



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-090100 Inmate Discipline	Issued: 09/04/85 Effective: 09/04/85	Reviewed: 01/09/25 Revised: 01/09/25
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

- A. NMSA 1978, Sections 33-1-6, 33-2-1, 33-2-10, 33-2-12, 33-2-12.1, 33-2-30, 33-2-32, 33-2-34 and 33-2-36, as amended.
- B. Policy *CD-010100*
- C. Policy *CD-160400*

## REFERENCE:

- A. ACA Standards 2-CO-3C-01, *Standards for the Administration of Correctional Agencies*, 2<sup>nd</sup> Edition.
- B. ACA Expected Practices 5-ACI-3C-01 through 5-ACI-3C-23, 5-ACI-4A-06, 5-ACI-4A-09, 5-ACI-4A-11, 5-ACI-4B-02 and 5-ACI-4B-11, *Performance Based Expected Practices for Adult Correctional Institutions*, 5<sup>th</sup> Edition.
- C. ACA Standards 2-CI-5A-5 and 2-CI-5A-6, *Performance-Based Standards for Correctional Industries*, 2<sup>nd</sup> Edition
- D. The Consultant's Report on Prison Operations in New Mexico Correctional Institutions, January 14, 2000; James Austin, Ph.D., Richard Crane, Ben Griego, Jerry O'Brien and George A. Vose, Jr.
- E. Colorado Department of Corrections policy on Inmate Discipline.

## PURPOSE:

To set out disciplinary procedures governing inmate rule violations and to provide written guidelines to ensure that inmate control and discipline are established and maintained in accordance with the following objectives: **[5-ACI-3C-02]**

- A. Require individual inmate compliance with reasonable behavior standards and limitations.
- B. Ensure the general welfare and safety of all persons living and working within the institution.
- C. Establish and maintain fair disciplinary procedures and practices based on due process.
- D. Ensure progressive levels of discipline are practiced.

## APPLICABILITY:

New Mexico Corrections Department (NMCD) employees and inmates.

## FORMS:

- A. **Inmate Misconduct Report** form (*CD-090101.1*) (2 pages)

- B. **Disciplinary Officer's Investigation Report** form (CD-090101.2)
- C. **Disciplinary Officer's Findings and Recommendations** form (CD-090101.3)
- D. **Disciplinary Hearing Summary of Evidence and Proceeding** form (CD-090101.4)
- E. **Disciplinary Decision** form (CD-090101.5)
- F. **Supplemental Signature** form (CD-090101.6)
- G. **Disciplinary Appeal** form (CD-090101.7)
- H. **Inmate Misconduct Mental Health Review** form (CD-090101.9)
- I. **Request/Waiver For Meeting With Inmate Staff Assistant** form (CD-090101.10) (2 pages)
- J. **Extra-Duty Assignment and Tracking Log** form (CD-090101.11) (2 pages)
- K. **Notification of Confinement in Disciplinary Restrictive Housing** form (CD-090101.12)
- L. **Warden's Disciplinary Appeal** form (CD-090101.15)
- M. **Witness Statement** form (CD-090101.16)

#### **ATTACHMENTS:**

- A. **Category "A" Offenses** Attachment (CD-090101.A) (5 pages)
- B. **Category "B" Offenses** Attachment (CD-090101.B) (4 pages)
- C. **Category "A" Sanction Chart** Attachment (CD-090101.C)
- D. **Category "B" Sanction Chart** Attachment (CD-090101.D)

#### **DEFINITIONS:**

- A. **Attempt:** An inmate commits an attempt when, with intent to commit an offense, the inmate engages in conduct which tends to affect the commission of such offense. It is an affirmative defense to the charge of attempt if the inmate voluntarily abandoned his or her efforts to commit the offense prior to the discovery of the active participation in the offense(s), or before it is substantially completed. In any prosecution or where the liability of the accused inmate is related to the conduct of another person, it is no defense if the other person has been found not guilty or has not been prosecuted or has been convicted of a different offense.
- B. **Complicity:** An inmate may be charged, tried, and convicted of any offense based upon the conduct of another person if, with the intent that the offense be committed, the inmate commands, induces, encourages, procures or aids the other to commit it. It is an affirmative defense to the charge of complicity that the inmate, prior to the commission of the offense, voluntarily withdrew from any active participation in the offense. In any prosecution where the liability of the accused inmate is related to the conduct of another person, it is no defense that the other person has been found not guilty or has not been prosecuted or has been convicted of a different offense.
- C. **Contraband:** Any material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security and safety of the institution.
  - 1. **Dangerous Contraband:** Any item which poses a serious threat to the security of

an institution and which ordinarily is not approved for possession by an inmate or for admission into the institution.

Examples may include, but are not limited to weapons, ammunition or explosives, combustible or flammable liquids, hazardous or poisonous chemicals and gases.

2. Nuisance Contraband: Any item other than dangerous contraband, which has never been authorized or which previously has been authorized for possession by an inmate, but whose possession is prohibited, or when it presents a threat to security or its condition or excessive quantities of it present a health, fire, or housekeeping hazard.

Examples may include, but are not limited to personal property no longer permitted for admission to the institution or permitted for sale in the commissary; altered personal property; excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area; food items which are spoiled or retained beyond the point of safe consumption; government-issued items which have been altered, or other items made from government property without staff authorization.

- D. Dangerous Drugs: Any intoxicant, including alcohol, inhalants, and any substance listed as a controlled substance in New Mexico State Statutes. Dangerous drugs also include ingredients or substances which may be combined for the purpose of producing an intoxicant and any counterfeit controlled substance.
- E. Date of Discovery: The date on which the reporting staff member has obtained sufficient information to determine that an offense has occurred, and the identity of the inmate(s) who committed the offense.
- F. Disciplinary Restrictive Housing: The placement of an inmate in a cell restriction with limited privileges as a result of being found guilty on a misconduct report.
- G. Disciplinary/Hearing Officer: Staff member having the duty to investigate misconduct reports and having the authority to recommend disposition of a major misconduct report and responsibility to conduct administrative hearings on misconduct reports when applicable and who has the authority to recommend the disposition of major misconduct reports. The assigned designees (Sergeants/Lieutenants) will only have the responsibility to investigate the minor misconduct reports and forward recommendations to the Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) for resolution when the need is present for such investigations.
- H. Discipline: Includes only the sanctions authorized in this policy.
- I. Intentionally: An inmate acts intentionally with respect to a result or to conduct described by the policy when he or she knowingly causes that result or engages in that conduct.

- J. Misconduct Report: A formal written charge of misconduct made by a staff member against an inmate (CD-090101.1).
- K. Physical Injury: Any physical injury that requires medical attention, or for which medical attention is indicated even if the injured person refuses medical care.
- L. Possesses: To knowingly exercise physical control or dominion over an object. Possession of an object shall be presumed when that object is found on an inmate's person or area of control or when that object is found anywhere in an inmate's cell or in a place where only the inmate could have placed it.
- M. Pre-Hearing Detention (PHD): The placement of an inmate after alleged misconduct, but prior to a finding of guilt, in a more secure location to control his or her behavior if he or she poses a threat to the security of the institution.
- N. Preponderance of Evidence: Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. That is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.
- O. Reckless: An inmate's conduct is reckless if the inmate performs an act or fails to perform an act knowing or having reason to know facts which would lead a reasonable person to realize that such conduct creates an unreasonable risk of physical harm to oneself or another, and then consciously disregards that risk. Recklessness is a degree of risk that is substantially greater than that which is necessary to make the conduct negligent.
- P. Security Items: Locks, locking systems, windows, telephones, computers, electronic devices, fire and smoke detection and suppression equipment, lights, cameras, or other items that are used for security/safety.
- Q. Staff: NMCD employees, volunteers, contractors and their employees or agents, and those employees or agents of organizations/businesses whose assignment or responsibility are to supervise or provide services to inmates.
- R. Threat to the Security of the Institution: Any behavior or situation which involves, causes or is reasonably likely to cause acts of violence, a substantial risk of death or serious injury to any person, substantial destruction of property, escape or risk of escape. It also includes the major introduction of contraband or the conspiracy or attempt to introduce contraband.
- S. Tobacco: Any tobacco product, including cigars, cigarettes, chewing tobacco, "chew", "snuff" or similar products.
- T. Working Days: Monday through Friday, excluding recognized holidays.

## **POLICY:**

- A. The New Mexico Corrections Department (NMCD) shall provide a safe and secure environment for both staff and inmates through the implementation and maintenance of reasonable standards of control and discipline. Staff and inmates will be provided access to copies of this policy and procedure additions/revisions as they are implemented. This policy and procedure shall be reviewed at least annually and updated as necessary.
- B. There are written rules of inmate conduct that specify acts prohibited within the institutions and the penalties that can be imposed for various degrees of violation. **[5-ACI-3C-01]**
- C. A rulebook containing chargeable offenses, ranges of penalties, and disciplinary procedures shall be given to each inmate and staff member and shall be translated into those languages spoken by significant numbers of inmates. Signed acknowledgement of receipt of the rulebook shall be maintained in the inmate's file. When a literacy or language problem prevents an inmate from reading the rulebook, a staff member or translator shall assist the inmate in reading the rules. **[2-CO-3C-01] [5-ACI-3C-03]**
- D. All personnel that work with inmates shall receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available. **[5-ACI-3C-04]**
- E. When a rule violation requires a formal resolution, a staff member shall prepare a disciplinary report and forward it to the designated supervisor. **[5-ACI-3C-07]**
- F. This policy includes written guidelines for resolving minor inmate infractions, which includes a written statement of the rule violated, and hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation; inmates may waive their appearance at the hearing. **[5-ACI-3C-05] [2-CI-5A-6]**
- G. When an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate court or law enforcement officials for consideration for prosecution. **[5-ACI-3C-06]**
- H. The disciplinary process of the industry program shall be in accordance with this policy. **[2-CI-5A-5]**
- I. Disciplinary reports by staff members should include at a minimum: **[5-ACI-3C-08]**
  - Specific rule(s) violated;
  - A formal statement of the charge;
  - Any unusual inmate behavior;
  - Any staff witnesses;
  - Any physical evidence and its disposition;
  - Any immediate action taken, including the use of force; and,
  - Reporting staff member's signature and date and time of report.

- J. When an alleged rule violation is reported, an appropriate investigation shall begin within twenty-four (24) hours of the time the violation is reported and shall be completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation. **[5-ACI-3C-09]**
- K. An inmate charged with rule violations that is placed on pre-hearing detention status shall be reviewed by the Warden or designee within seventy-two (72) hours, including weekends and holidays. **[5-ACI-3C-10]**
- L. An inmate charged with a rule violation shall receive a copy of the disciplinary report, which includes the written statement of the charge(s), a description of the incident and specific rules violated. The inmate shall be given a copy of the report no less than twenty-four (24) hours prior to the scheduled hearing with the Hearing Officer. The hearing may be held within the twenty-four (24) hours with the inmate's written consent. **[5-ACI-3C-11]**
- M. An inmate may waive his or her right to a hearing provided that the waiver is documented and reviewed by a Deputy Warden. **[5-ACI-3C-12]**
- N. An inmate charged with rule violations shall be scheduled for a hearing as soon as practicable, but no later than seven days, excluding weekends and holidays, after being charged with a violation. Inmates shall be notified of the time and place of the hearing at least twenty-four (24) hours in advance of the hearing. **[5-ACI-3C-13]**
- O. Continuance of the disciplinary hearing shall be for a reasonable period of time and for good cause. **[5-ACI-3C-14]**
- P. Disciplinary hearings on rule violations shall be conducted by an impartial person. A written record of the proceedings shall be made and maintained in accordance with state archive rules; a taped record of all major level proceedings shall be made and maintained for at least one year. **[5-ACI-3C-15]**
- Q. An inmate charged with rules violations shall be present at the hearing unless they waive that right in writing or through their behavior. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence; the reason for the inmate's absence or exclusion shall be documented. **[5-ACI-3C-16]**
- R. An inmate shall have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf; the reasons for denying such a request shall be stated in writing. **[5-ACI-3C-17]**
- S. A staff member or an agency representative will assist an inmate at disciplinary hearings if assigned. The institutional Facility warden will develop a representative list with the minimum of three appointed staff members to choose from to assist inmates if the need for a representative is required. A representative shall be appointed when it is apparent an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf. **[5-ACI-3C-18]**

- T. The hearing officer's decision shall be based solely on information obtained in the hearing process, including staff report, the statements of the inmate charged, and evidence derived from witnesses and documents. **[5-ACI-3C-19]**
- U. A written record shall be made of the decision and the supporting reasons and a copy shall be kept in the inmate's file and in the disciplinary archive file. **[5-ACI-3C-21]**
- V. If an inmate is found not guilty of an alleged rule violation, the disciplinary report shall be removed from the inmate's file. **[5-ACI-3C-21]**
- W. The Warden's appeal form in this policy is the mandatory form to be used by the designated Appeals Disciplinary officer and shall not be modified. This mandatory statewide facility form is to ensure continuity between all facilities (Public and Private).
- X. A Deputy Warden or applicable Facility designee shall review all disciplinary hearings and dispositions to assure conformity with policy and procedures. **[5-ACI-3C-22]**
- Y. All documentation pertaining to major and minor misconduct reports will be uploaded into the designated information management system no later than five (5) days after the inmate acknowledges, by signature, receipt of the discipline decision.
- Z. Data on disciplinary infractions shall be used to determine assault rates on NMCD staff and inmates.
- AA. Inmates have the right to appeal any decision of the hearing officer to the Warden. Inmates shall have up to fifteen (15) calendar days of receipt of the decision to submit an appeal. The appeal shall be decided within thirty (30) calendar days of its receipt by the Warden's office and the inmate shall be promptly notified in writing of the results. **[5-ACI-3C-23]**
- BB. The Warden or shift supervisor can order immediate removal from general population when it is necessary to protect the inmate or others. The action will be approved, denied, or modified within twenty-four (24) hours by the appropriate and higher authority who is not involved in the initial placement. **[5-ACI-4B-02]**
- CC. There is a sanctioning schedule **Category "A" Sanction Chart** Attachment (*CD-090101.C*) and **Category "B" Sanction Chart** Attachment (*CD-090101.D*). **[5-ACI-4A-09]**
- DD. Inmates in disciplinary restrictive housing or special management shall be personally observed by a correctional officer twice per hour, but no more than 40 minutes apart, on an irregular schedule. Inmates that are violent or mentally disordered or who demonstrate unusual or bizarre behavior shall receive more frequent observation. **[5-ACI-4A-11] [5-ACI-4B-11]**
- EE. An inmate can be placed in disciplinary detention for a rule violation only after a hearing by the Hearing Officer. **[5-ACI-4A-06]**



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Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

### AUTHORITY:

Policy CD-090100

**PROCEDURES:** [2-CI-5A-5] [2-CO-3C-01] [5-ACI-3C-02]

### A. General Principles:

The following general principles shall be applicable in every disciplinary action taken against an inmate:

1. The action shall be reasonable and proportionate in relation to the violation.
2. The action shall be taken in an impartial and nondiscriminatory manner.
3. The action must never be arbitrary or retaliatory.
4. Physical abuse is strictly prohibited.
5. Accurate, detailed reports of all disciplinary actions shall be maintained in accordance with this policy.
6. Only the Hearing Officer, as a result of having conducted a major level hearing, may recommend forfeiture of accrued good time and placement in disciplinary restrictive housing.
7. Any act, although not specifically listed in this policy, that would be either a felony or misdemeanor under the Criminal Code of the State of New Mexico or the Laws of the United States of America will constitute a misconduct violation under criteria established by this policy.
8. In those cases where an inmate allegedly commits an act that constitutes a crime, in addition to disciplinary action, the case will be referred for evaluation for possible criminal prosecution. [5-ACI-3C-06]
9. Any portion of a sanction may be suspended for a specified period of time. Inmates will be informed in writing of the conditions under which the suspended sanction may be invoked in the future. A finding of guilt in a report, however, cannot be suspended.
10. Disciplinary hearings are administrative hearings and findings will be determined by a preponderance of the evidence.



11. Minor deviations from this policy that do not prejudice an inmate's interest are not necessarily grounds for a continuance, dismissal, rehearing or appeal.
12. Loss of privilege sanctions will start the day the inmate is made aware of the decision.

**B. General Guidelines: [5-ACI-3C-01]**

Offenses are separated into two Categories, "A" and "B", as follows:

1. Category "A":

- a. Category "A" offenses are considered the most serious and, in some instances, may be violations of state or federal criminal law.
- b. The Hearing Officer, upon evaluation, may determine if there are circumstances that justify reduction to a minor offense and/or may issue a finding of guilt on any equal or lesser charge substantiated by a preponderance of the evidence as a result of a major level hearing.
- c. If an inmate is found guilty of a Category "A" offense, the Hearing Officer may recommend to a Deputy Warden or designee imposition of sanctions not to exceed the following:
  - 1) Recommendation to the Classification Committee for forfeiture of accrued good time, to include the loss of all good time. In certain instances, the amount of forfeiture may be limited by State statute, *Section 33-2-34*. Refer to the **Category "A" Sanction Chart** Attachment (*CD-090101.C*).
  - 2) Placement in Disciplinary Restrictive Housing. Refer to the **Category "A" Sanction Chart**.
  - 3) Loss of privileges. Refer to the **Category "A" Sanction Chart**.
  - 4) Any other sanction authorized for a Category "B" offense.
  - 5) Progressive action related to repetitive offenses will be determined based on a time period of twenty-four (24) months preceding the current offense.

2. Category "B":

- a. A Category "B" offense is considered less serious than a Category "A" offense. If upon investigation of a minor misconduct report, a determination is made that justifies elevation of the charge to be heard at a major level hearing, the report will be returned to the Disciplinary Officer to process as a major misconduct report. Elevating factors include:
  - 1) Life threatening incident is involved;

- 2) A threat to the security of the institution;
  - 3) The specific behavior is repeated and has previously been the subject of disciplinary action within the past twelve months;
  - 4) Substantial property damage or loss has occurred in excess of \$50.00;
  - 5) Any injury received was not of a minor nature and required medical attention; and,
  - 6) The offense was committed by more than one person, excluding offenses in which more than one person is required to commit the offense.
- b. If an inmate is found guilty of a Category “B” offense, the Disciplinary Hearing Officer Designee may recommend to a Deputy Warden or designee imposition of sanctions not to exceed the following:
- 1) Recommendation to the Classification Committee for forfeiture of accrued good time, as established by the offense. Refer to **Category “B” Sanction Chart** for maximum limits (only when elevated to a major level offense).
  - 2) Disciplinary Restrictive Housing. Refer to the **Category “B” Sanction Chart** for maximum limits (only when elevated to a major level offense).
  - 3) Restitution: Payment for lost, damaged or destroyed property during the commission of any infraction. This may include all or a portion of the cost incurred in treatment for self-mutilation as defined in offense B(34). Restitution for offense B(35) shall be at least \$50.00 but no more than \$100.00 per occurrence. Payment for restitution may be drawn from an inmate’s account, or the account may be frozen, pending receipt of payment.
  - 4) Reprimand: A formal written warning.
  - 5) Extra Duty: An additional work requirement imposed beyond those duties normally assigned. Extra duty shall not be compensable, and an inmate shall not be required to perform more than thirty (30) hours for any single offense. An inmate may waive his or her right to only perform one (1) hour a day. All extra duties shall be performed at a reasonable hour and shall not interfere with the normal sleep time of any particular sanctioned inmate. All extra duty performed shall be monitored and tracked on the **Extra-Duty Assignment and Tracking Log** Attachment (CD-090101.E) by the staff member monitoring the performance of the extra duty. All extra-duty logs shall be maintained in a designated location.
  - 6) Loss of Specific Privilege(s): If imposed as a sanction, it will be set forth in the written decision for a specified time period. Refer to the **Category “A” Sanction Chart** Attachment (CD-090101.C) and **Category “B” Sanction Chart** Attachment (CD-090101.D) for maximum limits. The loss may include, but is not limited to: telephone, canteen, movies, television, radio, gymnasium, yard, library, hobby shop or social visitation including contact

visiting, tablet services related to specific privileges. Loss of Specific Privileges will not include work, academic or mental health programs, except when affected by classification or restrictive housing or as necessary for the safety or orderly operation of the institution. If an inmate is denied access to the law library, alternative means of providing library materials will be considered. Loss of privileges will be consecutive to prior sanctions.

**Recreation can only be forfeited in increments of two (2) days per week, not to exceed two (2) days per week for a specified period of weeks.**

- 7) Confiscation of Property: Confiscation of an inmate's property for a specified time period (excluding their personal hygiene items, current legal work, and religious materials) that has been sanctioned by the Unit Manager, Chief of Security or Facility designee.
- 8) Progressive action related to repetitive offenses will be determined based on a time period of twenty-four (24) months preceding the current offense.

### **C. Misconduct Reports:**

1. Informal resolution of minor incidents is encouraged; however, when any staff member witnesses a serious violation of institutional rules and regulations or has reasonable belief that a serious violation has occurred, that staff member has a responsibility to prepare an **Inmate Misconduct Report** form (CD-090101.1). [2-CI- 5A-6]
2. The initial Inmate Misconduct Report should contain the date and time of the violation (or if unknown, the date of discovery), the date and time the report was written and the date and time the report was submitted to a Security Supervisor for review. The report should include the specific rules violated; a formal statement of the charge; any unusual inmate behavior; any staff witnesses; disposition of any physical evidence; any immediate action taken, including the use of force; and the reporting staff member's signature. [5-ACI-3C-08]
3. The reporting employee must complete the disciplinary report and submit it to a Security Supervisor for initial investigation/review, within one working day of the date of discovery. [5-ACI-3C-07]
4. A Deputy Warden may grant a written extension of that time limit for extenuating circumstances and specify the basis for the extension and the length of the extension.
5. Within twenty-four (24) hours of the date and time an alleged rule violation is reported to a supervisor, the Supervisor will conduct an initial investigation/review, which shall be completed without reasonable delay, unless there are exceptional circumstances for delaying the initial investigation/review. [5-ACI-3C-09]
6. Upon completion of the initial supervisory investigation/review, the report shall be logged and placed in the location designated for minor and major misconduct reports. The Disciplinary Officer will verify it meets the standards for a minor

violation and minor misconduct reports are to be forwarded to the Disciplinary Hearing Officer Designee for the report process. If the minor misconduct report meets the standards for elevation to a major misconduct report, the Disciplinary Officer will keep and process the report as a major misconduct report.

7. During the initial investigation/review, if the supervisor determines that information is not accurate, incomplete or that the body of the report does not support the charge(s) listed, he or she shall return the Inmate Misconduct report to the reporting staff member for correction or to clarify discrepancies. Clerical errors may be corrected in the event the reporting staff member is not available. However, the supervisor has no authority to change the substance or the reporting staff member's specific statement of facts.

#### **D. Disciplinary Investigation and Review:**

1. Within one (1) working day of the receipt of a report, the Disciplinary Officer will assign a case/log number and document the report on a tracking log. The Disciplinary Officer will collect and review the minor misconduct reports. The Disciplinary Officer will verify it meets the standards for a minor violation and minor misconduct reports are to be forwarded to the Unit Manager, Chief of Security, or Facility designee (includes Classification Supervisor) for the report process. If the minor misconduct report meets the standards for elevation to a major misconduct report, the Disciplinary Officer or designee will keep and process the report as a major misconduct report. The investigation will include but is not limited to, providing the inmate a copy of the misconduct report, conducting interviews and gathering evidence and statements. The investigation will be completed promptly unless exceptional circumstances cause a delay. Once the investigation is completed, all disciplinary documentation will be forwarded to a different disciplinary/hearing officer or designee to conduct a hearing and recommend disposition for the major misconduct report. A Deputy Warden or designee may grant an extension of the time limits in writing for a specified period of time not to exceed thirty (30) calendar days per extension. An employee shall not act as a disciplinary/hearing officer in any case in which that employee either was involved in the rule violation or is the reporting staff member.
2. An amendment of the charges and/or factual information contained in the report requires notification of the change to the inmate in writing at least twenty-four (24) hours prior to the hearing, unless waived by the inmate. However, correction of clerical errors does not require twenty-four (24) hour prior notice and can occur at any time (but should be part of the record). The Inmate Misconduct Report will be reviewed for the following:
  - a. All dates, times and charges are properly indicated;
  - b. The report narrative is clearly written and supports the charges cited;
  - c. Any unusual inmate behavior, staff witnesses, disposition of physical evidence, immediate action or use of force is stated in the report; and,
  - d. The reporting officer has signed the report.

3. During the investigation, if the Disciplinary Officer or Disciplinary Hearing Officer Designee determines that information is not accurate, is incomplete or that the body of the report does not support the charge(s) listed he or she shall return the Inmate Misconduct Report to the reporting employee for correction to clarify discrepancies. Clerical errors that are easily identifiable can be corrected by other staff if the reporting employee is unavailable for the purpose of clarifying any discrepancies. Other than clerical errors, the Disciplinary Officer or Disciplinary Hearing Officer Designee has no authority to change the reporting staff member's specific statement of facts.
4. For inmates in Special Management, Restrictive Housing, and MHTC, the Disciplinary Officer will submit the **Inmate Misconduct Mental Health Review** form (CD-090101.9) and a copy of the misconduct reports to the Facility Mental Health Manager. The Facility Mental Health Manager will determine:
  - a. Whether there are or are no mental health issues; and,
  - b. Recommend how the mental health issues should be considered during the disciplinary hearing. The Facility Mental Health Manager will then advise the Disciplinary Officer in writing in the **Inmate Misconduct Mental Health Review** form (CD-090101.9) within one (1) working day.
5. **Inmate Misconduct Mental Health Review** form (CD-090101.9) is also to be completed when any inmate is charged with the following offenses: *(115.78 c)*
  - A (21) Sexual Misconduct / Sexual Activity
  - A (22) Rape
  - A (40) Sexual Harassment
  - A (44) False PREA Allegation / Statement
  - B (34) Self-mutilation.
6. The Disciplinary Officer or Disciplinary Hearing Officer Designee will fill out the **Disciplinary Investigation Report** form (CD090101.2) which shall include the following:
  - a. The accused inmate's statement;
  - b. If there were any witnesses identified by the inmate and their testimony;
  - c. A staff representative will be assigned if needed for an accused inmate (major level hearings only);
  - d. Dates of prior disciplinary reports with a finding of guilt for the same behavior as follows:
    - 1) Category "B" offenses within the past twenty-four (24) months.
    - 2) Category "A" offenses within the past twenty-four (24) months.
  - e. Any elevating factors;
  - f. The disposition of any evidence. (Include a copy of the Chain of Custody of any

retained physical evidence to verify the integrity of the evidence or indicate if photocopies were submitted as facsimiles of the physical evidence); and,

- g. Any additional relevant information obtained during the course of the investigation to include follow-up investigations of any inmate allegations made during the interview process.
7. At least twenty-four (24) hours prior to the hearing, the Disciplinary/Hearing Officer or Disciplinary Hearing Officer Designee will provide the inmate with a copy of all documentation to be presented at the hearing, with the exception of confidential information. This includes any documentation or information that, if provided to the inmate, would present a threat to the security of the institution. This notification will be documented on the **Disciplinary Officer's Findings and Recommendation** form (CD-090101.3). **[5-ACI-3C-11]**
  8. The inmate will be advised he or she has the right to remain silent. If the inmate chooses to remain silent, his or her silence may be used against them only in the administrative disciplinary hearing process, not a criminal case, and only if there is other evidence of the inmate's guilt. An interpreter will be made available if necessary. The inmate will also be advised, depending upon whether the hearing is to be a major level or minor level, as to the extent to which he or she may be entitled to assistance from a staff member and the extent to which witnesses may be allowed.
  9. The Disciplinary Officer may answer any questions that the inmate has concerning the disciplinary process or the specific Inmate Misconduct Report and should explain to the inmate, if requested, the permissible range of punishment.
  10. The inmate may waive the right to a hearing provided that the waiver is documented and physically witnessed along with their printed name and signature of one additional staff member and reviewed by a Deputy Warden or Facility designee. **[5-ACI-3C-12]**
  11. The Disciplinary/Hearing Officer or Disciplinary Hearing Officer Designee has the ability to recommend the disposition of minor level reports.

**E. Placement in Pre-Hearing Detention (PHD): [5-ACI-3C-10]**

1. Whenever an inmate poses a threat to others, the security of the institution or the public, the Shift Supervisor must be notified immediately so that prompt, appropriate steps may be taken to control the situation. The Shift supervisor must justify in writing as to why the immediate misconduct incident is considered a threat to the security of the institution, which justifies placement in PHD. Refer to the definitions (page 4 of this CD Policy) and use in the CD policy form 90101.14 (Supervisors Misconduct Report Checklist).
2. An inmate may be placed in PHD if the inmate poses an escape risk or a threat to the security of the institution, public, other inmates, staff or others. The shift supervisor or Unit Manager shall ensure that the PHD placement form is placed in the inmate's file following completion of the form.

3. When PHD is necessary, the inmate's PHD status will be reviewed by the Chief of Security within seventy-two (72) hours, including weekends and holidays. The 72-hour review will include determination and documentation of continued placement in PHD status as to the charges as to the immediate threat level of the incident. The review of the charges will include notation of the threat, if the threat continues to exist and a justification for release of continued placement. This will be entered on the 72-hour review form. If the Chief of Security cannot complete the review in seventy-two (72) hours due to weekend or holiday, the Duty Officer will review the placement.
4. Continuous placement in PHD for longer than twenty (20) calendar days shall require the review and approval of a Warden. A Warden must review and approve any subsequent continuous placement in PHD every twenty (20) days. An inmate can be placed in Disciplinary Restrictive Housing for a rule violation only after a major level hearing by the Hearing Officer. **[5-ACI-4A-06]**

**F. Disciplinary Hearing Procedures: (Both Major and Minor Levels) [5-ACI-3C-13]**

1. A Disciplinary Hearing shall be conducted by an impartial person designated as a Disciplinary/Hearing Officer Unit Manager, Chief of Security or Facility designee, (includes Classification Supervisor) by the Warden. Inmates shall be notified of the time and place of the hearing at least twenty-four (24) hours prior to the hearing unless the inmate waives his or her notification in the presence of an additional staff witness with the printed name and signature other than the staff member notifying them of the hearing. **[5-ACI-3C-15]**
2. The Disciplinary/Hearing Officer Unit Manager, Chief of Security or Facility designee, (includes Classification Supervisor) **shall** shall conduct a hearing within seven (7) working days from the date of discovery unless prevented by exceptional circumstances that shall be documented as an institutional continuance. An institutional continuance must be served to the inmate no later than the scheduled hearing date unless the inmate is not available due to transfer, court, medical transport, escape, etc. Minor misconduct reports must be completed to include decision, in accordance with policy. **[5-ACI-3C-13] [5-ACI-3C-05]**
3. A continuance may be granted for good cause to the inmate or the institution by the Disciplinary/Hearing Officer Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) for a reasonable period of time not to exceed seven (7) working days per continuance that shall be documented and attached to the Disciplinary Packet. **[5-ACI-3C-14]**
4. An extension of more than seven (7) days may be granted if an inmate is transferred to another facility or is out to court prior to the hearing. If an extension is granted due to an Inmate's transfer to another facility, it is the responsibility of the receiving facility (where the inmate is currently housed) respective disciplinary hearing officer to ensure CMIS, tracking, and record files are updated, current and completed for the disciplinary history. **[5-ACI-3C-14]**
5. For inmates in Special Management that have a consideration submitted in writing from the Facility Mental Health Manager pursuant to **Sect. D paragraph 4**, of

this policy the Hearing/Disciplinary Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor). They will consider the input from the Facility Mental Health Manager. The Facility Mental Health Manager's input and the Hearing/Disciplinary Officer's consideration of that input shall be made a part of the disciplinary record for major level hearings. For minor level hearings, the consideration will be made a part of the written **Disciplinary Decision** form by the Unit Manager, Chief of Security or Facility designee. (CD-090101.5).

6. The inmate should receive a hearing within thirty (30) working days of his or her return to the facility, if absent from the facility prior to or on the day of the scheduled hearing.

**G. Minor Level Hearings and Recommended Decision: [5-ACI-3C-05]**

1. Hearings on minor level reports will be conducted and a written decision must be completed within seven (7) working days from the date of the incident, notwithstanding a continuance, extension or unusual circumstances, by a person not involved in the rule violation. Hearings will be conducted in accordance with the below procedures:
  - a. If a continuance, extension or unusual circumstances delay the hearing the reasons for such will be documented.
  - b. The inmate may waive the right to a hearing provided that the waiver is documented and physically witnessed along with their printed name and signature of one additional staff member.
  - c. The Disciplinary Hearing Officer will have the authority to designate (Sergeant/Lieutenant) to conduct a minor investigation and hearing. Informal hearings do not need to be recorded, and whoever conducts the hearing will submit a written recommendation to the Deputy Warden or designee.
  - d. The Disciplinary Hearing Officer may recommend either dismissal of the charges or impose minor sanction(s) allowed for the offense for which the inmate was cited.
  - e. A disciplinary sanction must be given for each finding of guilt.
  - f. The Deputy Warden will approve, disapprove or modify the recommended decision.
  - g. The inmate is not entitled to a representative.
  - h. The inmate may request that witnesses be examined and statements taken, but witnesses other than the inmate charged shall not appear at the hearing.
  - i. The inmate charged may present his or her own statement and any relevant evidence.



## **H. Major Level Hearings and Recommended Decision:**

1. Inmates charged with rule violations will be present at their hearings unless they waive that right in writing, refuse to attend the hearing, engage in disruptive behavior, or pose a threat to the security of the institution. Inmates may be excluded during any testimony given in confidence and the reasons for the absence or exclusion will be documented. When an inmate escapes from custody, the Hearing Officer may conduct a hearing in the inmate's absence. **[5-ACI-3C-16]**
2. An inmate will be permitted to make his or her own statement, to call reasonably available witnesses and to present documents on his or her behalf, providing the calling of such witnesses and/or the disclosure of documentary evidence does not jeopardize the physical safety of staff, inmates or others. **[5-ACI-3C-17]**
3. If the witness is not reasonably available, the charged inmate will be advised that he or she may prepare written questions for the proposed inmate witnesses, such questions should be prepared prior to the hearing. Once the disciplinary hearing has convened, such written questions will be submitted by the inmate or the inmate's representative to the Hearing Officer. The written questions will be made a part of the record. The Hearing Officer will determine: the relevancy of the questions submitted; whether the inmate is reasonably available; and/or, whether the witness's safety would be jeopardized (e.g., victim, etc.).
4. If the Hearing Officer determines the question(s) are irrelevant, or the inmate is not reasonably available, or questioning the inmate would jeopardize his or her safety, etc., the Hearing Officer will document on the record the rationale for such determination. **[5-ACI-3C-17]**
5. If the Hearing Officer determines that the questions will be asked (e.g., the questions are deemed relevant, and the inmate is reasonably available, and questioning the inmate will not jeopardize safety), the Hearing Officer will either pause the hearing or grant a continuance to obtain the **witness'** response to the written questions.
6. Inmate witnesses who are reasonably available, whose presence would not jeopardize their safety or the safety of the institution, and who are to respond to relevant questions shall ordinarily appear in person before the Hearing Officer to respond to the written questions.
7. An inmate witness in a restricted housing status will not be brought to the hearing; the Hearing Officer will go to the inmate witness if the inmate witness is reasonably available.
8. The Hearing Officer will tape record the reading of the question(s) and the inmate witness' response. The tape-recorded testimony will be made a part of the Hearing Record and be maintained.
9. The Hearing Officer will allow the inmate to submit logical follow-up questions and will make reasonable efforts to identify logical follow-up questions, based upon the response of the inmate witness, and not limit the questioning to those submitted

in advance by the charged inmate and factor such testimony into the Hearing Officer's decision.

10. Staff witnesses shall not be interrogated or cross-examined by the inmate. The inmate or the inmate's representative will submit written questions for the staff member to the Hearing Officer that should have been prepared prior to the hearing.
11. The Hearing Officer will determine the relevancy of the questions submitted and may grant a continuance.
12. The Disciplinary/Hearing Officer may refer the Misconduct Report and the questions to the investigating Disciplinary/Hearing Officer for further investigation and/or interview the staff member themselves. Staff must cooperate fully with all Hearing Officer Requests in regard to investigations and to provide written statements as to their testimonies.
13. The inmate may request the assistance of an assigned staff member as determined by the Hearing Officer in the preparation and/or presentation of the case by completing the **Request/Waiver for Meeting with Staff Assistant** form (CD-090101.10). The assigned investigating DHO, after review of the misconduct report and the inmate's capabilities to represent themselves, will authorize the inmate to be provided a staff representative to assist the inmate in the hearing process. Inmates are not entitled to be represented by legal counsel or inmate representation at hearings before the Hearing Officer. If the inmate being charged cannot read or write in English, adequately to comprehend the charge and present a defense, assistance will be provided by a person capable of communicating with the inmate and the Hearing Officer representative to assist them in the hearing process. **[5-ACI-3C- 18]**
14. Physical evidence or replicas thereof (e.g., photos of the physical evidence), will be *presented* at the hearing upon the Hearing Officer's determination of necessity. All photos should have a date, time, brief description and the name of the staff member who took the photo, printed on the photo. If a photo cannot be written on, a Chain of Custody should then accompany the photo. The Hearing Officer shall determine the integrity of any evidence and/or photos submitted on a case-by-case basis and based on relevancy (i.e., a photo submitted of a tattoo may not contain the requested information but the Hearing Officer may choose to photograph any evidence and present that photograph as a facsimile of the evidence for security purposes.
15. Where information obtained from a confidential informant is to be used, the investigating Hearing Officer will be given access to the original information and will evaluate the reliability of the informant and state on the record the grounds for finding the informant reliable. The reliability of the informant shall be based on the informant having provided reliable information in the past, or the information being offered is based on firsthand observations, or there is corroboration either from another source or through physical or other evidence showing the reliability of the informant's data.
16. A summary of the confidential information will be prepared by the Investigative Hearing Officer prior to the hearing, including reasons for a finding of reliability.

The Hearing Officer shall read the summary information into the record and the summary shall be attached to the final disciplinary decision packet.

17. The Investigative Hearing Officer will use due caution in preparing the summary information so not to divulge any information which would identify the source(s) of the information. Inmates or their representatives are not permitted to ask specific questions about the information summarized in an attempt to identify the source(s) of the Confidential Information. No inmate shall be found to have committed the offense solely on the testimony of a single confidential informant.
18. The Hearing Officer or Unit Manager, Chief of Security or Facility designee, (includes Classification Supervisor) will produce a written summary of the proceedings, including a summary of the evidence, excluding identifying information on confidential sources, on the **Disciplinary Hearing Summary of Evidence and Proceeding** form (CD-090101.4). The summary shall include what occurred during the course of the hearing with special attention to witnesses, evidence, confidential information, inmate testimony, and motions for dismissal, considerations requested by the inmate and any mental health considerations. Denial of any witness must be substantiated and documented. The Hearing Officer will also provide a written recommended decision as soon as possible, but no later than five (5) working days following the conclusion of the hearing, unless prevented by exceptional circumstances. Reasons for delay shall be documented.
19. The Hearing Officer or Unit Manager, Chief of Security or Facility designee, (includes Classification Supervisor) shall determine the reliability of evidence and testimony presented during the hearing. The decision will be based on a preponderance of the evidence and only the evidence presented at the hearing. The Hearing Officer will identify what he or she relied upon for the finding on the **Disciplinary Decision** form (CD-090101.5). **[5-ACI-3C-19][5-ACI-3C-20]**
20. For major level misconduct hearings, the hearing officer or applicable designee must complete and forward the major misconduct hearing report with the recommended disciplinary decision with five (5) working days from the date of the hearing to the Deputy Warden or assigned designee for review.
21. The Hearing Officer or Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) may recommend any one or a combination of the following actions:
  - a. Dismiss charge(s) (ensure report is removed from all of the inmate's files).
  - b. Impose sanctions allowed for the offense for which the inmate was found guilty. When sanctions are recommended, loss of goodtime recommendations will be one sanction for the entire report. Example: If a report has an A (14), B (8) Elevated, A (32, the good time loss will be one sanction only if (A (14) EMD 30-90 days loss of goodtime) or whatever charge the Disciplinary Hearing Officer decides. No additional sanctions of goodtime will be imposed with the additional charges.
    - 1) Loss of good time will not be an allowable sanction for those inmates

with less than 180 days to their projected release date except in the following instances:

- Assault or battery without a weapon on a staff member or visitor
- Assault or batter with a weapon on a person
- Murder or manslaughter
- Possession of dangerous drugs
- Rape
- Engaging in or inciting to riot
- Taking of hostages or kidnapping
- Escape with or without force
- Possession of escape paraphernalia
- Assault or batter without a weapon on an inmate that results in serious injury

- 2) For those inmates with more than 180 days to projected release date, forfeitures of good time should be limited to 30 days.
  - 3) If extenuating circumstances exist, such as multiple similar reports in a short period of time or incident more severe than the charge suggests, where greater forfeitures would be allowed, exceptions should be approved by the deputy director prior to submittal.
- c. The use of alternative sanctions (loss of visits, privileges, etc.) will be used in lieu of disciplinary restrictive housing as the sanction process by the Hearing Officer and Deputy Wardens. There must be documentation to justify the imposition of Disciplinary Restrictive Housing sanctions in lieu of alternative sanctions.
  - d. Recommend that an inmate be placed in disciplinary restrictive housing for a period up to the allowable maximum period, refer to the **Category “A” Sanction Chart** Attachment (*CD-090101.C*) and **Category “B” Sanction Chart** Attachment (*CD- 090101.D*) (only when a Cat “B” offense is elevated to a major level offense) for maximum limits and that an inmate be referred to the classification committee for a custody review. Specified charges will be given a mandatory maximum of thirty days as a Disciplinary Restrictive Housing sanction. These will be noted in the category “A & B” sanction chart.
  - e. Recommend suspension of the allowable punishments for a specified period of time and for specified amount of good time be forfeited. Refer to the **Category “A” Sanction Chart** for maximum limits.
  - f. Recommend suspension of the allowable punishments for a specified period of time and for specified conditions. Although the sanctions of a report may be suspended, the finding of guilt in the report itself cannot be suspended.
  - g. Sanction guidelines are to be followed in accordance with the Sanction Chart, not exceeding the first offense, second offense, third offense, unless aggravating circumstances exist. Aggravating circumstances must be documented as to why the sanction exceeded the guidelines.

22. All disciplinary recommendations, including dismissals, require a Deputy Warden's review.
23. Continuous confinement for more than thirty (30) consecutive days in disciplinary restrictive housing requires the review and approval of the Warden or designee. The review will be documented on the **Notification of Confinement in Disciplinary Restrictive Housing** form (*CD-090101.12*). Inmates held in disciplinary status for periods exceeding sixty (60) days are provided the same program services and privileges as inmates in administrative status and protective custody. **[5-ACI-4A-09]**

#### **I. Deputy Warden's Review:**

1. All recommended dispositions by a Disciplinary/Hearing Officer or Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) shall be forwarded to a Deputy Warden for review. This review should ensure that the hearing was conducted in accordance with procedures and that the action taken conforms to established policy.
2. Within three (3) working days of the Hearing Officer's or Unit Manager, Chief of Security or Facility designee, (includes Classification Supervisor) upon receiving recommended disposition, unless prevented by exceptional circumstances, a Deputy Warden or designee shall approve, reduce or modify the decision or reverse the decision and order a new hearing if the Deputy Warden or designee reasonably determines: a) the decision was not based on a preponderance of evidence, b) based on incomplete information, or c) there is newly discovered evidence which was not available to the Hearing Officer at the time of the hearing, and/or d) consideration of the severity of the charge(s) or the severity of the situation in making his or her sanction recommendation. When making the modification, the Deputy Warden or designee must document the reason for the modification. These are the only reasons allowed for modification. Deputy Warden or designee may also order a new investigation or additional investigation be conducted or that a new misconduct report be written if there is reason to believe that an additional investigation would produce new evidence that is relevant to the case. **[5-ACI-3C-22]**
3. If the Deputy Warden determines that the Hearing Officer's or Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) decision was not based on the evidence presented or that the Hearing Officer failed to consider the severity of the charge(s) or the severity of the situation in making his or her sanction recommendation and a new hearing is ordered, the Deputy Warden shall designate a different Hearing Officer to conduct the new hearing.
4. Modification of the Hearing Officer's recommendation may include the application or denial of a suspended sanction and implementation of any other sanction authorized for a Category "B" offense (i.e., suspension of visits, extra-duty, etc). Modification cannot include increasing the amount of recommended forfeiture of good time or additional time to placement in restrictive housing.
5. A copy of the final disposition will be given to the inmate, along with the **Disciplinary Appeal** form (*CD-090101.7*) within three (3) working days of a Deputy

Warden's or designee review, unless prevented by exceptional circumstances. [5-ACI-3C-20]

**J. Appeal: [5-ACI-3C-23]**

1. Any inmate may appeal decisions of the Disciplinary Hearing Officer's or Unit Manager, Chief of Security or Facility designee (includes Classification Supervisor) recommendation as reviewed by a Deputy Warden to the Warden of the adjudicating facility for final adjudication of the matter. The decision of the Warden may be subject to review by the Cabinet Secretary of Corrections or designee.
2. The inmate shall have fifteen (15) calendar days after the date the inmate receives the written report of the decision of a Deputy Warden to file a Disciplinary Appeal form. These forms shall be available to all inmates, including those housed in Special Management and Restrictive Housing.
3. The notice of appeal shall state the basis for the appeal and the names of any witnesses required to substantiate the appeal. The inmate shall attach to the appeal form any relevant documents that are not already part of the record of the hearing. The department shall ensure that such documents are reasonably accessible to the inmate and shall ensure that any inmate who requests assistance in completing appeal forms is provided such assistance. If a notice of appeal is not filed as required by this section, the decision and recommendation of a Deputy Warden shall be final.
4. An inmate shall file the completed appeal form and any attachments to the Warden's designated appeal Disciplinary officer of the facility where they are currently housed, either by personal delivery or by placing the materials in an envelope addressed to the Disciplinary Officer and placing that envelope in the mailbox designated for legal mail.
5. Inmates in restrictive housing may file appeal forms by submitting them to the Warden's designated appeal Disciplinary officer assigned to that housing unit.
  - a. The Warden's designated appeal Disciplinary Officer will log, track and maintain a copy of the appeal and forward a copy of the Disciplinary Packet along with the original appeal to the Warden's Office.
  - b. Upon receipt of the appeal materials forwarded by the Warden's designated appeal Disciplinary Officer, the Warden shall consider the appeal on the record within thirty (30) days. The Warden may order a new hearing if it appears from the appeal materials that the inmate was not given the opportunity to present then-existing or newly discovered relevant evidence at the hearing. Appeals based on frivolous contentions shall be denied.
  - c. The burden of proof is on the inmate to prove the contentions stated in the notice of appeal.
  - d. In deciding an appeal on the record, the Warden shall consider the following factors:

- 1) Whether there was substantial compliance with disciplinary policies. If there was not substantial compliance with disciplinary policy and procedure, the Warden may remedy any procedural error by ordering, as appropriate, that a new or additional investigation be conducted, that the misconduct report be dismissed and a new misconduct report be submitted, that a new hearing be conducted as specified, or that other appropriate action be taken.
  - 2) Whether the recommended decision of the Hearing Officer and final decision of a Deputy Warden was based on a preponderance of the evidence presented at the hearing; and,
  - 3) Whether the disciplinary sanctions were proportionate to the offense.
- e. The Warden may listen to the recording of the hearing when:
- 1) Information contained in the written material is unclear;
  - 2) The inmate claims that the summary of proceedings does not accurately describe what occurred during the hearing; or,
  - 3) The hearing officer informs the Warden that a particular procedure was covered during the hearing, but not documented in the summary of the proceedings.
- f. If the Warden orders a new hearing, the Warden shall notify the inmate, the inmate witnesses and any other persons whose attendance are required at the hearing at least seven days (7) in advance of the hearing. The Warden shall determine who shall conduct the new hearing and the extent to which that hearing shall be conducted.
- g. The Warden may order a new or additional investigation, may request additional information or documents be submitted by witnesses to the institution or by the witnesses for the inmate within reasonable time limits.
- h. The Warden shall prepare a narrative summary of the case, findings of fact and conclusions. The Warden may order a new or additional investigation, dismiss the misconduct report and order a new misconduct report be written, affirm the decision, modify or reverse the decision and order a new hearing, or enter a dismissal. In ordering a new hearing, the Warden may limit the new hearing to the purpose of permitting the presentation of new evidence.
- i. The Warden or facility disciplinary or appeals officer shall provide the inmate with a copy of the final decision promptly and not to exceed five (5) working days of the Warden's final decision. The appeal must be returned to the inmate within the five (5) working days of signature either in person or by in-house prison mail.
- j. There is no absolute right of appeal to the Secretary. In order to file an appeal to the Secretary of Corrections, the inmate must file the Disciplinary Appeal form

(CD-090101.7) with the facility disciplinary/appeals officer within 15 calendar days of receiving the Warden's appeal decision. However, the Secretary, Director of Adult Prisons or designee shall have final authority in reviewing the Warden's summary, findings and conclusions. The Secretary, Director of Adult Prisons or designee may order any appropriate remedy. In ordering a new hearing, the Secretary or Director of Adult Prisons or designee may limit the new hearing for the purpose of permitting the presentation of new evidence. After the Secretary, Director of Adult Prisons or designee has rendered a final decision on the appeal the Warden or disciplinary or appeals officer shall notify the appellant in writing of the decision within ten (10) working days after the decision and shall forward the inmate a copy of the written summary, the findings of fact and conclusions. That disposition is final.

#### **K. Hearing Record:**

A written summary of all the proceedings will be maintained by the institution and shall clearly document that the inmate was advised of his or her rights, including the appeal procedure. A tape recording will be made of any major level hearing, excluding any information that would allow identification of a confidential informant. **[5-ACI-3C-15]**

1. Recordings of disciplinary hearings will be retained for a minimum of one (1) year.
2. The Records Manager or other authorized staff member will place all disciplinary reports of which an inmate was found guilty in the inmate's classification file, along with all relevant documentation, including the investigation and the written hearing record. In the event the inmate has been transferred to another facility, the documentation will be forwarded immediately to the Records Department of the receiving institution. **[5-ACI-3C- 20]**
3. When an inmate is found not guilty, or the charges are dismissed, the disciplinary report will be removed from inmate files, though it will be entered into CMIS as historical data only. All such removed disciplinary reports will be maintained in a separate file for litigation or statistical research or other similar purposes only. **[5-ACI-3C-21]**
4. Violation of the time limits will not necessarily result in the dismissal of an Inmate Misconduct Report, if the delay was justified. However, if the inmate can demonstrate that the case was harmed by the delay, a dismissal may be granted.

#### **L. Disciplinary Restrictive Housing:**

Inmates who are sanctioned to Disciplinary Restrictive Housing will be placed in a unit that has been designated for that purpose. Inmates in Disciplinary Restrictive Housing will receive the following services and privileges:

- 1 Set of State Issued Linen
- 3 Sets of State Issued Clothing
- 1 Approved Religious Book



1 Deodorant, 1 Soap, 1 Shampoo

No other items or property will be allowed while the inmate is housed in Disciplinary Restrictive Housing.

Inmates in Disciplinary Restrictive Housing will be personally observed by a correctional officer twice per hour, but no more than 40 minutes apart, on an irregular schedule and any negative or positive behavior will be listed on the **Individual Inmate Behavior Log** form (CD-141002.3). [5-ACI-4A-09]

Inmates will be considered as having begun serving their disciplinary restrictive housing assignment time as follows:

1. Inmates who are on PHD will be considered as having begun serving their sanctioned Disciplinary Restrictive Housing on the date the inmate was placed in RHU.
2. Inmates who receive additional sanctions to Disciplinary Restrictive Housing while currently serving or awaiting placement in Disciplinary Restrictive Housing will have the additional sanctions added to their previous term. (e.g. The inmate is currently sanctioned to thirty (30) days Disciplinary Restrictive Housing and is sanctioned to an additional thirty (30) days of Disciplinary Restrictive Housing on a separate incident, the inmate will then serve a total of sixty (60) days in Disciplinary Restrictive Housing.).
3. Inmates housed in Disciplinary Restrictive Housing for periods exceeding 60 days are provided the same program services and privileges as inmates in administrative status and protective custody. [5-ACI-4A-09]

**M. Disciplinary Officer – Misconduct Report Administrative Responsibilities:**

1. All disciplinary misconduct reports (minor/majors) and appeals to include the final disposition with the signatures will be scanned and entered into the designated J: Drive folder by the local Facility Disciplinary Officer, Unit Manager, Chief of Security or Facility designee (Classification Supervisor). The original copy which is being scanned will be archived also as to have a backup copy available if needed.
2. Private contracted facilities Disciplinary/Hearing Officers will maintain a separate file folder within the Z: Drive to include the tracking reports, all disciplinary misconduct reports (minor/majors) and appeals to include the final disposition with the signatures will be scanned and entered in their designated folder by the local Facility Disciplinary Officer, Unit Manager, Chief of Security or Facility designee. The documents being scanned will be archived to have a backup copy available if needed. These file folders will be sent monthly (10th day of each month) to the Statewide Grievance/ Disciplinary Appeals Manager for retention in the J: Drive file. These files will have the standard tracking forms to be used only as to ensure continuity with all the state facilities.
3. Misconduct decision report appeals to the Secretary of Corrections or designee will

be electronically transmitted to the Statewide Grievance / Disciplinary Appeals Manager for review and decision. It is the responsibility of the Facility Appeal Disciplinary officer to ensure the inmate's appeal must include all required documentation and any additional information needed for review and decision at the Central office. If the appeal packet is not complete, it will be returned to the Facility Appeal Disciplinary officer to complete.

4. This will allow the Disciplinary officer, Statewide Grievance / Disciplinary Appeals Manager, Secretary of Corrections, Deputy Secretaries of Corrections, APD Director, Deputy Directors of Adult Prisons, and the Legal department access to the entire completed packet without having to go into the archive to retrieve copies.
5. Disciplinary officers will also deliver the inmate his/her misconduct report decision packet. An appeal packet will be hand delivered or mailed to the inmate within five (5) working days to ensure time limits are met and receipt of decision upon arrival for their facility records keeping and the inmate's receipt of copy.
6. Disciplinary officers will provide informational assistance to the inmate as to the proper disciplinary processes.

**Effective Date:**

The provisions of this policy apply to offenses committed after the revision date of this policy. For offenses committed before the effective date of this policy revision, the prior policy in effect at the time shall govern. The Corrections Department may provide explanatory language to staff and inmates to make the language of this policy more readily understandable so long as the explanation is consistent with the language of the policy statement.

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Category "A" Offenses**

- A (1) **Murder:** Intentionally causing the death of another person. The Hearing Officer shall have the discretion to modify the charge and convict the inmate of the offense of **Manslaughter** or an **Assault** charge if the hearing officer finds that the inmate did not intentionally cause the death, but instead the inmate's conduct met the elements of a manslaughter charge or an assault charge.
- A (2) **Manslaughter:** Recklessly causing the death of another person, with or without premeditation; or causing the death of another person upon a sudden heat of passion caused by a serious and highly provoking act, affecting the inmate sufficiently to excite an irresistible passion in a reasonable person. The Hearing officer shall have the discretion to modify the charge to convict the inmate of the offense of an Assault charge if the Hearing Officer finds that the inmate's conduct did not meet the elements of manslaughter, but met the elements of an assault charge.
- A (3) **Taking of Hostages or Kidnapping:** The inmate commits this by carrying any person from one place to another or by holding a person without their consent with the intent to force the victim or any other person to make any concession(s) or give up anything of value in order to secure the release of the person under the inmate's actual or apparent control.
- A (4) **Arson:** Without authorization, setting fire to burn, cause 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 valued at more than \$500.
- A (5) **Battery:** Intentionally or through recklessness causing injury to another person or applying any physical force, offensive substance (such as feces, urine, mucous, blood, saliva, etc.) or any other item or hazardous substance against any person regardless of whether or not injury occurs. Outside Law Enforcement Agency is called.
- A (6) **Assault or Battery with a Weapon on another Person:** Use of any type of object or instrument to threaten, strike or attempt to strike another person. Outside Law Enforcement Agency is called.
- A (7) **Assault or Battery without a weapon on a Staff Member or Visitor:** Without a weapon, striking or by actions, posture, stance, or other means, threatening to strike another person (who is a staff member or visitor, but not an inmate), and under circumstances where that other person could reasonably believe that he or she was about to be struck by the Inmate. Outside Law Enforcement Agency is called.
- A (8) **Assault or Battery without a Weapon on an Inmate:** The inmate commits this when they threaten to strike, strikes or by their actions, posture, stance, or other means implied to another inmate that they are about to be struck. Outside Law Enforcement Agency is called.
- A (9) **Engaging in Riot:** Two or more persons, participating in conduct that creates a serious danger or damage or injury to property or persons and obstructs the performance of the Facility functions.

- A (10) **Inciting to Riot:** Urging or organizing two or more inmates to imminently engage in a riot, and such incitement is likely to produce a riot, or once a riot begins, the inmate assumes a position of command or instruction in furtherance of the riot.
- A (11) **Escape with Force:** By force or threat of force, removing oneself from the confines of the institution or from official custody while beyond the confines of the institution. The Hearing Officer shall have the discretion to modify the charge and convict the inmate of Escape without Force if the hearing officer finds that the inmate did not use force or threat of force.
- A (12) **Escape without Force:** Without proper authority, removing oneself from the confines of the institution, failing to report to work, school or other assignment, leaving a work, school or other assignment, or fails to return to official custody following temporary leave granted for a specified period of limited duration, work release, school release, or Furlough.
- A (13) **Possession of Escape Paraphernalia:** Having in possession or receiving from or giving to another inmate, or fashioning or manufacturing, or introducing or arranging to introduce into the facility any escape paraphernalia including, but not limited to:
- a. A key, key pattern to any lock, a lock, lock pick, trip wires, locking devices, chain, rope, ladder, tool(s) or other items which could be used to affect an escape; and/or,
  - b. Mask, wig or disguise or any means of altering normal physical appearance which would make identification of an inmate difficult; and/or, Mannequin, dummy, replica of a human body, or part of a human body, or any item or device which could reasonably cause a staff member to believe an inmate was present at a designated time and place or which could in any way aid or abet the escape or walk-away of an inmate; and/or,
  - c. Form of securities, bonds, coins, currency, legal tender, official papers or documents (other than authentic and authorized papers or documents relative to judicial or administrative proceedings) unless expressly and specifically authorized by the Warden of the correctional facility concerned; and/or,
  - d. Item of an Officer's uniform, civilian clothing, or staff clothing, including badges, buttons, nametags or items of personal identification unless expressly and specifically authorized by the Warden of the facility concerned.
  - e. Any type of communication device.
- A (14) **Threats:** Communicating a determination or intent (either verbally, physically or in writing) to injure another person or to commit a crime of violence or an unlawful act presently or in the future and the probable consequence of such threat or threats (whether or not such consequences, in fact, occurs) is:
- a) To place another person in fear of bodily harm, or
  - b) To cause damage to property, or
  - c) To jeopardize the security of the facility.
  - d) By actions, posture, stance or other means, threatening to strike another person, and under circumstances where that other person could reasonably believe that he or she was about to be struck by the Inmate.
- A (15) **Abuse of Medication:** In any way, storing, saving, giving away or removing any prescription without authorization.

- A (16) **Possession of Syringe or Drug Paraphernalia:** Possession of a syringe or other implement capable of injecting a substance. To include possessing an article, equipment or apparatus capable of administering, inhaling, manufacturing or injecting a dangerous drug or volatile substance. Also includes items indicating the intent to alter a drug test.
- A (17) **Refusal to Submit to a Drug Test:** Failing or refusing to submit to any test for the unauthorized use of dangerous drugs requested by any employee of or under contract to the DOC. This includes removing or tampering with any drug detection patches or devices or apparatus used for drug testing.
- A (18) **Possession or Use of Dangerous Drugs:** Possessing, using or having under control or in custody any item defined as dangerous drugs, to include “hooch” (homemade alcohol).
- A (19) **Dealing in Dangerous Drugs:** Selling, trading, giving away, introducing, attempting to introduce, or conspiring to introduce any quantity of any item defined as dangerous drugs.
- A (20) **Possession of Dangerous Contraband:** Possessing, using or having under control or in custody any item defined as dangerous contraband.
- A (21) **Sexual Misconduct/Sexual Activity:** If the charge is in connection to a staff member, the inmate shall not be disciplined without a finding that the staff member did not consent to such activity. The inmate commits this when they are:
- a) Touching or having active or passive sexual contact with or fondling of the genitals, mouth, anus, breast or buttocks of another person, and whether or not the person consents to such conduct, regardless of whether the touching or contact is to clothed or unclothed parts of the body;
  - b) Displaying one’s anus, genitals, buttocks or female breast(s) to another person, regardless of the other person’s expressed or implied consent to the accused inmate’s conduct; or,
  - c) Masturbating in the presence or direct vision of another person, regardless of the other party’s expressed or implied consent to the conduct.
  - d) Displaying marks consistent with sexual activity and/or sexual actions i.e. hickeys.
  - e) Lewd behavior.
- A (22) **Rape:** Having sexual intercourse, penetration of or contact with the genitals, hand(s), mouth, vagina or anus of another person,
- a) Having impaired the power of the other person to appraise or control their conduct by administering or employing drugs, intoxicants or similar means; or,
  - b) Coercing, compelling or inducing the other person to submit by any force, misrepresentation, violence or threat of violence; or,
  - c) The other person suffers from a mental disease, defects or inadequacy that is reasonably apparent or known to the accused inmate, which in fact renders the other person incapable of understanding the nature of their conduct or being aware of the nature of the act committed; or,
  - d) The other person is unconscious or otherwise physically incapable of resisting and has not consented to the act.
  - e) The Hearing Officer shall have the discretion to modify the charge and convict the inmate of the charge of **Sexual Harassment or Sexual Misconduct**.

- A (23) **Robbery or Extortion:** Using or threatening to use physical force, coercion, or improper pressure 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; or,  
Compelling the owner of such property or another person to deliver or give up possession of the property.
  - b) The Hearing Officer shall have the discretion to modify the charge and convict the inmate of the charge of **Theft or Bartering**.
- A (24) **Bribery:** Offering to confer, conferring or agreeing to confer anything of value upon any staff member or other inmate(s) with the intent to influence that person's or inmate's exercise of discretion or other action in any capacity.
- A (25) **Forgery:** Creating or altering a document with intent to deceive.
- A (26) **Fraud:**
- a) Obtaining anything of value through deception, trickery or false claim.
  - b) Altering, destroying, concealing or removing anything with intent to impair its authenticity or availability.
  - c) Presenting or using anything which one knows to be false with intent to deceive.
- A (27) **Participating in, Contributing to, or Impeding Control of a Disturbance in any Area either Physically or Verbally:** Any action or statement made by an inmate which impedes staff or administration from the ability to control a disturbance.
- A (28) **Tampering with Locks or Security Items:** Without authorization, locking, unlocking or altering in any way, any lock, locking system or security device or system or using any unauthorized lock or security item.
- A (29) **Possession of Key or Key Pattern:** Possessing a key or key pattern to any lock.  
A key pattern is any substance upon which the impression of a key is made, or any substance or device designed to make or reproduce a key.
- A (30) **Tattooing and/or Possession of Tattoo Paraphernalia:** Receiving a tattoo, giving a tattoo or having in possession any tattooing paraphernalia to include, but not limited to the patterns, ink, needles or altered electrical appliances.
- A (31) **Attempt or Complicity:** The charge of complicity or attempt must be used in conjunction with any appropriate Category A offense(s) and the Hearing Officer may impose the same penalty prescribed for the substantive offense(s)(See "Definitions" sections A and B).
- A (32) **Refusal to Move or to be Restrained:** Refusing to be moved from an area or structure such as a recreation pen, search cell, shower, program area, etc., or refusing to be restrained or un-restrained. Pulling away or attempting to pull away from an officer while under escort.
- A (33) **Possession of Gang Paraphernalia:** Displaying or possessing Security Threat Group/Street Gang paraphernalia, e.g., colors, symbols, signs, insignias or gang-related documents.

- A (34) **Engaging in Security Threat Group/Street Gang Activity:** Recruiting, assaulting, theft(s), extorting and drug trafficking or conspiring to commit the above-mentioned acts.
- A (35) **Acts Constituting a Felony:** Any act not listed above that would be a felony under the Criminal Code of the State of New Mexico or the laws of the United States of America.
- A (36) **Attempt to Engage in or Engaging in any Unauthorized or Inappropriate Relationship:** An inmate commits this when he or she attempts to engage in or engages in any personal or romantic relationship with a staff member, contract employee, volunteer, etc. whether it be verbally, physically, or in writing, and the staff member has taken steps to avoid the inappropriate relationship (staff does not consent, staff does not participate in the relationship, staff member immediately reports the inappropriate relationship).
- A (37) **\*See Below**
- A (38) **Bringing contraband into places of imprisonment:** Introducing or arranging to introduce contraband into a prison consists of carry, transporting or depositing contraband onto the prison grounds. Contraband is described as any item not authorized by NMCD policy or permitted by the Warden.
- A (39) **Fighting:** The inmate commits this when he or she engages in a physical altercation that engages in physical contact by kicking, blows to the body, or physical contact which threatens to disrupt or cause a threat to the security of the institution.
- A (40) **Sexual Harassment:** If the charge is in connection to a staff member, the inmate shall not be disciplined without a finding that the staff member did not consent to such behavior. Subjecting another person to sexual conduct, through physical action, and/or verbal or written statements, and the other person does not express or imply consent to the accused inmate's conduct.
- A (41) **Tampering with Evidence:** Any inmate destroying, changing, hiding, placing or fabricating Physical evidence (mopping up blood at an assault scene, destroying contraband items, throwing away or swallowing unknown substances suspected to be drugs).
- A (42) **Failure to Participate In the Parole Plan Process:** Upon initiation and during the parole plan process, Inmate fails to participate or pursue an acceptable parole plan in good faith, refuses to accept conditions of parole, or refuses to sign a parole certificate.
- A (43) **Possession of Tobacco:** By being in possession of Tobacco products in amounts one (1) ounce or more.
- A (44) **False PREA Allegation/Statement:** Making a false PREA allegation or making a false statement during a PREA investigation, in bad faith, based on clear evidence, such as contradictory camera footage or other evidence. This charge is not to be used for inmates that reported in good faith.

**\*A-37 is not valid on CMIS**

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Category “B” Offenses**

The offenses in Category “B” may be considered to be major if one or more of the following elevating factors is found to be present by the disciplinary officer or hearing officer during the course of an investigation and must be substantiated on the **Disciplinary Officer’s Findings and Recommendation** form (CD-090101.3):

- a) A life-threatening incident is involved;
- b) A threat to the security of the institution;
- c) The specific behavior is repeated and the inmate has previously been found guilty of similar disciplinary actions within the previous twelve months;
- d) Substantial property damage or loss has occurred in excess of \$50.00;
- e) Any injury received was not of a minor nature and required medical attention and;
- f) The offense was committed by more than one person, excluding offenses in that more than one person is required to commit the offense.

These principles apply to the following offenses:

B (1) **Perjury:** Knowingly making a false statement under oath or affirmation or swearing or affirming the truth of a statement previously made knowing the statement to be false.

B (2) **Knowingly Making a False Statement to any Staff Member:** Knowingly providing untrue statements or information, either verbally or in writing, in any attempt or effort to mislead staff.

B (3) **Count interference:** Causing or participating in any interference, delay, disruption or deception with regard to the process of counting part or all of the inmate population, including, but not limited to, hanging, fastening, or attaching any sheet blanket, curtain, drapery or other material whether transparent or not on any part of the front of the door or cell or around a dormitory bed or other immediate sleeping area without the permission of an authorized staff member.

B (4) **Interference with Search:** Refusing to allow, obstructing or hindering in any way, any authorized person in their search of any person, housing unit, or cell.

B (5) **Failure to Program:**

- a) Failing to perform programs and program work as assigned and/or;
- b) Failing to report to any work assigned and/or;
- c) Departing from their appointed place of duty or assignment without authorization.

B (6) **Willful refusal without a statutory or regulated exemption to participate in the Inmate Literacy Program (ILP).** Statutory requirement.

B (7) **Unauthorized Absence without Proper Authority:**

- a. Departing from any place where they were directed to remain by any staff or facility regulation.



- b. Being away from an assigned area.
- B (8) **Violating a Condition of Furlough, School or Work release or other Community Activities.**
- B (9) **Presence in Unauthorized or Restricted Areas:** Entering or remaining in any area without permission or after being ordered in any manner, not to enter or remain in an area.
- B (10) **Gambling:** Playing for money or other thing of value at any game, including, but not limited to, those played with cards or dice, or bets on the side or hand of those playing or betting anything of value on the outcome of any observable event or ascertainable happening or organizing or being in possession of any game of chance, lottery, betting pool, betting slips or records, or being in possession of other similar devices.
- B (11) **Violation of Visiting Regulations:** Engaging in any conduct with visitor(s) or engaging in any other conduct in violation of facility visiting regulations.
- B (12) **Alteration of any food or drink.**
- B (13) **\*\*B (13) Not valid in CMIS**
- B (14) **Verbal Abuse or Gestures:** Subjecting another person to abusive, offensive or defamatory language or gestures.
- B (15) **Possession of Unauthorized Legal Documents:** Possessing legal documents of another inmate outside the immediate presence of the inmate to whom the documents belong.
- B (16) **Disobeying a Lawful Order:** Refusing to obey a verbal or written lawful order or instruction given by any staff member, acting within the scope of their authority.
- B (17) **Association:** While assigned to an off-ground or outside detail or work crew, associating or communicating with another person without first receiving authorization.
- B (19) **Contempt of Committee:** The inmate commits this when he or she acts in any manner that is considered disruptive while in, or in the immediate area of, any committee or hearing that is being conducted or in session, such as, but not limited to, Parole Board, Probation, Classification and Disciplinary.
- B (20) **Entering into Contract:** The inmate commits this when he or she enters into any contract or engages in any business.
- B (21) **Any unauthorized use of any Institutional Equipment:** e.g., Telephones, computers, fax machines, copy machines, tools, etc. Failure to abide by facility telephone rules or regulations, three-way phone calls, 3<sup>rd</sup> party calls, using another inmate's PIN number.
- B (22) **Violation of any Correspondence Regulation(s):** Failure to abide by facility correspondence rules or regulations.

- B (23) **Possession of tokens, tickets or script beyond the amount specified by policy:** Failure to abide by facility rules and regulations pertaining to inmate tokens, tickets or script.
- B (24) **Bartering, Selling Goods and Commodities or Services:** Bartering, loaning, selling, giving, receiving, borrowing or buying any item without the prior knowledge and permission of the appropriate staff member, including, but not limited to, those items sold in the canteen, clothing, housing furnishings, art and hobby craft services or transfers or attempts to transfer funds from the trust or banking account of one inmate to that of another inmate.
- B (25) **Possession of Contraband Items:** Possessing anything not allowed to be received through the mail, not sold at the canteen or issued by the State, out of its original condition, not permitted by the Warden or otherwise not permitted to be retained or belonging to another inmate and out of their immediate possession.
- B (26) **Damage to Property:** Intentionally or through recklessness, damaging or causing to be damaged or altered any property, such as, but not limited to, that of the State or that of a person.
- B (27) **Theft:** Knowingly obtaining or exercising control over property or services belonging to another.
- B (28) **Possession of Stolen Property:** Being in possession of the property of another.
- B (29) **Alteration of a Cell, Living Area, Housing Unit or Facility:** In any way altering any electrical, plumbing fixtures, blocking of vents, exchanging cell furnishings, placing furniture or TV from activity areas into cells; writing, painting, hanging or displaying anything on any walls, on the ceiling, on or over doors and doorways, over or on windows or on cell fixtures except where provided by institutional rules and regulations.
- B (30) **Sanitary Violation:**
- a) Willfully urinating or defecating on other than the facilities provided for such functions; or,
  - b) Willfully failing or refusing to shower at least once a week; or,
  - c) Willfully failing to keep their body, hair and clothes in as clean, sanitary, neat and odor-free condition as possible under the circumstances of their particular custody; or,
  - d) Willfully failing to keep their cell or immediate sleeping area clean, odor-free, sanitary, free of trash and debris and available to the visual observation of a staff member; or,
  - e) Intentionally committing acts that could be hazardous to the health of any person within the facility; or,
  - f) Disposing of any form of trash or waste in any place other than those specifically designated for waste disposal.
- B (31) **Failure to Display Identification, Name, Number and/or Card:** Failing to display

one's identification, name, number and/or card in the manner as prescribed by the Warden's directives and policy.

- B (32) **Failure to Obtain Permit:** Failure to obtain a permit for any item or activity as prescribed by policy or the Warden; or failure to obtain a permit to engage in any business activity or enter into any contract.
- B (33) **Failure to follow Published Rules or Regulations:** Violating any posted Facility, or State rule or regulation of which they have, or through the exercise of reasonable diligence, should have, knowledge.
- B (34) **Self-Mutilation:** Purposeful self-injurious behavior; the actions or activities through manipulative, self-injury, which is not directly related to a mental disorder this also includes, body modifications which also includes piercings.
- B (35) **Using Off-Hours Calls:** (medical, mental health, Duty Officer) for unrelated, non-emergency issues.
- B (36) **Attempt or Complicity:** Charges of complicity and attempt may be used in conjunction with any appropriate offense and the Hearing Officer/Disciplinary officer may impose the same penalty for the substantiated offense.
- B (37) **Acts Constituting Misdemeanor:** Any act not listed above that would be a misdemeanor under the Criminal Code of the State of New Mexico or the laws of the United States of America.
- B (38) **Improper Legal Assistance:** An inmate providing legal assistance to another inmate related to a qualified legal claim.
- B (39) **Possession of Tobacco:** By being in possession of tobacco products in amounts of less than 1 ounce.
- B (40) **Horse Play:** Any inmate or inmates commits this when he or she engages in any roughhousing, rowdiness, or rough boisterous actions which do not result in serious bodily injury

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Category “A” Sanction Chart**

Attachment (CD-090101.C)  
Revised 05/28/19

	CATEGORY A OFFENSES	LOSS OF PRIVILEGES (up to MAX DAYS)	DISC. HOUSING RESTRICTION (up to MAX DAYS)	LOSS OF GOOD TIME (up to MAX DAYS)
	MURDER	365 days	Up to 30 days	All good time
	MANSLAUGHTER	365 days	Up to 30 days	All good time
	TAKING OF HOSTAGES OR KIDNAPPING	365 days	Up to 30 days	All good time
	ARSON	365 days	Up to 30 days	All good time
	BATTERY	365 days	Up to 30 days	All good time
	ASSAULT OR BATTERY WITH A WEAPON	365 days	Up to 30 days	All good time
	ASSAULT OR BATTERY WITHOUT A WEAPON	365 days	Up to 30 days	All good time
	ASSAULT OR BATTERY WITHOUT A WEAPON ON AN INMATE	365 days	Up to 30 days	All good time
	ENGAGING IN RIOT	365 days	Up to 30 days	All good time
	INCITING TO RIOT	365 days	Up to 30 days	All good time
	ESCAPE WITH FORCE	365 days	Up to 30 days	All good time
	ESCAPE WITHOUT FORCE	365 days	Up to 30 days	All good time
	POSSESSION OF ESCAPE PARAPHERNALIA	365 days	Up to 30 days	All good time
	THREATS	365 days	Up to 30 days	All good time
	ABUSE OF MEDICATION	365 days	Max30 days	All good time
	POSSESSION OF SYRINGE OR DRUG PARAPHERNALIA	365 days	Max30 days	All good time
	REFUSAL TO SUBMIT TO A DRUG TEST ***	365 days	Up to 30 days	All good time
	POSSESSION OR USE OF DANGEROUS DRUGS ***	365 days	Up to 30 days	All good time
	DEALING IN DANGEROUS DRUGS +++	365 days	Up to 30 days	All good time
	POSSESSION OF DANGEROUS CONTRABAND	365 days	Up to 30 days	All good time
	SEXUAL MISCONDUCT	365 days	Up to 30 days	All good time
	RAPE	365days	Up to 30 days	All good time
	ROBBERY OR EXTORTION	365 days	Up to 30 days	All good time
	BRIBERY	365days	Up to 30 days	All good time
	FORGERY	365days	Up to 30 days	All good time
	FRAUD	365days	Up to 30 days	All good time
	PARTICIPATING IN, CONTRIBUTING TO, OR IMPENDING CONTROL OF A DISTURBANCE IN ANY AREA EITHER PHYSICALLY OR VERBALLY	365days	Up to 30 days	All good time
	TAMPERING WITH LOCKS OR SECURITY ITEMS	365days	Up to 30 days	All good time
	POSSESSION OF KEY OR KEY PATTERN	365days	Up to 30 days	All good time
	TATTOOING AND/OR POSSESSION OF TATTOO PARAPHERNALIA	365days	Up to 30 days	All good time
	ATTEMPT OR COMPLICITY	Same penalty prescribed for the substantive offense		
	REFUSAL TO MOVE OR TO BE RESTRAINED	365days	Up to 30 days	All good time
	POSSESSION OF GANG PARAPHERNALIA	365days	Up to 30 days	All good time
	ENGAGING IN SECURTY THREAT GROUP/STREET GANG ACTIVITY	365 days	Up to 30 days	All good time
	ANY ACT NOT LISTED ABOVE THAT CONSTITUTE A FELONY	365 days	Up to 30 days	All good time
	ATTEMPT OR ENGAGING IN A PERSONAL RELATIONSHIP WITH A MEMBER OF STAFF ETC.	365days	Max30 days	All good time
	POSSESSION OF TOBACCO (1 OUNCE OR MORE	365days	Max30 days	All good time
	BRINGING CONTRABAND INTO PLACES OF IMPRISONMENT	365days	Max30 days	All good time
	FIGHTING	365days	Max30 days	All goodtime
	SEXUAL HARRASSMENT	365days	Max30 days	All goodtime
	TAMPERING WITH EVIDENCE	365days	Max30 days	All goodtime
	FAILURE TO PARTICIPATE IN THE PAROLE PLAN PROCESS	365days	Max30 days	90 days
	FALSE PREA ALLEGATION/STATEMENT	365 days	Max 30 days	All goodtime

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Category “B” Sanction Chart**

	CATEGORY B OFFENSES	LOSS OF PRIVILEGES (MAX DAYS)	DISC. HOUSING RESTRICTION (up to MAX DAYS)	LOSS OF GOOD TIME (MAX DAYS)
	PERJURY	120 days	Up to 30 days	120 days
	KNOWINGLY MAKING A FALSE STATEMENT TO ANY STAFF MEMBER	120 days	Up to 30 days	120 days
	COUNT INTERFERENCE	120 days	Up to 30 days	120 days
	INTERFERENCE WITH SEARCH	120 days	Up to 30 days	120 days
	FAILURE TO PROGRAM	120 days	Up to 30 days	120 days
	WILLFUL REFUSAL, WITHOUT A STATUTORY OR REGULATED EXEMPTION, TO PARTICIPATE IN THE INMATE LITERACY PROGRAM	120 days	Up to 30 days	120 days
	UNAUTHORIZED ABSENCE	120 days	Up to 30 days	120 days
	VIOLATING A CONDITION OF FURLOUGH, SCHOOL OR WORK RELEASE OR OTHER Etc.	120 days	Up to 30 days	120 days
	PRESENCE UNAUTHORIZED OR REST. AREAS	120 days	Up to 30 days	120 days
	GAMBLING	120 days	Up to 30 days	120 days
	CONDUCT WITH VISITOR (S) IN VIOLATION OF FACILITY VISITING REGULATIONS	120 days	Up to 30 days	120 days
	ALTERATION OF ANY FOOD OR DRINK	120 days	Up to 30 days	120 days
	VERBAL ABUSE OR GESTURES	120 days	Up to 30 days	120 days
	POSSESSION OF UNAUTHORIZED LEGAL DOCUMENTS OR IMPROPER LEGAL ASSISTANCE	120 days	Up to 30 days	120 days
	DISOBEYING A LAWFUL ORDER	120 days	Up to 30 days	120 days
	ASSOCIATION	120 days	Up to 30 days	120 days
	HORSEPLAY	120 days	Up to 30 days	120 days
	CONTEMPT OF COMMITTEE	120 days	Up to 30 days	120 days
	ENTERING INTO CONTRACT	120 days	Up to 30 days	120 days
	UNAUTHORIZED USE OF EQUIPMENT	120 days	Up to 30 days	120 days
	VIOLATION OF ANY CORRESPONDENCE REGULATION	120 days	Up to 30 days	120 days
	POSSESSION OF TOKENS BEYOND THE AMOUNT SPECIFIED BY POLICY	120 days	Up to 30 days	120 days
	BARTERING, SELLING GOODS AND COMMODITIES OR SERVICES	120 days	Up to 30 days	120 days
	POSSESSION OF CONTRABAND ITEMS	120 days	Up to 30 days	120 days
	DAMAGE TO PROPERTY	120 days	Up to 30 days	120 days
	THEFT	120 days	Up to 30 days	120 days
	RECEIVING STOLEN PROPERTY	120 days	Up to 30 days	120 days
	ALTERATION OF A CELL, LIVING AREA HOUSING UNIT OR FACILITY	120 days	Up to 30 days	120 days
	SANITARY VIOLATION	120 days	Up to 30 days	120 days
	FAILURE TO DISPLAY IDENTIFICATION, NAME, NUMBER AND/OR CARD	120 days	Up to 30 days	120 days
	FAILURE TO OBTAIN PERMIT	120 days	Up to 30 days	120 days
	FAILURE TO FOLLOW PUBLISHED RULES OR REGULATIONS	120 days	Up to 30 days	120 days
	SELF-MUTILATION	120 days	Up to 30 days	120 days
	USING OFF-HOUR CALLS INAPPROPRIATELY PER B(35)	120 days	Up to 30 days	120 days
	ATTEMPT OR COMPLICITY	Same penalty prescribed for the substantive offense		
	ANY ACT CONSTITUTING A MISDEMEANOR	120days	Up to 30 days	All good time
	IMPROPER LEGAL ASSISTANCE	120 days	Up to 30 days	120 days
	POSSESSION OF TOBACCO (Less than 1 ounce)	120 days	Up to 30 days	120 days

# NEW MEXICO CORRECTIONS DEPARTMENT INMATE MISCONDUCT REPORT

			<b>Date Written</b>	
			<b>Log #</b>	<b>Time Written</b>
<b>Name</b>	<b>Inmate#</b>	<b>Facility</b>	<b>Unit</b>	
<b>Date of incident</b>	<b>Time of incident</b>	<b>Location of incident</b>		

## CHARGE(S):

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## REPORTING EMPLOYEE'S STATEMENT:

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<b>Pre-Hearing Detention?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Use of Force?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Are Witness Statements Attached?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>Name of Staff Witnesses:</b>		
<b>Reporting Employee's Signature:</b>	<b>Print Name:</b>	<b>Title:</b>
<b>Evidence Submitted To: (chain of custody)</b>		
<b>Supervisor's Signature:</b>	<b>Printed Name:</b>	<b>Supervisory Review:</b> <b>Date:</b> <b>Time:</b>
<b>Received by Disciplinary:</b> <b>Date:</b> <b>Time:</b>	<b>Disciplinary Officer's Signature:</b>	

[illegible]

Signature / Date \_\_\_\_\_

## INVESTIGATION REPORT:



**NEW MEXICO CORRECTIONS DEPARTMENT**  
**DISCIPLINARY OFFICER'S FINDINGS AND RECOMMENDATIONS**

Inmate's Name: \_\_\_\_\_ Inmate#: \_\_\_\_\_ Log#: \_\_\_\_\_

**Recommendation and Justification:** Major Level Hearing: \_\_\_\_\_ Explain basis for recommendation:

Minor Level Hearing: \_\_\_\_\_

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Investigation Completed Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Disciplinary Officer

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I received a copy of all Disciplinary material on: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

You are hereby notified that you have the right and are to appear before the  
Disciplinary/Hearing Officer on:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

The Hearing Officer has assigned a Staff member to assist me:

Assigned Staff: \_\_\_\_\_

Be prepared with your representative to present witnesses, documents or any other relative evidence.

☐ I hereby waive the right to appear

☐ I hereby waive the notification of hearing

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Inmate#

\_\_\_\_\_  
Print and sign name as Witness of Waiver

\_\_\_\_\_  
Print and sign name as Witness of Waiver

## Summary of Evidence and Proceedings

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**DISCIPLINARY DECISION**

Major Report: \_\_\_\_\_ Minor Report: \_\_\_\_\_ Dismissed: \_\_\_\_\_

\_\_\_\_\_  
Disciplinary/Hearing Officer

I have received the recommended decision of the Disciplinary Hearing and I:

Approve ☐ Disapprove ☐ Modify ☐

Deputy Warden / Designee Signature

Date

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
I have been advised of the Disciplinary decision, provided with a copy of the proceedings, and informed of my right to appeal the decision. The appeal must be filed with the Disciplinary Officer fifteen (15) calendar days from the date given to the inmate.

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Inmate #

Date copy given to the inmate (within three work days from D.W. / Designee decision) \_\_\_\_\_

A petition for writ of habeas corpus challenging the findings made in this disciplinary decision must be filed with the District Court within one (1) year from acknowledging receipt of this disciplinary decision. Rule 5-802(C)(1)(b)(c). If an inmate refuses to sign acknowledging receipt of this disciplinary decision, the disciplinary hearing officer with note the inmate's refusal and the notice requirement of Rule 5-802(C)(1)(c) shall be met.

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**SUPPLEMENTAL SIGNATURE FORM**

Statement of Understanding

**Inmate's signature below indicates that he or she has been advised of his or her rights during the course of the Disciplinary Hearing and fully understands everything that has been explained during the course of the hearing to include that the Hearing Officer's final decision is subject to review by a Deputy Warden / Designee, that a Deputy Warden / Designee may approve, reduce or order a new hearing.**

Inmate's Signature: \_\_\_\_\_ Inmate#: \_\_\_\_\_

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Refusal to Appear

**Two staff signatures below indicate that the inmate was called to report to his or her Disciplinary Hearing by the Hearing Officer and he or she refused to appear.**

Staff Witness \_\_\_\_\_ / \_\_\_\_\_  
(Printed Name) (Signature)

Staff Witness \_\_\_\_\_ / \_\_\_\_\_  
(Printed Name) (Signature)

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**Recording of Hearing**

Inmate Name: \_\_\_\_\_ Inmate#: \_\_\_\_\_

Case Log#: \_\_\_\_\_ Charges: \_\_\_\_\_

Recording Log#: \_\_\_\_\_ Side: \_\_\_\_\_ Start: \_\_\_\_\_ End: \_\_\_\_\_

Recording Log#: \_\_\_\_\_ Side: \_\_\_\_\_ Start: \_\_\_\_\_ End: \_\_\_\_\_

Recording Log#: \_\_\_\_\_ Side: \_\_\_\_\_ Start: \_\_\_\_\_ End: \_\_\_\_\_

\_\_\_\_\_  
Hearing Officer's Signature

\_\_\_\_\_  
Date:

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**DISCIPLINARY APPEAL**

Inmate: \_\_\_\_\_ Inmate # \_\_\_\_\_ Unit: \_\_\_\_\_

Institution: \_\_\_\_\_ Date Report Written: \_\_\_\_\_ Major: \_\_\_\_\_ Minor: \_\_\_\_\_

Log number / Rule Violation: \_\_\_\_\_

**INSTRUCTIONS:** You may appeal a misconduct report by completing this form within 15 days of receiving the Disciplinary findings. This form must be submitted to the Institutional Disciplinary Officer or equivalent. The appeal must be typed or clearly written. Failure to follow these instructions will result in your appeal being returned for proper completion.

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**STEP I – Basis of Appeal** *(Check one or more)*

- a) Disciplinary policies were not followed ☐
- b) Decision not based on evidence ☐
- c) Punishment was excessive ☐
- d) New evidence or witnesses would change the decision ☐

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**I believe the basis of my appeal is true because of the following:** *(Give a clear statement of the reason you are appealing and include copies of all new evidence.)*

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Date Submitted to Disciplinary Officer

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**STEP II –** *(To be completed by the Disciplinary/Hearing Officer)*

Date Appeal Form received and logged: Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Appeal Form completed, legible, and submitted within time limit: Yes ☐ No ☐

Date copies of the Misconduct Report, Disciplinary Officer's Report, Disciplinary Findings and all other related statements or evidence forwarded to the Warden's / Secretary of Corrections Office:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Disciplinary/Hearing Officer

Inmate Name: \_\_\_\_\_ Inmate#: \_\_\_\_\_ Facility: \_\_\_\_\_

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Meeting With Staff Assistant**

☐ I do not wish to meet with a staff assistant and waive my right to do so.

\_\_\_\_\_/\_\_\_\_\_  
Inmate Signature (Print / Sign)                      Time                      Date

\_\_\_\_\_/\_\_\_\_\_  
Officer Signature (Print / Sign)                      Time                      Date

**TO ENSURE THAT THERE IS SUFFICIENT TIME TO SCHEDULE THIS MEETING – SUBMIT THIS FORM TO THE RESPECTIVE UNIT MANAGER / HOUSING UNIT LIEUTENANT TO ENSURE THE MEETING HAS TAKEN PLACE. UPON COMPLETION SUBMIT COMPLETED ORIGINAL FORMS TO DISCIPLINARY OFFICER.**

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Meeting With Staff Assistant**

Inmate's Name: \_\_\_\_\_ Inmate#: \_\_\_\_\_

Housing Unit: \_\_\_\_\_

Pod: \_\_\_\_\_

Cell: \_\_\_\_\_

Status: PHD ☐ Disciplinary Restrictive Housing ☐

Meeting was received on:

\_\_\_\_\_ At \_\_\_\_\_ am / pm  
Date Time

Meeting must take place by: \_\_\_\_\_

Meeting for inmate: \_\_\_\_\_  
(Name and NMCD#)

At \_\_\_\_\_  
(Location of meeting)

\_\_\_\_\_  
Staff Member (Print/Sign)

A copy of the request and this form were provided to the following persons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

cc: Deputy Warden  
Unit Operations  
Director  
Disciplinary/Hearing Officer



**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Extra-Duty Assignment and Tracking Log**

To: \_\_\_\_\_ Facility Unit Manager

From: \_\_\_\_\_ Disciplinary/Hearing Officer

Re: **Extra-Duty**

Date: \_\_\_\_\_

Inmate: \_\_\_\_\_ Inmate#: \_\_\_\_\_ Case#: \_\_\_\_\_

Was found guilty of a misconduct report and is sanctioned to perform \_\_\_\_\_ hours of extra - duty,

He or she is only required to work only one (1) hour per day, until all sanctioned extra-duty hours are completed.

This attachment must be completed by the shift supervisor or designee and returned to the Disciplinary Department upon completion of the sanction.

Date received by the Unit Manager: \_\_\_\_\_

Date received by the Shift commander / designee: \_\_\_\_\_

Shift commander / designee signature \_\_\_\_\_

Date sanctions completed and returned to D.O. \_\_\_\_\_

If extra-duty was not completed, explain:

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Number of Hours Sanctioned: \_\_\_\_\_

[illegible]

Shift Commander or designee: \_\_\_\_\_ Date: \_\_\_\_\_

**NEW MEXICO CORRECTIONS DEPARTMENT**  
**Notification of Confinement in Disciplinary Restrictive Housing**

To: \_\_\_\_\_, Classification

Officer Thru: \_\_\_\_\_, Warden

From: \_\_, Disciplinary Hearing Officer

Subject: Disciplinary Restrictive Housing

The following inmate has been found guilty of a major level infraction by the hearing officer, with the following sanctions: This is to inform you of the disciplinary restrictive housing which is being imposed.

Name: \_\_\_\_\_ Inmate#: \_\_\_\_\_ Report Log#: \_\_\_\_\_

☐ Approve

☐ Disapprove

**Please see the appropriate paperwork is distributed. All parties involved are notified of the disciplinary restrictive housing assignment, and this confinement order is carried out effectively. This form will also serve as the review of any inmate who has been sanctioned to 30 days as to verify the warden's acknowledgement without having to review the misconduct hearing report as to ensure the disciplinary appeal process is not compromised.**

\_\_\_\_\_  
Signature of Warden (or designee)

\_\_\_\_\_  
Date

Date Entered \_\_\_\_\_

Date Released \_\_\_\_\_

**Warden's Disciplinary Appeal**  
**Respective Facility Letterhead**

To: \_\_\_\_\_ Inmate

From: \_\_\_\_\_ Warden

Re: Appeal of Major Misconduct Report dated \_\_\_\_\_ Log# \_\_\_\_\_

Date: \_\_\_\_\_

Sanctions: \_\_\_\_\_

1. Summary of offense and hearing officer's decision:

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2. Procedural review:

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| a. Time limits met.                       | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b. Proper charges made.                   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c. Sanctions proportionate.               | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d. Procedural requirements met.           | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e. Decision based on substantial evidence | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

3. Answer to Appeal:

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4. Warden's Decision:

- |                                    |                              |                             |
|------------------------------------|------------------------------|-----------------------------|
| Uphold Hearing Officer's decision. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Reduce to minor level report.      | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Dismiss Report.                    | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Order a new hearing.               | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Reduce sanctions.                  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Inmate Receipt of appeal copy \_\_\_\_\_

**Date mailed to Inmate or Inmate Initials if served in person**

**Inmate may appeal to the Secretary of Corrections within 15 calendar days from receipt of the appeal decision.**

Respectfully,

-Warden Correctional  
Facility

xc: Warden  
Hearing officer / File Archive Database Inmate

**Mandatory Appeal Form for all NMCD and Private Prison facilities**

Re: \_\_\_\_\_

I observed the following pertaining to the Misconduct Report for the inmate identified: