice as follows:

- a. Call in the accused incarcerated individual, read the charges in the Disciplinary Notice, and cite the rules involved as well as the investigative evidence.
- b. Determine if the procedures in the investigation were followed.
- c. Determine if a continuance for good cause is necessary.
- d. Continue the report and remand to the appropriate staff member to correct the procedure or other defects prior to continuing with the disciplinary hearing when procedures have not been followed properly. If necessary, a revised Disciplinary Notice shall be given to the incarcerated individual and further investigation done before the hearing resumes. The ALJ who remanded the matter back for changes or corrections may conduct the hearing after the corrections are made, unless the ALJ determines that to do so would violate the incarcerated individual's right to an impartial hearing officer.
- e. Review the evidence available such as the Disciplinary Notice, any available investigative reports, and documentary evidence such as test results and physical evidence. Review of the physical evidence need not be done in the presence of the incarcerated individual.
- f. Provide the incarcerated individual an opportunity to make a brief statement if the incarcerated individual has not previously given one. The ALJ may limit an incarcerated individual's statement if the statement contains irrelevant issues or becomes duplicative or repetitive.
- g. Hear in-person witnesses at the discretion of the ALJ. The accused incarcerated individual may or may not be present during such testimony, if any.
- h. If the ALJ determines that a written hearing decision can be issued immediately following the hearing, then the ALJ shall excuse the incarcerated individual and begin deliberations to determine whether the alleged rule violation(s) in fact occurred. Upon completing a written decision, the ALJ will call the incarcerated individual back into the hearing and give the incarcerated individual the written decision.

- i. In some cases, the ALJ may not be able to issue a hearing decision immediately after the hearing. In those instances, the ALJ shall prepare a written hearing decision within five working days after the hearing, with priority given to those incarcerated individuals in short term restrictive housing or investigative segregation status. A copy of the written hearing decision shall be given to the incarcerated individual by a staff member. The ALJ may, but need not, indicate at the conclusion of the hearing what the ALJ expects the hearing decision to be. A subsequent written decision may differ from the oral announcement made by the ALJ, provided the written decision explains the reason for the change.
- j. The findings made in a written hearing decision shall include a determination of the class of the offense and any aggravating circumstances. The findings of fact shall be made using the "some evidence" standard of proof.
- k. In appropriate circumstances the ALJ may issue one hearing decision that covers the incidents described in two or more disciplinary notices.
- l. The ALJ shall review all pertinent evidence presented and may draw an adverse inference from the incarcerated individual's hearing waiver or silence during the proceedings.
- m. If an ALJ discovers a typographical or scrivener's error in a hearing decision after the decision was given or sent to an incarcerated individual and before the Warden or designee has issued an appeal decision for the incarcerated individual, the ALJ may issue a corrected hearing decision. A copy of the corrected decision shall be given to the incarcerated individual. The incarcerated individual will have an additional 24 hours to file an appeal after receiving the corrected decision.

16. Incarcerated individual Conduct at Hearings

- a. An incarcerated individual's refusal to appear at a hearing shall constitute a waiver of all appeal rights and such refusal shall be documented.

- b. If a hearing waiver is made during the investigation stage, the investigator shall note the incarcerated individual's waiver on the Investigation of Violation screen in ICON. If the incarcerated individual chooses not to attend a hearing or refuses to go to the place of the hearing, the ALJ shall make findings of fact documenting that the incarcerated individual's actions constitute a waiver of the incarcerated individual's right to be at the hearing.
- c. If an incarcerated individual does not participate in a hearing (or does not appeal a hearing decision), the incarcerated individual will be deemed to have failed to exhaust the administrative procedures and administrative remedies available to the incarcerated individual.
- d. An incarcerated individual appearing before the ALJ is subject to the rules of discipline in the same manner as at any other time. If the incarcerated individual becomes so unruly at the disciplinary hearing that the hearing cannot be effectively continued, such conduct shall be treated as a refusal to appear at the hearing, and the hearing shall continue outside the incarcerated individual's presence. The ALJ shall document the incarcerated individual's behavior and make a finding regarding whether it constituted a waiver of the incarcerated individual's hearing right.

(5-ACI-3C-16)

17. Because an ALJ may conduct hearings from a location away from the institution where the incarcerated individual is housed, the following modifications to the hearing procedures may be made in appropriate circumstances:

- a. An ALJ may conduct hearings via a video connection (the "IDOC Tele-justice System").
- b. If there is physical evidence, the ALJ may review that evidence by:
 - (1.) Having the physical evidence sent to the ALJ for an in-person review;
 - (2.) Reviewing a scanned image of a document;

- (3.) Reviewing a photograph, live video, or recorded video of an object or location;
 - (4.) Using any other procedure that the ALJ finds will provide sufficient review of the item.
 - c. In appropriate cases, the ALJ may continue a hearing done via the Tele-justice System in order to hold an in-person hearing.
 - d. If the Tele-justice System is unavailable, an ALJ may also conduct hearings via telephone or other electronic means.
18. In lieu of appearance at a disciplinary hearing, an incarcerated individual may appear through a written statement in accordance with the following procedure:
- a. An incarcerated individual may voluntarily waive the right to appear at an ALJ disciplinary hearing in person by completing the *Appearance at Disciplinary Hearing by Written Statement Form (IO-RD-03 F-2)*. An incarcerated individual may submit that form at any time prior to an in-person hearing. An incarcerated individual's submission of the form will waive the right to a 24-hour delay between the serving of a disciplinary notice and the ALJ's hearing decision.
 - b. To ensure that an incarcerated individual voluntarily makes such waiver of in-person appearance, a staff member must witness the incarcerated individual's signature on the *Appearance at Disciplinary Hearing by Written Statement Form*.
 - c. A copy of the *Appearance at Disciplinary Hearing by Written Statement Form* shall be forwarded to the ALJ or shall be scanned into ICON and attached to the disciplinary file.
 - d. When the ALJ conducts the hearing on the matter at issue, the ALJ will review and consider the written statement made by the incarcerated individual to the same extent as if the incarcerated individual had personally appeared at the hearing.
 - e. If the ALJ concludes that to properly conduct a hearing the incarcerated individual must appear in person, the ALJ may

request that the incarcerated individual appear in person. If the incarcerated individual appears at the hearing, the ALJ may still consider the statements made by the incarcerated individual in the *Appearance at Disciplinary Hearing by Written Statement Form*.

- f. If an incarcerated individual called by the ALJ to appear at a hearing refuses to appear, then the ALJ shall render a decision based on the evidence in the record, including the *Appearance at Disciplinary Hearing by Written Statement Form*. However, the incarcerated individual shall lose the right to appeal the decision.
- g. When an ALJ issues a written hearing decision, the incarcerated individual using this procedure shall retain the right to appeal the hearing decision to the same extent as if the incarcerated individual had appeared in person, unless the incarcerated individual forfeited that right as described above.
- h. The incarcerated individual may indicate in his/her written statement that the ALJ should not send an appeal form with the ALJ's decision, so that the ALJ's decision and any sanctions may be implemented immediately. In such an instance, the incarcerated individual may still file an appeal within 24 hours after receiving the decision. However, such an appeal will not delay the implementation of any sanctions.

E. Record of Disciplinary Proceedings

- 1. The ALJ shall complete and provide the incarcerated individual with a written statement of the hearing decision using the Hearing Decision form on ICON, which shall include:
 - a. A statement of the facts found to support the determination of a rule violation (the who, what, where, when, how of the infraction) based on the "some evidence" standard of proof.
 - b. An indication of what these findings are based upon (officer's report, incarcerated individual's statement, etc.).
 - c. The specific sanctions imposed within the sanction class described in this policy.

- d. Aggravating factors that support imposition of increased sanctions.
- e. The disposition of any physical evidence. If the incarcerated individual is found guilty of any property disciplinary violation, the property may be deemed to be contraband and may be disposed of without further order.

Note: In those cases where individual safety or institutional security may be jeopardized by including certain items of evidence in the Hearing Decision furnished to the incarcerated individual, these items may be deleted. The Hearing Decision shall indicate that confidential information was relied upon.

(5-ACI-3C-20)

- 2. The disciplinary record shall be maintained for at least six months.
(5-ACI-3C-15)

F. Procedures for the Use of Confidential Information

- 1. The ALJ shall consider confidential documentary evidence or testimony reviewed outside the presence of the incarcerated individual only, if after reviewing and/or hearing such evidence, the ALJ has:
 - a. Made a finding that the information is reliable; and
 - b. Made a finding that disclosure of the evidence to the incarcerated individual would create a substantial risk of harm to individual safety or institutional security.
- 2. Wherever confidential information from confidential informants is used to prepare a disciplinary notice, the ALJ shall prepare a summary on ICON. That summary shall not be disclosed to the incarcerated individual. The summary shall include the following information:
 - a. Brief summaries of all confidential information available to the ALJ;
 - b. Either the name or relationship to the institution of any informants;

- c. The confidential information relied upon by the ALJ;
- d. The reasons supporting use of confidential information;
- e. An indication why the information is being kept from the incarcerated individual.

When the confidential information is in the form of a written statement or an investigation summary, the ALJ's summary need only contain a brief summary of the most important information in the written document(s). If the ALJ finds certain confidential information within a written document is not credible, the ALJ summary should note that fact.

- 3. Because videos from institutional security cameras can reveal limitation of the video system, all such videos are considered confidential and incarcerated individuals shall not be allowed to review such videos.
- 4. Where the above procedures are followed, the information shall not be reviewed with the incarcerated individual. The statement of the evidence relied on shall indicate the reliance on confidential or omitted information. If the ALJ determines that mentioning the ALJ's reliance on confidential or omitted information would itself alert an incarcerated individual to the identity of a confidential informant and could thus jeopardize the safety of that confidential informant, then the ALJ should not mention the reliance on confidential information in the hearing decision. Instead, the ALJ shall put a confidential finding into the ICON record describing why that information has been kept out of the Hearing Decision.
- 5. Any confidential information and any summary of confidential information described in this section may be stored in a secure physical location or may be stored in a secured location on ICON. Access to confidential information shall be limited to the ALJ, the Warden, any person handling disciplinary appeals, and any other persons designated by the Director or designee to have access to such information.
- 6. The Iowa Code, including **Iowa Code 904.602**, the Iowa Administrative Code, or IDOC Policy **AD-CR-04** *Release of Information* may classify documents or evidence in the record of a disciplinary matter as confidential or non-public. Disclosure of such

documents or evidence to an incarcerated individual is prohibited, unless specifically allowed by the applicable law or policy.

7. Witnesses providing statements after a disciplinary notice has been written and approved may mark or request that their witness statements be kept confidential. This policy at paragraph IV.D.7 indicates that incarcerated individual witness statements are not to be made available to any other incarcerated individual as they are considered to be non-public documents. However, to further assure incarcerated individual witness requesting that their statements be confidential, such statements should be stored in the confidential portion of ICON. Like other witness statements in the record, the ALJ need not do a confidential information summary regarding such statements, unless the person writing the disciplinary notice relied on the statements by the witness to write the notice.

G. Loss of Earned Time/Good Time

1. For incarcerated individuals serving sentences for OFFENSES COMMITTED PRIOR TO JULY 1, 1983, **Section 246.41 of the 1983 Iowa Code** requires the following sanctions for violation of a major rule:

"A prisoner [incarcerated individual] who violates any of such [disciplinary] rules shall forfeit the reduction of sentence earned as follows:

- a. For the first violation, two days.
- b. For the second violation, four days.
- c. For the third violation, eight days.
- d. For the fourth violation, sixteen days and in addition, whatever number of days more than one that he [or she] is in punishment [i.e., disciplinary detention].
- e. For the fifth and each subsequent violation, or for escape or attempt to escape, the warden shall have the power, with the approval of the state [IDOC] director, to deprive the prisoner [incarcerated individual] of any portion or all of the good time that may have been earned."

2. Whenever the ALJ desires to take from the incarcerated individual more than the number of days of good time specified in the **1983 Iowa Code, Section 246.41(4)**, as a result of an incarcerated individual's fifth or subsequent infraction, the ALJ shall note the maximum amount that should be taken in the decision. The same applies whenever the ALJ believes that more than the amount specified by the number of the infraction should be taken as a result of an escape or attempted escape. Actual removal of extra time pursuant to **Section 246.41(5), 1983 Code of Iowa**, requires approval of the Warden and the Director.
3. Each incarcerated individual serving a sentence for an OFFENSE COMMITTED ON OR AFTER JULY 1, 1983, may forfeit earned time within the class for each major violation, except as noted below. The loss of earned time shall be determined by the ALJ, and the ALJ's view of the seriousness of the misconduct.
 - a. In cases of escape, attempted escape, and serious or dangerous violence resulting in serious physical injury or loss of life, the ALJ may recommend a loss of any or all accumulated earned time. Such recommendations shall be subject to review by the Director of IDOC/Designee.
 - b. The ALJ shall specify an amount of earned time to be forfeited consistent with the sanctions available under this policy for the class of the infraction.
 - c. Any suspended sanctions, which an incarcerated individual may have received for previous reports, shall be counted towards the number of violations used in determining the amount of earned time to be taken for all future violations.
4. Whenever an incarcerated individual is found guilty of a major infraction, which is not suspended, the incarcerated individual may lose the amount of earned time as specified in the ALJ's Hearing Decision consistent with the Iowa Code and this policy. The institutional records supervisor shall be responsible for computing the loss of time within a reasonable amount of time after the ALJ finds an incarcerated individual guilty of a major infraction, determine the incarcerated individual's new discharge date, and inform the incarcerated individual of the loss of time and new discharge date. An incarcerated individual will not lose earned time simply by being in a Disciplinary Detention (DD), administrative segregation, or long-term/short-term restrictive housing.

H. Meritorious Earned Time/Good Time

Earned Time/Good Time, which the Director has restored under **Iowa Code 903A.3(3)** to an incarcerated individual for acts of heroism or for meritorious actions or the Director has awarded under **Iowa Code 903A.2(3)** to an incarcerated individual for exemplary acts, is not subject to sanctions by the ALJ.

I. Sanctions – General Rules

1. When the ALJ finds that an incarcerated individual has violated a rule as set forth in this policy, the ALJ shall impose one or more sanctions consistent with the sanctions available under the class of offense, in proportion to the seriousness of the infractions involved. Sanctions shall be explicit as to nature, extent, and duration, and are to be run consecutive with other sanctions, unless otherwise noted by the ALJ. If the ALJ finds that an incarcerated individual violated more than one major infraction rule, the ALJ may impose consecutive sanctions for each rule violation within a single hearing decision. The ALJ shall also impose sanctions that prevent an incarcerated individual from benefitting due to the incarcerated individual's violation of the rules.
2. In imposing sanctions, the ALJ shall give consideration to those conditions that maximize the opportunity for behavioral change. The ALJ may also recognize the circumstances that occurred after the original incident by giving the incarcerated individual full or partial credit towards any sanction (other than loss of earned time/good time). The ALJ will note the giving of any credit in the Hearing Decision.
3. The ALJ is authorized to suspend any or all sanctions. Upon a subsequent finding of guilt for another disciplinary report, the ALJ may, but need not, impose the suspended sanctions. The ALJ may also specify particular conditions related to a future report that shall result in the imposition of a suspended sanction. If suspended sanctions from a prior hearing decision are imposed in addition to the sanctions imposed for the current hearing decision, the total sanctions can exceed the sanctions authorized for the current violation class without aggravating the violation to the next violation class.
4. Disciplinary Detention

- a. The amount of time ordered in DD should be proportionate to the offense(s)/violation(s) taking into consideration the incarcerated individual's prior conduct, specific program needs, and other relevant factors.
 - b. Continuous DD shall not exceed 60 days for any incident or 90 days for a series of incidents. Incarcerated individuals' conditions of confinement while in DD shall be governed by IDOC Policy **IO-HO-07**, *Disciplinary Detention*.
 - c. For incarcerated individuals placed in special needs housing because of mental health, developmental or medical disabilities, the use of DD time is not recommended. In lieu of DD time, the ALJ should defer to the special needs unit treatment team for proper sanction/disposition.
- 5. The use of food or meals as a disciplinary measure is prohibited. **(5-ACI-5C-084)**
- 6. Assessing Costs
 - a. In addition to imposing any other sanctions, the ALJ may assess costs for damages to property, theft, and any other costs related to a rule violation, investigation, or disciplinary hearing. The amounts assessed should be calculated to cover any losses incurred by any person, by an institution, or by the IDOC. If more than one incarcerated individual is responsible for a cost, the ALJ shall specify the percentage or amount that each incarcerated individual shall be responsible for. In most cases, the costs should be split equally, unless the ALJ finds that the facts support a different distribution of the costs. In appropriate cases, the ALJ may impose costs on several incarcerated individuals using joint and several liability. In imposing joint and several liability, the ALJ shall not be limited to using comparative fault when the underlying actions were done intentionally.
 - b. When an item is damaged, the cost imposed shall be the repair costs. If an item is destroyed or cannot be repaired, then the cost imposed shall be the cost for replacing the item. When calculating replacement costs, the depreciated or salvage value of the original item need not be taken into account. Other costs shall be the actual incurred costs. If the

actual cost cannot be readily ascertained, an estimate of the cost may be used.

c. The following are examples of the type of violations for which costs may be imposed as part of a disciplinary hearing.

(1.) Injury to another incarcerated individual, staff, visitor or self (assaults, fights, use of force, attempted suicide, violation or work rules, etc.)

a) Cost of local hospital, physician and professional fees, laboratory, x-ray, and testing fees, ambulance costs, University of Iowa Hospitals & Clinics (UIHC) charges (if billed to an institution or the IDOC), staff overtime, vehicle mileage, etc.

b) A \$5.00 fee in addition to any other medical costs assessed for trips to the UIHC or a local hospital caused by an incarcerated individual's self-injurious behavior, willful neglect, etc.

c) If a staff member is injured and is away from work for any period, then the incarcerated individual may be charged for any or all of the following:

i. Any extra costs incurred by the institution to have other staff cover the work that cannot be performed by the injured person;

ii. Any workers compensation costs associated with the injury to the staff member;

iii. Any additional costs paid by the institution to the injured staff member while they are away from work, including vacation or sick leave costs needed to allow the injured staff member to be fully paid while convalescing.

- (2.) Damage to state property (cell, mattress, furniture, bedding, clothing, headphones, radios, rental TVs, etc.)
 - (3.) Damage to incarcerated individual and/or employee property.
 - (4.) Theft or attempted theft from incarcerated individuals, staff, visitors, institutions, e.g., food from Food Services, commissary items, supplies, adulteration of food, etc.
 - (5.) Actions resulting in special staff costs, e.g. investigations, escape, etc.
 - (6.) Lost incarcerated individual work allowances through misconduct of another.
- d. If known at the time of a disciplinary hearing, an itemized list of costs shall be included in the disciplinary hearing decision or attached to the hearing decision with the incarcerated individual receiving a copy. If itemized costs would disclose confidential information, then incarcerated individuals shall receive a certified list of costs that excludes the confidential information.
- e. When actual costs are assessed, documentation of the costs, such as a copy of the hearing decision or a store order, shall be processed through the Business Office.
- f. In some cases the amount of costs or damages will not be known at the time of the original hearing. In other cases, the existence of certain costs or damages may not be known at the time of the original disciplinary hearing. In either case, once the cost information becomes available an incarcerated individual shall be given written notice of the costs and have an opportunity to request a hearing regarding the reasonableness of the costs. An incarcerated individual who waived the incarcerated individual's hearing right in the original proceeding will still have the right to request a cost hearing.
 - (1.) When an incarcerated individual is given a notice of the cost amounts, the staff shall also give

the incarcerated individual a *Cost Hearing Request Form (IO-RD-03 F-7)*. That form will allow the incarcerated individual to request a hearing on the reasonableness of the costs, provided that the incarcerated individual submits a completed form within 24 hours from the time of receipt. Failure to submit a completed form within 24 hours will serve as a waiver of the right to participate in a cost hearing.

- (2.) If an incarcerated individual requests a cost hearing, the ALJ shall hold a hearing on whether the assessed costs are reasonable. The hearing will be conducted using the same procedures used to conduct other disciplinary hearings. Such a hearing will be limited to the reasonableness of the costs to be imposed. Any prior decision about the imposition of costs cannot be reopened at a cost hearing, but will be considered to have been settled and finalized by the earlier disciplinary hearing and appeal.
- (3.) If an incarcerated individual does not request a hearing or indicates on the *Cost Hearing Request Form* the incarcerated individual does not want a cost hearing, then the ALJ shall issue a decision without the incarcerated individual's participation in the cost hearing.
- (4.) If an incarcerated individual requests a hearing, that incarcerated individual may file an appeal of the ALJ's cost decision using the same procedure as used for other disciplinary hearing decisions. Such an appeal will be limited to cost issues only. If the incarcerated individual does not request a hearing, the incarcerated individual may not appeal the ALJ's decision determining costs.

g. Collection of Money

- (1.) Collection of money will be done in accordance with IDOC Policy **AD-FM-11**, *Incarcerated Individual Funds*, and the policies and procedures established for the Business Office at each institution.

- (2.) When an incarcerated individual transfers to a new institution and remains in the IDOC, collection of disciplinary costs shall be transferred to the receiving institution.
 - (3.) Incarcerated individuals who are assessed costs by the ALJ shall be liable for those costs during any time that they are held at an IDOC institution, including during any subsequent incarceration. There will be no general limitation period for collecting monies owed by incarcerated individuals for disciplinary sanctions, except as established in IDOC Policy.
 - (4.) Upon the expiration of an incarcerated individual's sentence, unpaid costs can no longer be collected in the normal manner. If the incarcerated individual agrees by a written agreement that payments will continue, such agreement shall be binding. Staff may also pursue any other options available under State law, such as using small claims court or seeking to have a former incarcerated individual's State tax refunds used to pay the indebtedness as allowed by Iowa Department of Revenue rules.
- 7. To prevent on-going misconduct, the ALJ may indicate in the Hearing Decision that privilege restrictions take effect immediately. Such hearing restrictions will stay in force, unless institutional procedures indicate otherwise, or during the appeal process the warden or designee reinstates the privileges while the appeal is pending, or the warden or designee modifies or reverses the privilege restrictions in an appeal decision.
 - 8. Notwithstanding other policy provisions, the ALJ may return property loaned to another incarcerated individual to the owner if the ALJ finds that such an action would likely have a chance for a more positive behavioral change than sending out or destroying the property. The ALJ may impose a delay on the returning of such property in order to help encourage behavioral change by an incarcerated individual.
 - 9. Any time loss sanction shall reduce the accrued earned time credits for each active time computation group by the amount of the

sanction. An active time computation group is one for which an incarcerated individual accrues credits for time served. In appropriate circumstances, an ALJ may explicitly limit a time loss sanction to a particular time computation group.

J. Dismissed Notices

1. If the incident as charged in the Disciplinary Notice is dismissed, the disciplinary records of that incident shall be sent to the Inactive screen in ICON.
2. Dismissal of alleged individual rule violations constituting only part of the entire incident shall not require sending the file to the Inactive screen in ICON.
3. Nothing in this policy is intended to limit the availability of dismissal or any other remedy in appropriate cases. **(5-ACI-3C-21)**
4. The goals of the disciplinary process, as described in IDOC Policy **IO-RD-01** *Overview and Philosophy of Incarcerated Individual Discipline*, seek to positively change incarcerated individual behavior, insure security, and deter future inappropriate behavior. Therefore, any dismissal shall be without prejudice to initiating a new disciplinary process in appropriate cases. A new disciplinary process covering the same or closely related actions can be done if evidence is obtained or developed that was not available during the original proceeding or was not part of the record reviewed by the ALJ or warden/designee in the original proceeding.

K. Appeals

1. The ALJ or other staff member shall advise the incarcerated individual of the right to appeal the disciplinary decision. Each institution shall establish one or more locations where an incarcerated individual may obtain a *Disciplinary Appeal Form*. **(IO-RD-03 F-3)** Incarcerated individuals in segregation shall be given appeal forms upon request to staff. Any appeal must be submitted within 24 hours of the date and time that the incarcerated individual receives a copy of the ALJ's written decision. An incarcerated individual need not be given a Disciplinary Appeal Form if the incarcerated individual forfeited appeal right (e.g., by waiving the right to be at a hearing) or waited more than 24 hours after receiving a written hearing decision. Each institution shall create a procedure regarding recording times that hearing decisions are given to

incarcerated individuals and how incarcerated individuals may obtain a Disciplinary Appeal Form.

2. If the incarcerated individual receives a Disciplinary Appeal Form from the ALJ when the ALJ issues a hearing decision, the sanctions, other than loss of privilege sanctions, shall be stayed pending a decision by the Warden or designee. Institutions shall establish procedures regarding when and how sanctions are stayed pending an appeal when an ALJ is not the person who gives a copy of the hearing decision to an incarcerated individual. If the incarcerated individual declines to take a Disciplinary Appeal Form in a manner that stays the sanctions, the sanctions imposed by the ALJ shall then go into effect. If later, still within the 24-hour appeal time frame, the incarcerated individual decides to appeal, the sanctions shall remain in effect. Each institution shall establish procedures regarding how staff will be notified regarding when an incarcerated individual's sanctions shall be stayed and when they shall go into effect.
3. Failure to appeal within the 24 hours shall result in the upholding of the ALJ's hearing decision. **(5-ACI-3C-23)**
4. If an incarcerated individual does not appeal an ALJ decision, then the incarcerated individual has failed to exhaust the incarcerated individual's administrative remedies regarding that decision and may not challenge the decision in later disciplinary matters. In particular, if an incarcerated individual does not appeal a decision that has one or more suspended sanctions, the incarcerated individual may not raise any challenge to the suspended sanction in a subsequent ALJ decision that imposes the suspended sanction. Similarly, if an incarcerated individual does not appeal an ALJ decision, then the incarcerated individual may not challenge that decision if it is used to enhance sanctions in later disciplinary matters.
5. Appeals to Warden/Designee: The Warden/Designee shall respond to an appeal in writing within 15 calendar days from receipt of the appeal, or 15 calendar days from receipt of authorized supplemental information.
 - a. The final appeal response of the Warden/Designee constitutes final agency action.
 - b. The Warden/Designee may affirm the decision. If procedures have not been followed or there is insufficient evidence in the

record to support the ALJ's findings, the Warden/Designee may:

- (1.) Remand for correction of procedural errors;
 - (2.) Order a rehearing; or
 - (3.) Reduce, modify, or suspend the findings and/or sanction; or
 - (4.) Reduce the sanction class from more serious to less serious and revise sanction; or
 - (5.) Reverse the decision and dismiss the disciplinary report(s) against the accused incarcerated individual; or
 - (6.) Order additional investigation.
- c. The failure of the Warden/Designee to respond to the appeal within 15 calendar days may, for purposes of an incarcerated individual's exhaustion of administrative remedies, be considered a denial of the appeal and the incarcerated individual may proceed with other available remedies. However, the Warden/ Designee shall still be required to provide an appeal response as soon as practical.
6. Time limits for appeals may be expanded by the Warden/ Designee if exigent circumstances arise, such as disturbances, natural disasters, health or safety emergencies, or illness of the Warden/Designee.
7. Nothing in these rules shall preclude further review of a disciplinary action by initiative of the Warden, Director, or Designee, even when no incarcerated individual appeal is filed. If a Warden, Director, or Designee modifies a decision under this provision, the Warden, Director or Designee shall complete the *Further Review* form **IO-RD-03 F-4**. A copy of that form shall be attached to the disciplinary file in ICON. No form need be completed if the modification of a disciplinary action is done through the actions of a classification committee or in accordance with an established program, such as one governing long-term restrictive housing or as part of a treatment plan for mentally ill incarcerated individuals.

8. Upon remand of a case, the ALJ shall not impose any greater sanction than that imposed initially for that case. The ALJ may, however, impose a different type of sanction if the total sanction imposed on remand is of a lesser severity than the original sanction. For example, in the case of a disciplinary detention sanction, the ALJ may impose a longer sanction of a lesser type, such as cell/room/bunk restriction.
9. Incarcerated individuals are expected to fully participate in the ALJ hearing process in order to preserve all of their appeal rights. If an incarcerated individual does not make any statement about the facts raised by a disciplinary notice during the investigation of the notice or at the ALJ hearing, then the incarcerated individual may not raise factual issues as part of an appeal, but the incarcerated individual may still raise issues regarding a sanction imposed. An incarcerated individual may still raise factual issues raised by evidence that is newly discovered after the ALJ hearing is completed.

L. Procedures Following Potential Criminal Misconduct

1. Any incarcerated individual who may have violated a state or federal law while in custody shall be subject to criminal prosecution. The alleged incident shall be reported, investigated, and handled as any regular criminal case. **(5-ACI-3C-06)**
2. Generally, where the Warden/Designee determines that a crime has or may have been committed that should be prosecuted, normal disciplinary action may still be taken promptly provided that the incarcerated individual has been read the following warning prior to being interviewed by the investigator or other appropriate official and the incarcerated individual has been informed that:
 - a. Criminal prosecution is possible;
 - b. The incarcerated individual has the right to remain silent;
 - c. The incarcerated individual's silence may be used against the incarcerated individual in the disciplinary hearing; and
 - d. Anything the incarcerated individual says may be used in criminal prosecution.

While many of the disciplinary rules are modeled after criminal statutes, the above warning need only be used when a matter

involves conduct serious enough that it is highly probable that a criminal prosecution may be brought. The failure to give the above warning does not limit the use of any statements in any disciplinary proceedings, but may limit the use of such statements in any criminal proceeding.

3. If the ALJ conducting a disciplinary hearing has been advised that a matter covered by a disciplinary notice could result in a criminal prosecution or the ALJ determines that such a prosecution is highly probable, then the ALJ shall read out the warning in IV.L.2. above. The ALJ shall indicate the warning was given in the Hearing Decision.
4. Generally, if the Warden/Designee believes that a criminal act has been committed that should be prosecuted, the Warden/Designee may consult with the local County Attorney.
5. In cases involving allegations of sexual violence, the Inspector General/Designee rather than the Warden/Designee shall handle issues connected with possible criminal prosecution. The Inspector General/Designee may consult with the police and prosecuting authorities and the incarcerated individual will receive a Miranda warning when appropriate. **(PREA 115.22(b), 71(h))**
6. The ALJ may continue discipline until criminal proceedings are resolved. After the dismissal, trial, or other disposition of criminal charges, any disciplinary proceeding still pending shall be conducted or concluded.

M. Prohibited Acts

1. Policy Review

In order to establish a firm foundation for incarcerated individual conduct and the institutional discipline process, it is necessary to describe the kinds of behavior prohibited within IDOC institutions. These rules are reviewed as needed by the IDOC's Legal and Policy staff to assure compliance with statutory and case law requirements.

2. Authorized Sanctions

- a. Upon a finding of guilty by the ALJ, the ALJ shall specify the class of the violation taking into consideration any aggravating or mitigating circumstances. Any or all of the following

sanction listed for a given class may be imposed at the discretion of the ALJ:

(1.) Class A

- a) Loss of earned time/good time not to exceed 365 days.
- b) Disciplinary Detention up to 60 days or 90 days for multiple class A offenses.
- c) Loss or modification of any or all privileges including but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed 365 days.
- d) Assess actual costs.
- e) Suspend honor contract (for incarcerated individuals committed before July 1, 1983).
- f) Suspend all or part of the sanctions up to 90 days.
- g) Any sanction available on any lesser class offense.

(2.) Class B

- a) Loss of earned time/good time not to exceed 180 days.
- b) Disciplinary Detention up to 45 days for serious or dangerous violence or 30 days for all other offenses.
- c) Loss or modification of any or all privileges including, but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed 180 days.

- d) Restriction to the cell/unit up to 30 days. (may or may not include routine activities).
- e) Assess actual costs.
- f) Extra duty not to exceed 45 days.
- g) Special conditions (alcohol treatment, drug treatment, referral to classification committee, anger management, etc.).
- h) Reprimand.
- i) Suspend honor contract (for incarcerated individuals committed before July 1, 1983).
- j) Suspend all or part of the sanctions up to 90 days.
- k) Any sanction available on any lesser class offense.

(3.) Class C

- a) Loss of earned time/good time not to exceed 30 days.
- b) Disciplinary Detention up to 15 days.
- c) Loss or modification of any or all privileges including, but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed 90 days.
- d) Restriction to the cell/unit up to 21 days (May or may not include routine activities.).
- e) Assess actual costs.
- f) Extra duty not to exceed 30 days.

- g) Special conditions (alcohol treatment, drug treatment, referral to classification committee, anger management, etc.).
- h) Reprimand.
- i) Suspend all or part of the sanctions up to 90 days.
- j) Any sanction available on any lesser class offense.

(4.) Class D

- a) Loss of earned time/good time not to exceed 16 days.
- b) Disciplinary Detention up to 5 days.
- c) Loss or modification of any or all privileges including, but not limited to, canteen privileges (not including personal hygiene items), visiting privileges, allowance for work performed, access to jobs and programs, not to exceed 30 days.
- d) Restriction to the cell/unit up to 14 days (May or may not include routine activities.).
- e) Assess actual costs.
- f) Extra duty not to exceed 15 days.
- g) Written assignments.
- h) Special conditions (alcohol treatment, drug treatment, referral to classification committee, anger management, etc.).
- i) Reprimand.
- j) Suspend all or part of the sanctions up to 90 days.

- k) Disposition of evidence.
- b. In accordance with the provisions of this policy, an incarcerated individual may lose all accumulated earned time or good time for certain serious infractions.
- c. The ALJ may reduce the classification of any rule violation from a major infraction to a minor infraction if the ALJ finds that the documented unique factors of the case make such a reduction appropriate. **(5-ACI-3C-01)**

In such a case, the ALJ may impose or suspend one or more of the minor report sanctions listed in IDOC Policy **IO-RD-02**, *Informal Corrective Action and Minor Disciplinary Reports*, or in any minor report procedure established by an institution.

When an ALJ's hearing decision reduces a major report to a minor report, the ALJ's decision shall be the final decision on the matter. An incarcerated individual will not have the right to appeal such a decision.

3. Major Infractions

a. While it is impossible to define every possible prohibited act or rule violation, the following Major Infractions are prohibited in all IDOC institutions:

b. Rule #

- (1.) Killing
- (2.) Assault
- (3.) Kidnapping
- (4.) Extortion, blackmail, protection (strong-arming)
- (5.) Escape
- (6.) Participation in a Disturbance
- (7.) Arson
- (8.) Robbery

- (9.) Possession of dangerous contraband
- (10.) Dealing in dangerous drugs/intoxicants
- (11.) Criminal or unlawful conduct
- (12.) Possession of key or key pattern
- (13.) Fighting
- (14.) Threats/Intimidation
- (15.) Sexual misconduct and sexual violence
- (16.) Unauthorized possession/exchange
- (17.) Damage to property
- (18.) Theft
- (19.) Tampering/interfering with locks, security items, computers, or electronic devices
- (20.) Possession/ Manufacture of drugs, intoxicants
- (21.) Medication violations
- (22.) Refusal or failing to work
- (23.) Disobeying a lawful order/direction
- (24.) Violating a condition of leave/furlough
- (25.) Out of place of assignment
- (26.) Verbal abuse
- (27.) Obstructive/Disruptive conduct
- (28.) Counterfeiting, forging
- (29.) Being intoxicated or under the influence

- (30.) Gambling, debts, etc.
- (31.) Attempted suicide, self-mutilation
- (32.) Bribery
- (33.) Bartering, selling goods or services, etc.
- (34.) Entering into contracts, agreements, operating businesses
- (35.) False statements
- (36.) Refusal or failing to participate in treatment
- (37.) Habitual minor violator
- (38.) Adulteration of food or drink
- (39.) Safety, sanitation, tattooing, and piercing
- (40.) Misuse of mail, O-mail, telephone, or other communication
- (41.) Inappropriate sexual harassment and sexual abuse
- (42.) Security Threat Groups
- (43.) Attempt or complicity
- (44.) Rioting
- (45.) Violations involving electronic devices and electronic files

c. Definition of Offenses (By Rule #)

- (1.) Killing - An incarcerated individual commits killing when the incarcerated individual non-accidentally causes the death of another person.

Class "A" for all violations.

(2.) Assault - An incarcerated individual commits assault when the incarcerated individual intentionally does any act that:

- a) Causes or threatens to cause pain or injury to another person or which is intended to result in physical contact which will be insulting or offensive to another person.
- b) Applies any physical force or offensive substance (i.e. feces, urine, saliva, mucous) or any other item against any person or animal regardless of whether pain or injury occurs.

Class "A" for assaults on a staff person or if a weapon or potentially infectious bodily fluids, secretions, tissue, or excrement have been used; Class "B" for all other violations.

(3.) Kidnapping - An incarcerated individual commits kidnapping when the incarcerated individual seizes, carries, forces, entices, or in any other manner moves any person from one place to another, or confines another without the person's consent.

Class "A" for all violations.

(4.) Extortion, Blackmail, Protections (strong-arming) - An incarcerated individual commits an offense under this subsection when the incarcerated individual demands or receives money or anything of value in return for:

- a) Providing protection from others.
- b) Refraining from violent or sexual activity.
- c) Refraining from informing on another.
- d) Acting as a "middleman" for someone engaged in any of this activity shall also be punishable under this subsection.

Class "B" for all violations.

(5.) Escape - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Without proper authority evades a place of confinement.
- b) Fails to return from an authorized temporary absence such as furlough.
- c) Fails to comply with a work agreement outside the institution by leaving a place of work without authority or by failing to return at the required time.
- d) Evades custody while being transported.

Class "A" for all violations.

(6.) Participation in a Disturbance - An incarcerated individual commits an offense under this subsection when three or more incarcerated individuals assemble together, with one or more of them acting in a violent manner, and with the intent to commit further violations causing a disruption to institutional operations.

If further violations continue after the initial acts, those actions may be considered separate or additional violations of this rule or of other disciplinary rules, including the riot rule, and those violations may be punished as separate offenses.

When a disturbance is occurring, any incarcerated individual who immediately refuses to follow an order to disperse, fails to move as directed by an order, or fails to comply with any order given after notification has been used, shall be deemed to have been part of the disturbance and shall be guilty of violating this rule.

Class "B" for all violations.

(7.) Arson - An incarcerated individual commits arson when the incarcerated individual intentionally sets fire to, burns, causes to be burned, or by the use of any explosive or

combustible device, damages or destroys, or causes to be damaged or destroyed, any structure or property.

Class "A" if the act occurs in an occupied dwelling;
Class "B" for any other violations.

(8.) Robbery - An incarcerated individual commits robbery when the incarcerated individual uses or threatens the use of physical force upon another person for the purpose of:

- a) Preventing or overcoming resistance to the taking of property or to the retention thereof immediately after the taking.
- b) Compelling the owner of such property or another person to deliver the property.
- c) The ALJ may modify an alleged violation to this rule to theft under Rule 18.

Class "A" if a weapon has been used; Class "B" for all other violations.

(9.) Possession of Dangerous Contraband - An incarcerated individual commits an offense under this subsection when the incarcerated individual possesses, uses, or has under the incarcerated individual's control or in the incarcerated individual's custody an item considered dangerous contraband.

Class "B" if life threatening; Class "C" for all other violations.

(10.) Dealing in Dangerous Drugs/Intoxicants - An incarcerated individual commits an offense under this subsection when the incarcerated individual sells or gives away any quantity of dangerous drugs or intoxicants. Also includes introduction into the institution with intent to sell or give away any quantity of dangerous drugs or intoxicants.

Class "B" for all violations.

(11.) Criminal or Unlawful Conduct - An incarcerated individual commits an offense under this subsection if an incarcerated individual plans, participates, assists, condones, or encourages others to violate a state or federal law or an existing court order, whether the offense is or will be committed inside or outside the institution and whether the offense actually occurs. The law violated may be a state or federal criminal or civil law.

Class "B" for all violations.

(12.) Possession of Key or Key Pattern - An incarcerated individual commits an offense under this subsection when the incarcerated individual possesses a key or key pattern to any lock. A key pattern is any substance upon which the impression of a key is made. This offense shall not prohibit possession of keys or shape authorized by the Warden.

Class "A" for possession of a key or pattern of a key that could breach the institution's perimeter; Class "B" for all other violations.

(13.) Fighting - An incarcerated individual commits fighting when the incarcerated individual engages in a physical altercation including the exchange of blows, shoves, kicks, or other offensive physical conduct. The physical contact need not be in anger.

Class "B" if weapon is used; Class "C" for all other violations.

(14.) Threats/Intimidation - An incarcerated individual commits a threat when the incarcerated individual communicates a determination or intent (including through gestures, physical movements, or body language) to injure another person or to commit a crime of violence or an unlawful act dangerous to human life, and the probable consequence of such threat or threats (whether or not such consequence, in fact, occurs) is:

- a) To place another person in fear of bodily injury.
- b) To cause damage to property.

- c) Is to take place in the future after released from confinement.

It shall be an offense under this subsection for any incarcerated individual to intentionally compel or induce another to engage in conduct from which the latter has a legal right to abstain or to abstain from conduct in which there is a legal right to engage, by means of conduct described in this subsection. It shall also be punishable under this section to intimidate another from behaving in such manner, either through express or implied words or actions (including through gestures, physical movements, or body language) that would be understood by a person to carry an implied threat of negative consequences if the person does not acquiesce.

Class "B" for threats to kill, rape, sexually assault, or use of weapon; Class "C" for all other violations.

(15.) Sexual Misconduct and Sexual Violence - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Proposes a consensual sexual contact or sexual relationship with another person through gestures, such as, kissing, petting, etc., or by written or oral communications or engages in a consensual sexual contact or relationship. An incarcerated individual may be disciplined for proposing a consensual sexual contact or sexual relationship with staff only upon a finding that the staff member did not explicitly or implicitly consent to or encourage such a proposal.
(PREA 115.78(e))
- b) Encourages or does not stop a visitor from exposing the visitor's genitals, buttocks, pubic areas, breasts, or under garments to view by an incarcerated individual during an in-person or video visit.

- c) Takes part in an indecent exposure. Indecent exposure includes, but is not limited to, offensive exposure of the genitals or pubic areas in a manner designed to be seen by another person.
- d) Communicates to another person using writings, drawings, comments, or gestures of a sexual nature designed to cause, or capable of causing, embarrassment or offense to another person.
- e) Openly masturbates or touches himself or herself sexually. This shall be a violation when the incarcerated individual is looking at another person or engages in this behavior with the intent that he or she will be seen by the other person. This shall be a violation even if the person being looked at is unaware of the incarcerated individual's action.
- f) Sexually harasses, even once, a staff member, incarcerated individual, volunteer, contractor, visitor, an off-grounds worker, or member of the community. Such harassment may consist of, but is not limited to, inappropriate comments on the personal appearance or personal information of an individual.
- g) Watches another incarcerated individual undress, shower, use the toilet, masturbate, or touch himself or herself in a sexual manner, if done for the sexual arousal or pleasure of one or both incarcerated individuals.
- h) Possesses a written proposal for sexual contact with another incarcerated individual after having had time to dispose of the written proposal.
- i) Creates or displays sexually explicit drawings or drawings showing sexual violence.
- j) Any of the following acts, done by an incarcerated individual to any non-incarcerated person, if the victim does not consent, is

coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- i. Contact between penis and vulva or between the penis and the anus, including penetration, however slight;
 - ii. Contact between the mouth and the penis, vulva or anus;
 - iii. Penetration of the anal or genital opening of another person, however slight, by the hand, finger, object or other instrument;
 - iv. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person.
- k) Any of the following acts done by an incarcerated individual to any non-incarcerated person:
- i. Ejaculating onto another person;
 - ii. Forcing a person to watch a sex act or a person masturbate;
 - iii. Making a single unwelcome sexual advance or request for sexual favors, if the advance or request includes an explicit or implied threat;
 - iv. Using threats or coercion to have another person expose that person's genitals, anus, buttocks, or breasts to another person.

Class "A" for any non-consensual act of sexual violence committed against a staff member; Class "B" for any other non-consensual act of sexual violence; Class "C" for all other violations.

(16.) Unauthorized Possession/Exchange - An incarcerated individual commits an offense under this subsection if the incarcerated individual has in possession on the incarcerated individual's person, in the incarcerated individual's cell or domicile, in the incarcerated individual's immediate sleeping area, locker, or immediate place of work or other program assignment; or receives from or gives to another incarcerated individual, or fashions or manufactures or introduces, or arranges to introduce into the institution any unauthorized item(s) delineated as contraband including, but not limited, to:

- a) Locks, lock picks, trip wires, locking devices, chain, hooks, metal cutting saws or devices, files, rope, ladder, tool(s), or diagrams, or other items which could be used to jeopardize security.
- b) Mask, wig, or disguise or any other means of altering normal physical appearance which would make ready identification of an incarcerated individual difficult.
- c) Mannequin, dummy, replica of a human body, human hair, or any item or device which would cause any incarcerated individual to be counted as being present at a designated time and place when, in fact, the incarcerated individual would be absent; or in any way would aid or abet the escape or walk away of an incarcerated individual.
- d) Form of securities, bonds, coins, currency, legal tender, official papers, or documents (other than those pertaining to judicial or administrative proceedings) unless expressly and specifically authorized.
- e) Item of an officer's uniform, civilian clothing, or staff clothing or imitation including badges, buttons, name tags, or items of personal identification unless expressly and specifically authorized.

- f) Food or drink unless expressly and specifically authorized. Food or drink commissary or vending items shall be authorized for a period of only 90 days from their delivery date, unless institution rules specify a different period.
- g) Property belonging to someone else or anything not authorized. An item is deemed to be not authorized if it is not properly marked or engraved as required by institutional rules. Items that may be ordered through commissary are only authorized to the extent that the items or the quantity of an item is specifically allowed by an institution's rules.
- h) Exceeding limits of authorized possessions or possessing any item in a location where such an item is not allowed.
- i) Altered authorized/unauthorized property; to include, but not limited to, altering electrical items which results in the ability of that item to produce heat or an electrical spark. Altered property includes items intentionally altered or any broken items. Property is also considered to be unauthorized if stored in non-original packaging or packaging without an original label, unless institutional procedures allow such storage.
- j) Jigger string, pole, or any other device used to send or retrieve an object from one cell or location to another, or to pass notes or any other object from one place to another.
- k) Jigger mirror, usually a piece of broken mirror, glass, or any other reflective object used to look into another cell, down a range, or any other location.
- l) Documents, materials, graffiti, photographs, artwork, clothing, or any other item depicting any form of gang relationship, affiliation, or membership.

- m) Any form of tobacco and any smoking related materials.
- n) Prohibited Communication/Electronic Devices.
- o) Legal documents or draft legal documents that belong to another incarcerated individual unless permitted by written institutional policy.
- p) The transfer or exchange of any property or item of value or the direct or indirect exchange of money or a money substitute, such as a debit card. Transfers between or payments by incarcerated individuals through third-parties, including transfers or payments through or by persons outside an institution, are prohibited by this provision.
- q) The possession of any type of fantasy sports game or league materials, fantasy role-playing game, or homemade fantasy board or card game, unless allowed by institutional procedure.
- r) Except as allowed by law, publications, photographs, or drawings that feature nudity or have sexually explicit visual content.
- s) Publications, photographs, or drawings that contain materials that an incarcerated individual is not allowed to possess due to the incarcerated individual's current or future participation in a treatment program, provided that the incarcerated individual received prior notice that the incarcerated individual could not possess such items.
- t) Publications, materials, photographs, or drawings that feature drugs, intoxicants, or alcohol images, names, or recipes, or show weapons or violent actions, unless allowed under IDOC rules or policies.

- u) Any unauthorized electronic device or electronic file.

Class "B" for security items; Class "C" for all other violations.

- (17.) Damage to Property - An incarcerated individual commits an offense under this subsection by intentionally or negligently causing damage to property of another person or of the State such as tampering with electronic, mechanical, or plumbing devices or fixtures. This also includes damage to property resulting from other misconduct, (i.e., fighting, roughhousing, theft, disruptive conduct, etc.).

Class "D" for all violations.

- (18.) Theft - An incarcerated individual commits theft when the incarcerated individual knowingly obtains or exercises control over property without authorization, intending to deprive the rightful owner of the use or benefit of the property. This rule also covers possessing property which an incarcerated individual knows or should know was stolen.

Class "C" for all violations.

- (19.) Tampering/Interfering with Locks, Security Items, Computers, or Electronic Devices - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Without authorization, locks, unlocks, alters or interferes in any way with any lock, locking system, or security item within the institution.
- b) Without authorization, accesses or modifies the settings or files of any computer or other electronic device.
- c) Uses any unauthorized lock or security item.

Class "B" for all violations.

(20.) Possession/Manufacture of Drugs, Intoxicants - An incarcerated individual commits an offense under this subsection if the incarcerated individual makes, hides, consumes, inhales, or possesses:

- a) Any quantity of unauthorized dangerous drugs or alcohol.
- b) A syringe or other implement capable of injecting a substance under the skin of an individual or an article, equipment, or apparatus for the use or manufacture of a drug, alcohol, or other intoxicant, or a volatile substance. This rule also covers possession of any precursor substances for making unauthorized drugs or alcohol, such as baker's yeast or fermenting fruity liquids used to make homemade alcohol.
- c) Recipes for intoxicants or any description of any of the steps used to manufacture any dangerous drugs or intoxicants.
- d) An incarcerated individual with a positive urinalysis, blood test, or breath test shall be presumed to be in possession of the drug or intoxicant for which tested. The incarcerated individual must provide a testable, non-adulterated, urine sample of sufficient volume within two hours of the request. Refusal or failure to provide the requested sample shall constitute a violation of this rule. Using urine or a urine substitute from another source or tampering with a sample by diluting it or adding any substance to it shall be deemed a refusal to provide a sample. The institution may choose to segregate or isolate the incarcerated individual immediately upon a positive test or failure to provide a sufficient sample. All testing done for drugs or intoxicants must conform to the requirements of IDOC Policy **IO-SC-21**, *Incarcerated Individual Substance Abuse Testing*.

Class "B" for all violations.

(21.) Medication Violations - An incarcerated individual commits an offense under this subsection when:

- a) The incarcerated individual fails to follow the prescription or direction for any medication or fails to follow the rules governing self-administered medications.
- b) The incarcerated individual stores, saves, removes, gives, or receives any medication.
- c) The incarcerated individual is repeatedly late for or repeatedly misses scheduled medication lines or medical appointments.

Class "C" for all non-attendance violations; class "D" for all attendance violations.

(22.) Refusal or Failing to Work - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Refuses to perform work assigned, refuses or fails to report to work, or quits an assigned job.
- b) Fails to perform work as instructed by a supervisor.

Class "C" for all violations.

(23.) Disobeying a Lawful Order/Direction - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Fails to obey a written rule or posted order.
- b) Fails to obey a verbal or written order (including a disciplinary sanction) given by any person in authority or staff of the institution.
- c) Interferes with or circumvents established procedures.

Orders shall be reasonable in nature and give reasonable notice of the conduct expected. If the alleged conduct involves violation of a rule or posted order not classified as a major rule, the Disciplinary Notice as well as the ALJ's decision must state adequate reasons (e.g. repetition or severity of the infraction) in addition to the infraction to justify this rule's sanctions.

Class "C" for all violations.

- (24.) Violating a Condition of Leave/Furlough - An incarcerated individual commits an offense under this subsection when the incarcerated individual fails to comply with any condition of a leave, including a leave to perform work away from the institution, or furlough from the institution.

Class "B" for violations involving security issues; Class "C" for all other violations.

- (25.) Out of Place of Assignment - An incarcerated individual commits an offense under this subsection when the incarcerated individual without proper authority:

- a) Fails to report, as prescribed, to the appointed place of duty or assignment or any other place to which directed to proceed by an order of an employee of the IDOC or by order of institution regulations.
- b) Departs from the appointed place of duty or assignment or any place where the incarcerated individual was directed to remain by an order of an employee of the IDOC or by an order of institution regulations.
- c) Is present in an unauthorized area or in an area in which the incarcerated individual currently lacks permission to be present.

Class "B" for violations involving security issues; Class "C" for all other violations.

(26.) Verbal Abuse - An incarcerated individual commits an offense under this subsection when the incarcerated individual subjects another person to abusive, defamatory, insolent, or disrespectful language or remarks whether written or oral, or abusive, defamatory, insolent, or disrespectful gestures. It is also a violation if the language or gesture was directed at one person, but was overheard or seen by another person.

Class "C" for all violations.

(27.) Obstructive/Disruptive Conduct - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Transmits through any form of communication, threats, demands, or suggestions which advocate or could cause disruption of operations of any segment of an institution; including, but not limited to, gestures, actions, words, or any other type of signals, either verbal, nonverbal, or in written communication.
- b) Interferes with staff duties or investigation.
- c) Engages in conduct which disrupts or interferes with the security, tranquility, or orderly running of an institution including, but not limited to, "horseplay;" roughhousing, interfering with a search, making false fire alarms, participating in unauthorized meetings, gatherings, or petitioning, throwing food, liquid, or other objects, spitting, encouraging others to refuse to work or participate in work stoppage, engaging in, or encouraging a group demonstration, jumping lines, smoking or chewing tobacco, etc.
- d) Acts as a jigger or lookout for others or uses a form of communication to create a diversion to avoid detection or observation.
- e) Proposes, suggests, or participates (orally, in writing, or by actions) in any activity with staff

member(s) which interferes with, has the potential to interfere with, or compromises that staff member's judgment, responsibilities, or duties. This prohibition covers communications of love or affection for a staff member or seeking to establish a friendship or relationship after the incarcerated individual gets out of prison.

- f) Destroys, damages, or hides any potential evidence of a possible rule violation.
- g) Smuggles into an institution, transport vehicle, or off-grounds work location, any items that are considered contraband for incarcerated individuals to possess or use. This prohibition covers any incarcerated individual who actually brings in such contraband and any incarcerated individual who helps or supports such smuggling. Providing money or items of value, directly or indirectly, to purchase items to be smuggled or to pay someone to smuggle items is also a violation of this provision.
- h) Possesses personal information about institutional staff, volunteers, vendors, or any governmental employee that could be used to negatively impact that person, if that information was not given to the incarcerated individual by that person or was published in a newspaper, magazine, or other public source available to incarcerated individuals.

Class "B" for violations involving security issues; Class "C" for all other violations.

(28.) Counterfeiting, Forging - An incarcerated individual commits an offense under this subsection when the incarcerated individual counterfeits, forges, or reproduces without authorization, any document, article of identification, money, security, or official paper and includes unauthorized use of an official document or paper.

Class "C" for violations involving security issues; Class "D" for all other violations.

(29.) Being Intoxicated or Under the Influence - An incarcerated individual commits an offense under this subsection when the incarcerated individual uses or is found to be intoxicated or under the influence of drugs, dangerous drugs, and intoxicants.

Class "B" for all violations.

(30.) Gambling, Debts, etc. - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Plays for money, services, or other things of value at any game including, but not limited to, those played with cards or dice.
- b) Bets on the side or hand of those playing.
- c) Bets anything of value on the outcome of any observable event or ascertainable happening.
- d) Organizes, conducts, or participates in any game of chance, lottery, betting pool, or other similar device.
- e) Incurs debts.
- f) Possesses in any manner debt lists.
- g) Possesses in any manner gambling paraphernalia.
- h) Playing of any games that are predominately gambling games, such as poker, blackjack, or craps. Institutional procedure may allow the playing of such games in general or at specified time and may also designate other gambling games that are prohibited.

Class "C" violations involving security issues; Class "D" for all other violations.

(31.) Attempted Suicide, Self-Mutilation - An incarcerated individual commits an offense under this subsection by attempting suicide, causing self-mutilation, or other destruction.

Class "C" for all violations.

(32.) Bribery - An incarcerated individual commits an offense under this subsection when the incarcerated individual offers to confer, confers, or agrees to confer anything of value upon another person with the intent to influence that person's exercise of discretion or other action in any official capacity in an attempt to gain special favors.

Class "C" for all violations.

(33.) Bartering, Selling Goods or Services, Etc. - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Is in violation of laws, rules, or policies regarding the transfer or ownership of property.
- b) Barters, loans, gives, exchanges, accepts, sells or buys things of value including, but not limited to, those items sold in the commissary, clothing, housing furnishings, art and craft items.
- c) Transfers or attempts to transfer or accepts transfer of funds from one incarcerated individual to another incarcerated individual, either directly or through another person.
- d) Agrees to perform or receive services, including legal work, for anything of value or in return for services.

Class "C" for all violations.

(34.) Entering into Contracts/Agreements, Operating Businesses - An incarcerated individual commits an offense under this subsection when the incarcerated individual enters a contract, unauthorized agreement, or

engages in a business without the prior written approval of the Warden.

Class "D" for all violations.

- (35.) False Statements - An incarcerated individual commits an offense under this subsection when the incarcerated individual knowingly makes a false statement whether or not under oath or affirmation including, but not limited to, dishonesty, deception, cheating, plagiarism, etc. A report of sexual harassment and/or sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying (or any other violation of this rule), even if an investigation does not establish evidence sufficient to substantiate the allegation. **(PREA 115.78(f))**

Class "C" for all violations.

- (36.) Refusal or Failing to Participate in Treatment - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Refuses to follow through with prescribed or required treatment or other programs.
- b) Fails to participate in prescribed or required treatment or other programs as instructed.

Note: The disciplinary notice and/or the record provided to the ALJ should demonstrate that the appropriate staff actions described in IDOC Policy **IS-CL-03**, *Case Planning Procedures*, regarding required treatment or other programs were done prior to the writing of the disciplinary notice.

Class "B" violation for all refusals or terminations involving required treatment classes; Class "C" for all other violations.

- (37.) Habitual Minor Violator - An incarcerated individual commits the offense of a habitual minor violator if the incarcerated individual is repeatedly found to have committed minor infractions. The number of minor

infractions and prescribed time frame shall be seven minor infractions within a 60 day time period.

Class "D" for all violations.

- (38.) Adulteration of Food or Drink - An incarcerated individual commits an offense under this subsection by introducing any foreign substance or contaminant into any food or drink meant to be consumed by one or more other persons.

Class "B" for all violations.

- (39.) Safety, Sanitation, Tattooing, and Piercing - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Uses any equipment or engages in any practices contrary to written or verbal safety instructions including, but not limited to, possession or use of any item that punctures or causes bleeding, either self-inflicted, inflicted on another incarcerated individual, or inflicted by another incarcerated individual. This prohibition covers giving and receiving tattoos or body piercings, or using any object to keep open an existing piercing.
- b) Is unsanitary or untidy, (i.e., one's person, living quarters, work areas, etc.) including, but not limited to, failure to place clothing, towels, linens, rags, or paper items contaminated with blood or body fluids, body waste, or substances into a protocol bag designed for such use and notify the proper authority of such contamination and incident.
- c) Improper disposal of anybody's waste, substance, or fluid, i.e., spitting or throwing.

Class "C" for violations involving health/security issues;
"D" for all other violations.

(40.) Misuse of Mail, O-Mail, Telephone, or Other Communications - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Fails to follow institutional procedures, regulations or instructions, written or verbal, while communicating with another person such as through the mail, O-Mail, kites or Kiosk messages, telephones, video visitation, or uses another form of communication without proper authorization, or includes or uses coded messages or symbols in any communication.
- b) It is also a violation of this rule to use an authorized form of communication to further any violation of one of the other disciplinary rules.
- c) Makes or receives direct or indirect third-party messages using any form of communication, uses another incarcerated individual's telephone or O-Mail account, allows another incarcerated individual to use the incarcerated individual's telephone or O-Mail account, improperly shares or possesses telephone or O-Mail passwords, knowingly sends or receives mail which uses a false name or address, makes direct or indirect contact with a former incarcerated individual or anyone under state or federal supervision (except as allowed by IDOC policy), or uses any form of communication to seek to deceive staff about the nature of the communication or the person(s) involved in the communication.
- d) Knowingly violates institutional or IDOC rules by directly or indirectly establishing, using, updating, or communicating through any social media site, including Facebook, MySpace, Instagram, Snapchat, Twitter, LinkedIn, Tumblr, TikTok, WeChat, Parler, Gab, MeWe, etc.

- e) Makes an unwanted and uninvited contact with an individual member of the public with whom the incarcerated individual has no prior personal connection. This prohibition will not apply if someone who personally knows the member of the public provides the contact information to an incarcerated individual or if the incarcerated individual gets the contact information through any organization or group that provides contact information for incarcerated individual "pen pals." This provision will also not apply to contact made by an incarcerated individual as part of the incarcerated individual's release plans or any contact made to a public official, lawyer, business, corporation, union, or media outlet.

Class "C" for all violations.

(41.) Inappropriate Sexual Harassment and Sexual Abuse – An incarcerated individual commits an offense under this subsection when the incarcerated individual commits any act against another person as defined below.

- a) Incarcerated individual on Incarcerated individual Sexual Harassment – Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one incarcerated individual towards another incarcerated individual.
- b) Incarcerated individual of Incarcerated individual Sexual Abuse - Any of the following acts, done by one incarcerated individual to another incarcerated individual, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
 - i. Contact between the penis and vulva or between the penis and the anus, including penetration, however slight;

- ii. Contact between the mouth and the penis, vulva, or anus;
 - iii. Penetration of the anal or genital opening of another person, however slight, by the hand, finger, object, or other instrument;
 - iv. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- c) Retaliation – The making of threats or taking negative actions towards any person because that person –
 - i. Filed or is believed by the incarcerated individual to have filed a report alleging sexual abuse or sexual harassment by an incarcerated individual or staff member, or
 - ii. Cooperated or gave statements or is believed by the incarcerated individual to have cooperated or given statements as part of investigation into reports of sexual abuse or sexual harassment.
- d) Inappropriate Sexual Conduct - Any of the following acts done by an incarcerated individual to any other incarcerated individual:
 - i. Ejaculating onto another person;
 - ii. Forcing an incarcerated individual to watch a sex act or watch a person masturbate;
 - iii. Making a single unwelcome sexual advance or request for sexual favors, if

the advance or request includes an explicit or implied threat;

- iv. Using threats or coercion to have another incarcerated individual expose that individual's genitals, anus, buttocks, or breasts to another person.
- e) Sexual Exploitation – The non-consensual contact of an exploited incarcerated individual with a third party arranged by or coerced by an incarcerated individual. The exploitation may be in exchange for some benefit received by the first incarcerated individual from the third party ("pimping"). The benefit received need not consist of something with a monetary value.
- f) Precursor acts – An incarcerated individual who undertakes actions towards another incarcerated individual that are meant to lead to inappropriate sexual contact, sexual harassment, or sexual abuse also commits a violation of this rule. Such actions may include the providing of items of value to an individual, providing services to an incarcerated individual, offering protection, etc., when such actions are not based on mutual consent but are designed to create a debt relationship that could be exploited or are based on exploiting an imbalance of the different physical characteristics and prison experiences of the incarcerated individuals.

Class "A" if weapon used, victim exposed to potentially infectious bodily fluids, secretions, tissue, or excrement, or the victim suffers a mental or physical injury; Class "B" for all other violations. **(PREA 115.6, 78(g))**

- (42.) Security Threat Groups - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Originates, promotes, participates in, recruits for, etc., any unauthorized group, organization, gang, clique, association, etc.
- b) Communicates involvement in any unauthorized groups through written or verbal means, physical appearance, hand signs, symbols, photographs, association with others, etc.
- c) Possesses, creates, reproduces, or transmits any materials related to unauthorized group/gang activities.

Class "B" for all violations.

(43.) Attempt or Complicity - An incarcerated individual commits an offense under this subsection when the incarcerated individual attempts any of the listed offenses or is in complicity with others who are committing or attempting to commit any of the listed offenses. The relevant offense(s) involved shall be itemized in the disciplinary notice.

Class determined by the offense the attempt or complicity relates to.

(44.) Rioting - An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) With two or more persons, participates in conduct that creates danger of damage or injury to property or persons and causes staff to relinquish control of all or a portion of a facility.
- b) Urges or organizes two or more incarcerated individuals to intentionally engage in a riot, and such incitement is likely to produce a riot, or once a riot begins, the incarcerated individual assumes a position of command or instruction in furtherance of the riot.
- c) Fails to return to the incarcerated individual's own cell in a riot situation upon notification.

Class "A" for all violations.

(45.) Violations Involving Electronic Devices and Electronic Files – An incarcerated individual commits an offense under this subsection when the incarcerated individual:

- a) Without authorization, accesses or modifies the settings, files, or programs of any electronic device.
- b) Without prior, explicit authorization from the Director, Warden, or designee, uses an electronic device to access –
 - i. Any network or system, including the ICON system, the Internet, any Wi-Fi network, any cellphone network, any college or school computer network, or any other computer network inside or outside an institution.
 - ii. Any electronic files stored inside or outside of an institution or in a file system not generally accessible to incarcerated individuals.
- c) Possesses any electronic file, unless specifically authorized to possess or create such electronic file. This provision also prohibits the transfer or sharing of any electronic file or any media storing an electronic file between incarcerated individuals without authorization.
- d) Possesses any electronic file that contains text, images, audio, video, or other information the incarcerated individual is not allowed to possess in another format under IDOC policy, institutional procedures, or due to security or treatment restrictions.
- e) Possesses non-public personal information regarding any staff member, volunteer, incarcerated individual, visitor, or vendor as an

electronic file or printed materials that were obtained from an outside or Internet source.

- f) Violates Federal copyright law by possessing or copying any electronic file without proper authorization.

Class "B" for violations involving security issues; Class "C" for all other violations.