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**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**DISCIPLINARY RULES AND  
PROCEDURES FOR OFFENDERS**



**Correctional Institutions Division**

**AUGUST 2019**

**GR-106**

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# TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## DISCIPLINARY RULES AND PROCEDURES FOR OFFENDERS

### FOREWORD

It is the policy of the Texas Department of Criminal Justice (TDCJ) to operate a swift and fair disciplinary process that embodies constitutional and statutory standards. TDCJ staff shall not order, require, suggest, or in any manner, directly or indirectly, impose disciplinary quotas. Inappropriate disciplinary actions are strictly prohibited and will result in formal disciplinary action against the employee in accordance with PD-22, “General Rules of Conduct and Disciplinary Action Guidelines for Employees,” and may result in criminal liability. The TDCJ *Disciplinary Rules and Procedures for Offenders* establishes a uniform offender disciplinary process.

The goals of the offender disciplinary process are to:

- Maintain order and control of institutional safety;
- Discipline offenders fairly;
- Protect offenders’ constitutional rights;
- Modify offender behavior in a positive manner; and
- Maintain an official record of an offender’s disciplinary history.

To preserve the integrity and fairness of the disciplinary process, the TDCJ ensures deleted or modified disciplinary actions result in correction of an offender’s records.

This rulebook is in compliance with Texas Government Code §§ 493.001, 494.002, 499.004, 499.102(a)(9).

Reference: 28 C.F.R. §§ 115.72, 115.78 (a)-(g)

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Lorie Davis, CID Director

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## INTRODUCTION

Offenders housed in secure correctional facilities operated by or under contract with the TDCJ are required to follow the rules outlined in the *Offender Orientation Handbook* and as posted by their unit of assignment. This rulebook, the *Disciplinary Rules and Procedures for Offenders*, outlines the procedures for determining whether an offender has violated a rule and available consequences for such behavior. If an offender does not fully understand the rules outlined in the *Offender Orientation Handbook*, the offender should consult a staff member for explanation.

A copy of this rulebook is provided to every offender within the TDCJ. Spanish translations of this rulebook are provided to offenders whose primary language is Spanish. In addition, the rules shall be explained to offenders who are illiterate or whose primary language is neither English nor Spanish.

## DISCIPLINARY PROCEDURES

If an offender violates a rule of the TDCJ, the offender may be penalized. All disciplinary rules for which an offender may be penalized shall be in written form, provide adequate notice of the conduct prohibited and the consequences for engaging in prohibited conduct, and be adequately distributed or posted. The following procedures will be followed when an offender violates a TDCJ rule.

### I. General Procedures and Requirements

#### A. Reporting Infractions

When a TDCJ, Windham, or contract employee witnesses or has knowledge of any act by an offender that is in violation of TDCJ rules and regulations, the employee first shall attempt, if appropriate, to resolve the matter informally. If a volunteer becomes aware of a violation, the volunteer shall report the incident to a TDCJ employee. Informal resolution may include counseling, verbal reprimand, or the giving of an instruction, warning, or order. Informal resolution is not appropriate for any offense that poses a risk to the security of the institution, such as solicitation of staff to violate a rule or policy, an attempt to establish an inappropriate relationship, or possession of dangerous contraband.

1. If the incident cannot or may not be resolved informally by the observing employee, the employee shall bring the matter to the attention of the supervisor on duty or complete an Offense Report, I-210, whichever is appropriate at the time of the incident. The supervisor shall attempt, if appropriate, to resolve the matter informally.
2. If the supervisor cannot resolve the incident informally, an Offense Report and a Preliminary Investigation Report (reverse side of the I-210 form) shall be completed. The Offense Report shall be written by someone who has direct knowledge of the incident. The Preliminary Investigation Report shall be conducted by a different staff member, with the rank of correctional officer V or above, who is not the charging officer or a person who is involved in the incident.
3. Upon completion of the Offense Report and Preliminary Investigation Report, the supervisor shall review the information and determine whether informal resolution is appropriate. If the incident cannot be resolved informally, a Disciplinary Report shall be completed, formally charging the offender with violating a TDCJ rule. All offense reports, including those informally resolved, shall be forwarded to the unit disciplinary office for processing.
  - a. The Disciplinary Report shall be generated on the appropriate form (Form I-47MA or Form I-47MI).
  - b. The Disciplinary Report shall include the following information: the accused offender's name, TDCJ number, time earning class, and for prison offenders, custody classification, housing, and job assignment; the reporting officer's name and title; the code number and title of the

offense; the date of the offense; and a description of the facts of the offense. The description of the facts of the offense shall include, at a minimum, the date and time of the alleged infraction, the name(s) of the charging officer and all witnesses, the location of the incident, and a full statement of the facts.

- c. The Disciplinary Report does not need to include the reporting officer's signature and the date of the signature as long as the reporting officer has signed and dated a form that includes the description of the facts of the offense (Offense Report, I-210).
- d. The Offense Report shall include any unusual offender behavior, any physical evidence and its disposition, and any immediate action taken, including a use of force.

B. Classification of Hearing - Minor v. Major (Applies to all offenders)

- 1. A minor disciplinary hearing is a means of processing less serious rule infractions in accordance with this rulebook. A minor disciplinary hearing cannot result in the imposition of the following:
  - a. Any major penalties (see Section VII.A.2 for a list of the major penalties); or
  - b. Assessment of monetary damages due to damage or destruction of state property.
- 2. A major disciplinary hearing is an administrative hearing, presided over by a disciplinary hearing officer (DHO) with the rank of captain or above, to process serious rule violations in accordance with the procedures for a major disciplinary hearing. An offender shall not be given any major penalty without a major disciplinary hearing.
- 3. The final decision whether a disciplinary hearing will be classified as minor or major shall be made by a captain or above. The decision shall be based on the following:
  - a. The nature and seriousness of the offense. For example, a Level 3 offense is more apt to be processed through a minor disciplinary hearing than a Level 1 offense;
  - b. The offender's disciplinary history; and
  - c. The period of time since the offender's last rule violation.

C. Offenders Participating in a Treatment Program

- 1. When a TDCJ, Windham, or contract employee witnesses or has knowledge of any act committed by an offender participating in a substance abuse therapeutic

community treatment program or other rehabilitative programs that is in violation of the rules and regulations of the TDCJ, the employee shall attempt, if appropriate, to resolve the matter informally. The employee may also refer the infraction to treatment personnel for disposition. An offender is subject to behavior modification techniques and sanctions imposed by the treatment team for violating any rules. Non-serious disciplinary infractions may be managed by the multi-disciplinary treatment team. If a volunteer becomes aware of a violation, the volunteer shall report the incident to a TDCJ employee.

2. If the incident cannot be resolved informally by the observing employee, the employee shall refer the infraction to their immediate supervisor for disposition. The supervisor shall attempt, if appropriate, to resolve the matter informally and may refer the infraction to the multi-disciplinary treatment team for disposition through established treatment sanctions. Incidents that cannot be resolved informally shall be referred to the multi-disciplinary treatment team.
3. The offender's treatment team shall determine whether the violation can be addressed through treatment, and if so, decide the appropriate sanctions or make recommendations for formal discipline. The offender's treatment team shall determine whether to discharge the offender from treatment due to behavioral problems.
  - a. For parole modification offenders, the treatment team shall be composed of the following persons:
    - (1) Program director or designee;
    - (2) Lieutenant or above;
    - (3) Offender's case manager or counselor;
    - (4) Institutional parole officer (IPO) case manager assigned to facility; and
    - (5) The designated parole officer for the facility.
  - b. For probation modification offenders, the treatment team shall be composed of the following persons:
    - (1) Program director;
    - (2) Lieutenant or above;
    - (3) Offender's case manager; and
    - (4) Transitional care coordinator.



- c. For other program offenders, the treatment team shall consist of the persons designated in the appropriate program policy manual.
4. Incidents that the treatment team determines cannot be addressed through treatment shall be referred to the building major for grading. At that time, a formal disciplinary report may be processed, charging the offender with violating a rule. Disciplinary hearings for Substance Abuse Felony Punishment (SAFP) facility offenders shall be held in accordance with the disciplinary rules and procedures contained in this rulebook. A SAFP facility may conduct state jail offender disciplinary hearings, as described in Section I.D. For offenders who have been discharged from treatment, and who commit disciplinary violations, the procedures in Section I.C shall be followed but without referring the infraction to treatment personnel.
5. If an offender has been removed from the treatment program, the offender shall continue to be subject to the disciplinary rules and procedures contained in this rulebook. Rule violations committed by offenders who are no longer in treatment shall be processed by correctional staff and forwarded to the unit disciplinary office. A disciplinary hearing shall be conducted if the grading official deems it appropriate.
6. Offenders who have been removed from the treatment program shall remain housed at the facility pending transfer to an appropriate destination. Offenders who pose a risk to the physical safety of others or who present a threat to the security of the facility shall be separated and placed in transient status pending transfer.
7. Offenders who have been removed from the treatment program shall be required to work as assigned. Offenders shall be managed in accordance with applicable procedures outlined in the appropriate program policy manual and procedures relative to the offender's custody and housing assignment.

#### D. State Jails

A state jail offender disciplinary hearing is an administrative hearing held to process any rule violation committed by an offender sentenced to a state jail and is conducted in accordance with procedures for a minor disciplinary hearing. Under a state jail offender disciplinary hearing, a state jail offender may receive any penalty categorized as minor, or as major for the state jails. However, a state jail offender shall be provided with a major disciplinary hearing in accordance with Sections IV and VI of these procedures if assessment of monetary damages due to destruction of state property may be imposed. Disciplinary hearings for offenders sentenced to a prison but assigned in transfer status to a state jail shall be conducted in accordance with the grade assigned to the disciplinary report and under the applicable minor or major disciplinary hearing procedures.

E. Prisons

If an offender is found guilty in a minor disciplinary hearing, the guilty finding shall not preclude the offender from being reviewed for promotion in time earning class. An offender who has received a disciplinary conviction resulting in a major penalty may be reviewed and considered for promotion in time earning class after 12 months.

F. Investigation

A Disciplinary Report cannot be processed without a proper investigation, to include interviews with the charging officer, the accused offender, or other witnesses. A preliminary investigation shall begin within 24 hours from the time the violation is reported and completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation. Exceptional circumstances shall be documented on the preliminary investigation. A supervisor, sergeant or above, reviews the offense report and appoints a staff member, with the rank of correctional officer V or above, without knowledge of, and/or involvement in, the disciplinary case, to conduct the preliminary investigation.

II. Prehearing Detention

A. Criteria

An offender charged with, or suspected of, a disciplinary violation may be placed in prehearing detention (PHD) without notice or hearing only by the warden, assistant warden or designee, lieutenant or above, and only if the offender falls into one of the following categories:

1. The offender is a current escape risk;
2. The offender's presence in general population would create a threat to the physical safety of other offenders or staff; or
3. It is necessary to maintain the integrity of an investigation, such as to preserve the integrity of information in either the offender's possession or another offender's possession.

B. Time Limits

1. Whenever possible, a disciplinary hearing shall be held within 72 hours of the offender's placement in PHD. If a disciplinary hearing is not held within 72 hours, the reason for the delay shall be documented on the record of the hearing.
2. If the offender has not had a disciplinary hearing within 10 days, the offender shall be released from PHD.

3. The original 10-day period may be extended for an additional 10 days if the warden documents in writing that it is necessary to complete the investigation, specifying the reasons for the extension. Only one extension may be granted.

C. Records

1. Uniform written records shall be maintained on the Restrictive Housing Log, I-188, for each offender placed in PHD to include:
  - a. The offender's name and TDCJ number;
  - b. The date and time the offender was placed in PHD;
  - c. The reason for placement, including the criterion used and a brief reason for the confinement;
  - d. The name of the lieutenant or above who authorized placement;
  - e. The date of the review by the warden or designee within 24 hours of the offender's placement in PHD, including weekends and holidays; and
  - f. The date the offender is released from PHD.
2. A Restrictive Housing Confinement Record, I-201, shall be completed on each offender placed in PHD. For more information about this record-keeping requirement, see the *Restrictive Housing Plan*.

D. Physical Examination

An offender who is determined to require placement in PHD, and who has no apparent medical problems, may be placed in PHD without prior medical evaluation. However, an offender placed in PHD without prior medical evaluation shall be evaluated as soon as possible, and no later than 12 hours after being placed in PHD, by a qualified health care provider in accordance with applicable Correctional Managed Health Care (CMHC) policies.

III. Minor Disciplinary Hearing Procedures and Penalties

A. Hearing

1. A Disciplinary Report graded as minor shall be heard by a minor DHO. The minor DHO shall be the rank of lieutenant or above and meet the criteria outlined in Section IV.D.2. The minor DHO shall not be the same person who served the offender with notice of a charge.
2. An offender shall be served notice of a charge, usually by a correctional officer, at least 24 hours prior to the disciplinary hearing. The charge(s) shall be explained to the offender in terms the offender can understand and within 30 days of discovery of the alleged violation. Offenders may not be subject to any form of coercion designed to persuade them to waive the right to 24 hours'

notice. If an offender is offered the opportunity to waive 24 hours' notice, they shall be fully informed, in terms intelligible to them, of the nature of the rights at stake. All applicable time limits for a minor disciplinary hearing are the same as for a major disciplinary hearing. Offenders shall be informed of their right to submit a written statement to the DHO in response to the charge(s). Confirmation that the offender was advised of these rights shall be documented on the original Disciplinary Report.

3. An offender accused of a disciplinary charge may waive attending the disciplinary hearing. At the time of notice of a charge, the offender shall be asked if the offender wants to attend the disciplinary hearing. The offender's decision shall be documented on the Disciplinary Report and Hearing Record. If the offender elects not to attend the disciplinary hearing, the offender shall be asked for a plea, and then advised that if the offender later decides to attend the hearing, the offender shall submit a written request to the DHO before the hearing is held. The DHO shall review the offender's decision to waive attending the disciplinary hearing, conduct the hearing in the offender's absence, and document the absence on the report by writing: "Offender waived attending the hearing."
4. The offender may submit a written statement or make a verbal statement in the offender's defense during the disciplinary hearing.
5. When possible, minor disciplinary hearings shall be scheduled within seven days after the alleged violation, excluding weekends and holidays. If a disciplinary hearing is not held within seven days, excluding weekends and holidays, the reason for the delay shall be documented on the record of the hearing.

#### B. Minor Penalties

1. If found guilty, the DHO may impose one or more of the following penalties:
  - a. Counsel and reprimand.
  - b. Extra duty not to exceed 42 hours per disciplinary case. If an offender is given extra duty through a finding of guilt at a disciplinary hearing and the offender refuses to perform the extra duty, the offender may be charged for the refusal. If the offender is found guilty in a major disciplinary hearing and given a major penalty, the offender shall no longer be required to perform the extra duty.
  - c. Loss of privileges not to exceed 30 days per disciplinary case. At no time shall the loss or restriction of each privilege exceed a total of 90 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions. Privileges that may be restricted include:

- (1) Recreation – Dayroom, gymnasium, and outdoor recreation yard.
  - (2) Commissary purchases – Except legal and correspondence materials and hygiene items, which include a toothbrush, toothpaste, deodorant, shampoo, soap, and feminine hygiene items.
  - (3) Television.
  - (4) Personal property – Except any type of correspondence, to include legal and correspondence materials; hygiene items, which include toothbrush, toothpaste, deodorant, shampoo, soap, and feminine hygiene items; and religious literature or items, such as a prayer rug or shawl.
  - (5) Other leisure activities – Except craft privileges. Craft privileges may be administratively suspended by the unit warden or designee.
- d. Cell restriction, not to exceed 30 days per disciplinary case.
- (1) Offenders may receive consecutive terms of cell restriction for cumulative disciplinary convictions. At no time shall cell restriction exceed a total of 90 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions.
  - (2) Offenders on cell restriction shall not leave the cell except for:
    - (a) Medical reasons;
    - (b) Treatment programs;
    - (c) Showers;
    - (d) Meals;
    - (e) Law library visits during non-work hours only;
    - (f) Work;
    - (g) Educational or vocational school or training;
    - (h) To attend religious activities held in the chapel or the area designated to serve as the chapel; and
    - (i) Contact and noncontact visits.

- (3) Cell restriction does not involve restrictions on correspondence.
  - (4) The offender shall not be allowed out-of-cell recreation. When an offender serves more than 30 continuous days of cell restriction as a penalty resulting from a minor disciplinary hearing, the offender shall be allowed physical recreation out of the cell for a one-hour period every seven days.
  - (5) Specific guidelines for the management of general population offenders given cell restriction are outlined in AD-03.70, "Cell Restriction for General Population Offenders."
- e. Suspension of contact visitation privileges for a minimum of one visit and a maximum of two months.
2. Under no circumstances may an offender's participation in educational or vocational school or training be denied, altered, or restricted as the result of a minor disciplinary hearing. When more than one of the minor penalties listed above is imposed at the disciplinary hearing, the penalties shall be served concurrently.

C. Procedural Requirements for Death Row and Security Detention

1. Offenders assigned to death row or security detention shall be given a minor disciplinary hearing and be found guilty prior to receiving cell restriction or loss of recreation privileges. Cell restriction or loss of recreation privileges may not exceed a period of 15 days for each disciplinary conviction. These offenders may receive consecutive terms of cell restriction or loss of recreation privileges.
2. Security Detention

Consecutive terms of cell restriction and loss of recreation privileges shall not exceed 30 days when imposed on a security detention offender. At no time shall loss of recreation privileges or cell restriction exceed a total of 30 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions. When cell restriction or loss of recreation privileges are imposed on security detention offenders, they shall be allowed physical recreation out of the cell for a one-hour period every seven days. This requirement applies even if the offender has received only a single term of cell restriction or loss of recreation privileges.
3. Death Row

Consecutive terms of cell restriction and loss of recreation privileges shall not exceed 90 days when imposed on a death row offender. At no time shall loss of recreation privileges or cell restriction exceed a total of 90 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions. The 90-day limitation regarding consecutive terms of

cell restriction or loss of recreation privileges applies to all death row offenders. When consecutive terms of cell restriction or loss of recreation privileges are imposed, a death row offender shall be allowed physical recreation out of the cell for a one-hour period every seven days. Loss of recreation or cell restriction for death row offenders shall be regarded as a major penalty if assessed as a result of to a major hearing.

#### D. Hearing Record

1. At the conclusion of the disciplinary hearing, the offender shall be given a copy of the Disciplinary Report and Hearing Record, I-47MI. If the offender is found guilty, the DHO shall inform the offender of the right to use the offender grievance procedure to appeal the finding of guilt and the penalty imposed. If the offender requests a Step 1 grievance form, the DHO shall make it available at that time. If the offender was not present at the hearing, the DHO shall notify the offender of the hearing results and the right to appeal the finding of guilt and penalty imposed by completing the Disciplinary Hearing Results Notification, I-217. The original Disciplinary Hearing Results Notification shall be attached to the offender's copy of the Disciplinary Report and Hearing Record and sent to the offender. The copy of the Disciplinary Hearing Results Notification shall be attached to the Disciplinary Report and Hearing Record.
2. If the offender is found not guilty, records pertaining to the alleged violation shall not be placed in the offender's unit file but shall be maintained in the unit disciplinary archive file. This file shall be maintained by month for a period of two years. Information regarding not guilty findings shall only be used for legal or grievance issues.

#### IV. Major Disciplinary Hearing: Procedures Before the Hearing

##### A. Notice of a Charge

1. Offenders shall be served with notice of a disciplinary charge by a counsel substitute at least 24 hours prior to the disciplinary hearing and within 30 days of discovery of the alleged violation. The disciplinary hearing shall be classified as major prior to notice being served, or the accused offender shall be given 24 hours from the time the offender is notified that the hearing is classified as major until the hearing is conducted.
2. Notice of a disciplinary charge after 30 days shall be allowed only if unforeseen circumstances arise, such as the offender is temporarily transferred to another unit, and the warden's written approval, including the reasons for the delay, is obtained before the offender is served with notice.
3. Offenders may not be subject to any form of coercion designed to persuade them to waive the right to 24 hours' notice. If offenders are offered the opportunity to waive 24 hours' notice, they shall be fully informed, in terms intelligible to them, of the nature of the rights at stake. The DHO shall note on

the recording of the disciplinary hearing an offender's decision to waive the right to 24 hours' notice.

4. An offender accused of a disciplinary charge may waive attending the disciplinary hearing. At the time of notice of a charge, the offender shall be asked if the offender wishes to attend the disciplinary hearing. The offender's decision shall be documented on the Disciplinary Report and Hearing Record, I-47MA. If the offender elects not to attend the disciplinary hearing, the offender shall be asked for a plea, and then advised that if the offender later decides to attend the hearing, the offender shall submit a written request to the DHO before the hearing is held. The DHO shall review the offender's decision to waive attending the disciplinary hearing, conduct the hearing in the offender's absence, and document the absence on the report by writing: "Offender waived attending the hearing."
5. Notice of a charge shall include a copy of the Disciplinary Report. Items of information which, if disclosed to the accused offender, would seriously jeopardize the safety of other offenders shall not be provided to the accused offender.
6. At the time an offender is served with notice pursuant to a major disciplinary hearing, the offender shall be informed of the right to present documentary evidence and to request witnesses. The offender shall be informed that a counsel substitute will be assigned unless the offender waives representation. The offender's decision shall be noted on the Service/Investigation Worksheet, along with the names of the witnesses requested, and the information shall be provided to the DHO. However, either the offender or the counsel substitute may inform the DHO at any time prior to and at the disciplinary hearing of any changes to the list of witnesses requested. Offenders who are not assigned counsel substitutes shall be allowed to communicate directly with a reasonable number of potential witnesses in advance of the disciplinary hearing. There is no minimum or maximum number of witnesses allowed; this should be determined on a case-by-case basis.
7. The investigation report shall be attached to the Disciplinary Report and submitted to the DHO.
8. An offender who successfully appealed a disciplinary conviction may be served with notice of a rehearing, if, at the initial disciplinary hearing the offender was served with notice of a charge in a timely manner and a timely disciplinary hearing was conducted. A rehearing may not be conducted on an overturned disciplinary conviction for which an offender did not receive either notice of a charge or a disciplinary hearing within the established time limits. The 30-day time limit for serving the offender with notice begins on the date of the decision granting the appeal. After notice has been served, the rehearing shall be held in accordance with established time limits.



## B. Counsel Substitutes

1. Assignment - Counsel substitutes are non-uniformed employees who represent offenders in disciplinary hearings by advocating on behalf of the offender and keeping related records. This requirement does not apply to state jail offender disciplinary hearings, except when state jail offenders are brought before major disciplinary hearings for assessment of monetary damages for destruction of state property. Offenders shall be provided with counsel substitutes prior to a major disciplinary hearing when any of the following conditions are met:
  - a. When the offender is developmentally disabled as defined in the *Developmental Disabilities Plan (DDP)*. Additionally, a counsel substitute shall be assigned when the offender's mental ability to understand and respond to a disciplinary charge and proceeding is questionable, even though the offender has not been assessed to have developmental disabilities as outlined in the DDP;
  - b. When the offender is assigned to a mental health inpatient facility or has been placed on an outpatient mental health caseload;
  - c. When the offender's literacy or understanding of English is questionable. A counsel substitute shall be assigned in every case in which the offender's Educational Achievement score is below 5.0 on reading;
  - d. When the offender, because of the complexity of the issue, will be unlikely to be able to collect and present the evidence necessary for an adequate comprehension of the case;
  - e. When the offender is confined to any form of restrictive housing pending the disciplinary hearing; or
  - f. When a witness requested by the accused offender is unable to attend a disciplinary hearing because either the requested witness or the accused offender has been transferred to another unit. When these circumstances exist, the counsel substitute assigned shall obtain witness statements and present the statements to the DHO.
2. Offenders who have been assigned a counsel substitute as required by Section IV.B.1.a, b, and c shall not be considered competent to waive the right to counsel substitute.
3. The assignment of a counsel substitute shall be made at least 24 hours prior to the disciplinary hearing unless the counsel substitute agrees to proceed sooner and is able to fully prepare for the hearing without at least 24 hours' notice.
4. In most cases, a counsel substitute will not be assigned for minor and state jail offender disciplinary hearings. The minor DHO may obtain the assistance of a counsel substitute when the offender is unable to understand and participate in

the minor disciplinary hearing process. Moreover, an offender who does not speak or understand English shall be provided with a qualified interpreter at the disciplinary hearing.

5. Responsibilities - Prior to the disciplinary hearing, a counsel substitute shall:
  - a. Read the Disciplinary Report to the accused offender;
  - b. Inform the offender of the offender's rights and ensure the offender understands these rights. Explain the Disciplinary Report and ensure the offender understands the charges;
  - c. Obtain the accused offender's statement in response to the disciplinary charges;
  - d. Obtain the names of employees and offenders whom the accused offender wishes to call as witnesses;
    - (1) Interview all witnesses prior to the disciplinary hearing;
    - (2) For those witnesses not able to appear at the disciplinary hearing, such as an offender or a correctional officer who has been transferred to another unit, obtain written statements that can be provided to the DHO at the hearing;
    - (3) Inform the DHO of any changes in the list of witnesses requested; and
  - e. Obtain any requested documentary evidence relevant to the case that is not already in the possession of the accused offender, such as medical records.
6. The counsel substitute's role during the disciplinary hearing is to present the accused offender's case and act as the offender's advocate.

#### C. Time Limits

1. Whenever possible, major disciplinary hearings shall be scheduled as soon as practicable, but no later than seven days after the alleged violation, excluding weekends and holidays. If the disciplinary hearing is not held within seven days after the alleged violation, excluding weekends and holidays, the reason for the delay shall be documented on the hearing record. Offenders shall be verbally notified of the time and place of the disciplinary hearing at least 24 hours in advance of the hearing. In any event, the disciplinary hearing shall be held within 20 days after the offender is served with notice. If a disciplinary hearing cannot be held within 20 days due to unforeseen circumstances, such as the accused offender is temporarily transferred to another unit, the time limit may be extended to 45 days with the warden's written approval. If a disciplinary hearing cannot be held within 45 days due to unforeseen

circumstances, the time limit may be extended with the regional director's written approval, including the reason for the delay. If an offender is served with more than one Disciplinary Report, all the Disciplinary Reports shall be heard by the unit DHO within the above time limits.

2. If an offender is given a permanent assignment to a new unit prior to the offender's disciplinary hearing, the Disciplinary Report shall be forwarded to the new unit of assignment, and a hearing shall be held within 30 days of the offender's arrival on the new unit. If a disciplinary hearing cannot be held within 30 days due to unforeseen circumstances, the time limit may be extended an additional 30 days with the warden's written approval.
3. If the offender is placed in prehearing detention, see Section II.B for the schedule of additional time limits.

D. Disciplinary Hearing Officer

1. The DHO for a major disciplinary hearing shall be at least the rank of captain.
2. The DHO shall not be an employee who:
  - a. Completed the Disciplinary Report;
  - b. Ordered the Disciplinary Report to be completed;
  - c. Participated in any incident that led to the charges in question;
  - d. Witnessed the incident;
  - e. Participated in the investigation of the charges; or
  - f. Made the decision to process the report through a major disciplinary hearing.

V. Special Procedures for Certain Categories of Offenders

- A. Special considerations are required for developmentally disabled offenders, mental health patients, or offenders participating in a sex offender rehabilitation program charged with or suspected of a disciplinary infraction. The applicable procedures to be followed are specified in the DDP and the *Correctional Managed Health Care Policy Manual* and the Sex Offender Rehabilitation Programs policies and procedures.
- B. Unit psychologists treating developmentally disabled outpatients, such as those not assigned to sheltered units, or mental health outpatients, have the responsibility for providing the DHO and the counsel substitute office with an updated list of the names and TDCJ numbers of all developmentally disabled outpatients and mental health outpatients on the units.

- C. Offenders engaging in self-inflicted bodily injury may be subject to disciplinary action, only if an evaluation by a mental health professional determines the offender's behavior was not the result of their mental condition.
- D. Medical staff shall be consulted prior to the imposition of penalties on mobility-impaired offenders to determine possible negative medical consequences for a given penalty.
- E. Language assistance shall be provided to offenders in the disciplinary process, as needed, in accordance with AD-04.25, "Language Assistance Services to Offenders Identified as Monolingual Spanish-Speaking," and AD-06.25, "Qualified Interpreter Services – American Sign Language." A qualified interpreter shall be used to assist a counsel substitute in performing tasks if the counsel substitute is not a qualified interpreter. A qualified interpreter shall be provided for non-English-speaking offenders and offender who use American Sign Language (ASL) during investigations, at the time of notification of a disciplinary charge, and at disciplinary hearings. A DHO who is a qualified interpreter may serve as the interpreter at minor disciplinary hearings only. A counsel substitute who is a qualified interpreter may serve as the interpreter for both minor and major disciplinary hearings.
- F. Applicable special procedures shall be followed whether a minor or a major disciplinary hearing is conducted. Copies of documents referenced in these rules are available for review on each unit.

## VI. Major Disciplinary Hearing: Procedures for Actual Hearing

- A. Presence of Offender at the Disciplinary Hearing
  - 1. An offender charged with a rule violation shall be present at the disciplinary hearing unless behavior immediately before or during the hearing justifies exclusion, or the offender waives attending the disciplinary hearing. If an offender refuses to appear or waives attendance at the hearing, the hearing may be conducted in the offender's absence.
  - 2. An offender may hear all the evidence presented at the disciplinary hearing, unless hearing the evidence will jeopardize the life and safety of persons or the security and order of the institution.
  - 3. The DHO shall provide written reasons on the record for the accused offender's absence during any portion of the disciplinary hearing. If security considerations require an offender's removal from the hearing for the presentation of any evidence or questioning of any witness, the offender's counsel substitute shall remain and act on the offender's behalf. The offender's counsel substitute shall not transmit any evidence to the offender if hearing the evidence will jeopardize the life or safety of persons or the security and order of the institution.
  - 4. If an offender who has not been assigned a counsel substitute refuses to attend the disciplinary hearing, voluntarily leaves the hearing while it is in progress,

or engages in disruptive behavior that requires removal, the offender's actions shall be considered a constructive waiver of the right to a counsel substitute. If the offender is excluded because hearing evidence may jeopardize the life and safety of persons or the security and order of the institution and a counsel substitute had not previously been appointed, the disciplinary hearing shall be continued so a counsel substitute can be appointed.

B. Presentation of Evidence

1. The DHO shall read the Disciplinary Report into the record, and the offender shall be allowed to enter a plea to each charge. If a charge involves possession of contraband, such as fighting with a weapon, the item(s) of contraband shall be produced at the disciplinary hearing if the existence or nature of the item(s) cannot be satisfactorily established by other means. Perishable items or any item(s) that pose a threat to health and safety may be disposed of prior to the hearing. If it is determined the presence of particular contraband items at the disciplinary hearing will create a threat to the physical safety of offenders or staff, the contraband may be excluded. Any contraband items that are excluded from the disciplinary hearing shall be photographed or photocopied, and this evidence shall be produced at the hearing, if the production of the items at the hearing is required, unless the contraband was destroyed by the offender. If the contraband involves a controlled substance, such as marijuana, the DHO shall have a laboratory report or the results of a field test kit available, establishing the nature of the substance.
2. The accused offender may make a statement on his or her own behalf. The counsel substitute also may make a statement on the offender's behalf.
3. The accused offender or the counsel substitute may present documentary evidence. Documentary evidence shall be accepted into evidence unless it is clearly irrelevant or repetitious.
4. The offender may call witnesses unless the DHO decides the testimony of such witnesses is likely to jeopardize the life or safety of persons or the security and order of the institution. If witnesses are denied, written reasons shall be provided in the disciplinary hearing record for the DHO's decision. The DHO may not automatically deny witnesses requested at the hearing by the accused offender because the offender did not request the witnesses at the time of notification of the alleged violation. The DHO shall decide whether to permit such testimony on a case-by-case basis. The DHO may limit the number of witnesses to those needed to fairly present the facts of the case. At the DHO's discretion, the DHO may accept the accused offender's summary of the testimony (called stipulated testimony) of a witness as the actual testimony of the witness in order to eliminate repetitive testimony.
5. The offender may request the presence of accuser(s), including the charging officer.

6. The offender or counsel substitute may question all witnesses who appear at the disciplinary hearing or are interviewed over the telephone. The DHO shall ask the accused offender or the counsel substitute if they have any questions for the witnesses. However, the accusing officer shall be questioned by the counsel substitute or, after the accused offender has indicated what questions they want asked, by the DHO. Written statements from witnesses, other than the charging officer, shall be presented into evidence when witnesses are unable to attend the disciplinary hearing. Any witness, including the charging officer, who is unable to attend the hearing may be interviewed by telephone and the answers of the witness shall be repeated into the recorder if a speakerphone is not used. The unavailability of the charging officer's testimony by telephone or physical presence shall be limited to those occasions when extreme circumstances arise. The questions shall be transmitted by the DHO if the offender is not represented by a counsel substitute.
7. The Disciplinary Report shall be the only evidence used against the accused offender if the offender fails to present non-frivolous evidence to contradict the report. However, if the accused offender presents non-frivolous evidence, which, if true, would contradict the facts alleged in the Disciplinary Report, the following shall occur at the disciplinary hearing before a finding is rendered:
  - a. Question the charging officer concerning the non-frivolous evidence presented;
  - b. Examine additional documentary evidence, which does not include investigation reports or written statements by the charging officer or witnesses; or
  - c. Question other witnesses concerning the non-frivolous evidence presented.

C. Standard of Guilt

After hearing all of the evidence, the DHO may ask all present to leave the room. The DHO shall decide whether the offender is guilty or not guilty with respect to each charge on the Disciplinary Report based on the preponderance of the credible evidence. In other words, the DHO shall review all of the evidence presented during the disciplinary hearing, decide what weight should be attached to what evidence, and decide whether the weight of the evidence shows the offender to be guilty or not guilty. The reasons, a minimum of two, shall be documented on the Disciplinary Report.

D. Recorder

All major disciplinary hearings shall be recorded to preserve a verbatim record of the proceedings. The recording shall not be turned off at any time during the taking of evidence, regardless of the DHO's opinion concerning the relevance of the testimony. If a Disciplinary Report has been processed in accordance with the procedures for a major disciplinary hearing and the recording has begun, and the DHO decides the

report should have been processed in accordance with the procedures for a minor disciplinary hearing, it shall be reduced to minor and processed without a recorder. All recordings shall be preserved in accordance with the TDCJ *Records Retention Schedule*.

E. Written Statement

At the conclusion of the disciplinary hearing, the offender shall be given a copy of the Disciplinary Report and Hearing Record, I-47MA. If the offender was not present at the disciplinary hearing, the DHO shall notify the offender of the hearing results and the right to appeal the finding of guilt or penalty imposed by completing the Disciplinary Hearing Results Notification, I-217. The DHO shall provide the offender a copy of the written record of the disciplinary hearing. If the offender was not present at the hearing, the original Disciplinary Hearing Results Notification, I-217, shall be attached to the offender's copy of the disciplinary hearing record and sent to the offender. A copy shall also be attached to the Disciplinary Report and Hearing Record and placed in the offender's unit and central files. The record shall include the following information:

1. Whether the offender was held in PHD for more than 72 hours prior to the disciplinary hearing and, if so, the reason for the delay;
2. Whether the accused offender was excluded from any part of the evidence stage and, if so, the reason for the exclusion. If an offender refuses to attend the disciplinary hearing, this refusal shall be reported as an exclusion, and the reason for the exclusion shall be the offender's refusal to attend;
3. Whether any requested witnesses were excluded and, if so, the reason for the exclusion;
4. Whether any documentary evidence was excluded and, if so, the reason for the exclusion;
5. Whether confrontation and cross-examination of the offender's accusers, if requested, was denied and, if so, the reasons for the denial;
6. If found guilty, the evidence presented and considered, and the reasons for the determination of guilt;
7. If found guilty, the penalty imposed, including whether credit was given for time served in PHD, and the specific factual reason for the particular penalty chosen by the DHO;
8. If a qualified interpreter was used, and if so, the signature of the interpreter; and
9. Whether the disciplinary hearing was held within seven days after the date of the alleged violation, excluding weekends and holidays, and if so the reason document for delay.

If the offender is found not guilty, records pertaining to the alleged violation shall not be placed in the offender's unit file but maintained in the unit disciplinary archive file. This file shall be maintained in accordance with the TDCJ *Records Retention Schedule*. Information regarding not guilty findings shall only be used for legal or grievance issues.

F. Continuances

Disciplinary hearings may be continued or recessed for a reasonable period and for good cause. If the presence of a witness is required, and if it is known when the witness will be available within applicable deadlines (including all authorized extensions), the hearing shall be delayed until the witness can be brought in.

If the witness is currently unavailable, and it is anticipated the witness will not be available within the deadlines, the hearing shall be held without the witness present. A witness, including the charging officer, who is unable to attend the hearing shall be interviewed by telephone.

VII. Major Disciplinary Hearing: Penalties

A. An offender found guilty of a major disciplinary violation may be assessed one or more of the following penalties:

1. Minor Penalties

a. Counsel and reprimand.

b. Extra duty not to exceed 42 hours per disciplinary case. There is no cumulative maximum. If an offender is given extra duty through a finding of guilt at a disciplinary hearing, and the offender refuses to perform the extra duty, the offender may be charged for the refusal to perform extra duty. If the offender is found guilty and given a major penalty, the offender will no longer be required to perform the extra duty, and the extra duty will be forgiven.

c. Loss of privileges not to exceed 45 days per disciplinary case. At no time shall the loss or restriction of each privilege exceed a total of 90 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions. Privileges that may be restricted are:

(1) Recreation - Dayroom, gymnasium, and outdoor recreation yard. However, loss of recreation for death row offenders shall be a major penalty if imposed as a result of a major disciplinary hearing. Offenders may receive consecutive terms of loss of recreation privileges for cumulative disciplinary convictions. As stated in Section III.C.2 and 3, consecutive terms of loss of recreation privileges shall not exceed 30 days when imposed on



security detention offenders and shall not exceed 90 days when imposed on death row offenders. One term of loss of recreation privileges may not exceed 15 days for offenders in security detention or death row. When loss of recreation privileges are imposed on offenders in security detention, the offenders shall be allowed out-of-cell physical recreation for a one-hour period every seven days. When consecutive terms of loss of recreation privileges is imposed on death row offenders, they will be allowed out-of-cell physical recreation for a one-hour period every seven days.

- (2) Commissary purchases - Except legal and correspondence materials and hygiene items, which include toothbrushes, toothpaste, deodorant, shampoo, soap, and feminine hygiene items. (1-45 days)
- (3) Television.
- (4) Personal property - Except any type of correspondence, to include legal and correspondence materials; hygiene items, which include a toothbrush, toothpaste, deodorant, shampoo, soap, and feminine hygiene items; and religious literature or items, such as a prayer rug or shawl.
- (5) Other leisure activities - Except craft privileges. Craft privileges may be administratively suspended by the warden or designee.
- (6) Suspension of Offender Telephone System (OTS) privileges. (1-45 days)

d. Cell restriction not to exceed 45 days per disciplinary case.

- (1) Offenders may receive consecutive terms of cell restriction for cumulative disciplinary convictions. At no time shall cell restriction exceed a total of 90 days from the date of the most recent disciplinary conviction as the result of cumulative disciplinary convictions.
- (2) Security Detention. As stated in Section III.C, consecutive terms of cell restriction shall not exceed 30 days when imposed on security detention offenders or 90 days when imposed on death row offenders. One term of cell restriction may not exceed 15 days for offenders assigned to security detention or death row. Cell restriction for death row offenders will be a major penalty if imposed pursuant to a major disciplinary hearing. See Section III.C for further procedural requirements relating to assessment of cell restriction for death row and security detention offenders.

- (3) Offenders restricted to the cell shall not leave the cell except for:
    - (a) Medical reasons;
    - (b) Treatment programs;
    - (c) Showers;
    - (d) Meals;
    - (e) Law library visits during non-work hours only;
    - (f) Work;
    - (g) Educational or vocational school or training;
    - (h) To attend religious activities held in the chapel or area designated as the chapel; and
    - (i) Contact and noncontact visits.
  - (4) Cell restriction does not involve restrictions on correspondence.
  - (5) The offender shall not be allowed recreation, except for out-of-cell recreation for a one-hour period every seven days as follows:
    - (a) When an offender in the general population serves more than 45 continuous days of cell restriction as a penalty resulting from a major disciplinary hearing;
    - (b) When cell restriction is imposed on an offender in security detention; or
    - (c) When consecutive terms of cell restriction are imposed on death row offenders.
  - (6) Specific guidelines for the management of general population offenders assessed cell restriction are outlined in AD-03.70 "Cell Restriction for General Population Offenders."
- e. Suspension of contact visitation privileges for a minimum of one visit and a maximum of four months.

2. Major Penalties

a. Prisons

- (1) Reduction in class. Reduction in class from SAT II to SAT III is not a disciplinary penalty. These time earning classes earn the same amount of good conduct time each month.
- (2) Forfeiture or suspension of good conduct time.
- (3) Retention in Line Class III.
- (4) Commissary purchases – Except legal and correspondence materials and hygiene items, which include a toothbrush, toothpaste, deodorant, shampoo, soap, and feminine hygiene items. (46-60 days, not to exceed 120 days total)
- (5) Suspension of OTS privileges. (46-60 days, not to exceed 120 days total)
- (6) Suspension of contact visitation privileges (minimum of four months and maximum of six months)

b. State Jails

- (1) Commissary purchases – Except legal and correspondence materials and hygiene items, which include a toothbrush, toothpaste, deodorant, shampoo, soap, and feminine hygiene items. (46-60 days, not to exceed 120 days total)
- (2) Suspension of OTS privileges. (46-60 days, not to exceed 120 days total)
- (3) Suspension of contact visitation privileges (minimum of four months and maximum of six months)

B. The following guidelines are intended to assist the DHO in arriving at fair and appropriate sentences for offenders found guilty of a disciplinary violation.

1. All disciplinary offenses have been assigned a level of seriousness. Each level carries maximum penalties that cannot be exceeded for that particular offense (see Section XIV.A). The penalties shall not exceed the established maximums.
2. The DHO shall take into consideration the following factors. It is imperative for the DHO to be as specific as possible when detailing the reasons for a particular penalty on the disciplinary hearing record. The following are factors to be considered but must be elaborated on to be case or offender specific.

- a. Nature and seriousness of the offense(s);
  - b. Extent of injury to persons or damage to property caused by the offense(s);
  - c. Offender's disciplinary record, including prior Disciplinary Reports for the same or similar offenses;
  - d. Period of time since last rule violation; and
  - e. Penalties given to other offenders for the same or similar violations.
3. If an offender is charged with multiple offenses, the offender shall not be penalized separately for each offense unless the offenses are separate and distinct incidents. Specifically, an offender shall not be penalized for a lesser-included offense, which is defined in Section IX.A.

### VIII. Special Procedures Regarding Certain Charges

#### A. Offenders Who Refuse to Work

An offender who refuses to work may be prohibited from participating in non-programmatic and recreational activity for as long as the offender refuses to work or three days, whichever is less, when the offender has not yet received a disciplinary hearing. Additionally, the offender can be charged with a disciplinary offense (Level 2 - Code 25 Refusal to Work) and, upon a finding of guilt, be subject to the penalties outlined in Section III.B or VII.A. An offender who continues to refuse to work shall be subject to progressive disciplinary measures. Specific guidelines for the management of offenders who refuse to work are outlined AD-03.70, "Cell Restriction for General Population Offenders."

#### B. Offenders Who Refuse to Groom, Refuse to Accept Housing Assignments, Engage in Sexual Abuse, Sexual Misconduct, or Are Out of Place

Offenders who refuse to comply with grooming standards, such as male offenders who refuse to shave or get a haircut or offenders who have extreme haircuts or extreme hairstyles, refuse to accept housing assignments, engage in sexual misconduct, or are out of place are subject to penalties outlined in Section III.B or VII.A. At such time as the offender expresses a willingness to voluntarily shave or get a haircut, the offender shall be given the opportunity to do so. The offender's compliance with the grooming standards shall be taken into consideration by the warden or assistant warden when deciding to remove or modify the penalty. The applicable guidelines are outlined in AD-03.83, "Offenders Who Refuse to Comply with Grooming Standards." Specific guidelines for the management of general population offenders who refuse to groom, refuse to accept housing assignments, engage in sexual abuse, sexual misconduct, or are out of place are outlined in AD-03.70, "Cell Restriction for General Population Offenders."

C. Destruction of State Property

An offender who intentionally damages or destroys state property may be charged with a major offense (Level 2 - Code 18 Damaging or Destroying Property). Upon a finding of guilt by the DHO, the offender shall be subject to the penalties outlined in Section VII.A. Additionally, the TDCJ may seize the contents of the offender's Inmate Trust Fund (ITF) account to recover monetary damages assessed. Specific guidance for processing this charge is provided in AD-14.61, "Offenders Who Intentionally Damage or Destroy State Property."

IX. Lesser-Included Offenses

- A. If an offender is charged with multiple offenses, the offender shall not be penalized separately for each offense unless the offenses are separate and distinct incidents. If an offender is found guilty of multiple offenses that are separate and distinct incidents, for example, possession of contraband and striking a correctional officer, both arising from a cell search, penalties may be imposed consecutively.

If an offender receives a penalty for a more serious offense, the offender cannot also be penalized for the lesser-included offense, which is defined as follows:

*When it is impossible to commit a particular offense without, at the same time and by the same conduct, committing a less serious offense, the latter is a lesser-included offense. For example, possession of contraband is a lesser-included offense of the possession of contraband for planning escape if the two charges involve the same items of contraband.*

When the DHO determines that a lesser-included offense more accurately represents the offender's conduct and culpability, the DHO may find the offender guilty of the lesser-included offense instead of the more serious offense, without further notice and hearing.

- B. A single disciplinary hearing may be held regarding multiple offenses reported on a single Disciplinary Report. A separate disciplinary hearing shall be conducted for separate Disciplinary Reports, but these hearings may be conducted consecutively.
- C. The minor DHO, in the event of a minor disciplinary hearing, and the DHO for a major disciplinary hearing, may change the charge on a Disciplinary Report at the time of the hearing. If the charge is changed, the accused offender shall be given an additional 24 hours to prepare for the disciplinary hearing unless the new charge is a lesser-included offense of the original charge.

## X. Remission of Penalty

Remission of penalty shall not change the formal written record of penalties assessed, but merely modify the full imposition of those penalties. The warden or designee may lift the penalty at any time during the penalty when any of the following penalties or combinations thereof are imposed:

- A. Cell restriction;
- B. Loss of privileges; and
- C. Extra duty.

## XI. Post-Hearing Procedures

### A. Appeals

At the conclusion of the disciplinary hearing, the DHO shall inform the offender of the right and method to appeal the decision by using the offender grievance procedure. If the offender requests the appropriate forms (I-127 or I-128), the DHO shall make the forms available at that time.

### B. Recordings

1. The offender shall have access to listen to the recording of the disciplinary hearing to assist in preparing an appeal. Only the portion of the recording when the offender was excluded from the disciplinary hearing for security reasons may be excluded from the offender's review. If, after the offender has been transferred to a new unit of assignment, the offender requests access to the recording of the disciplinary hearing, a duplicate recording shall be forwarded to the offender's new unit of assignment.
2. If the offender requests in the appeal, the recording shall be made available to the appropriate reviewing authority. The reviewing authority shall listen to the recording before deciding the appeal.
3. The DHO is the designated custodian of the disciplinary hearing recordings.

### C. Grounds for Appeal

There are three basic grounds for appeal.

1. First, the offender may argue that one or more procedural rights were violated, such as the offender did not receive notice of the charge at least 24 hours prior to the disciplinary hearing or the offender or counsel substitute was not allowed to question witnesses.

2. Second, the offender may argue there was insufficient evidence to substantiate a finding of guilt. A finding of guilt by the DHO shall be based upon a preponderance of the credible evidence presented at the disciplinary hearing.
3. Finally, the offender may argue that the penalty imposed by the DHO was too severe.

## XII. Disciplinary Hearings in Absentia

In certain situations when the accused offender is physically incapable of participating in the disciplinary hearing, for example, when an offender has escaped, left the TDCJ on an extended bench warrant, or is in a free world hospital receiving medical care, notwithstanding procedural deadlines that might otherwise apply, the offender may be charged and a disciplinary hearing held in the physical absence of the offender. In any event, a counsel substitute shall be assigned and given reasonable opportunity to attempt to contact the offender and prepare for the disciplinary hearing. Upon the offender's return, the offender shall be advised of the charge(s) and the results of the disciplinary hearing. If the offender should become available at any time during the present sentence, the offender may request and obtain a rehearing during which the DHO shall reconsider guilt and penalty. However, such rehearing shall occur without recharging the offender.

## XIII. Rehearings

### A. Applicability

An offender who successfully appealed a disciplinary conviction may be served with notice of a rehearing if at the initial disciplinary hearing the offender was timely served with notice of the charge and a disciplinary hearing was timely conducted. A rehearing may not be conducted on an overturned disciplinary conviction for which an offender did not receive either notice of the charge or a disciplinary hearing was not conducted within the established time limits.

### B. Time Limits

Time limits established in this rulebook apply for rehearing procedures except for the time limit regarding notice of charges. Notice of the charge for a rehearing shall be served within 30 days from the date the appeal was granted, unless an extension is properly obtained.

### C. Evidence

Any evidence presented at the initial disciplinary hearing may be presented again at the rehearing. However, if a disciplinary action was overturned due to insufficient evidence, some additional evidence must be considered at the rehearing to render a finding of guilt.

#### D. Penalties

1. Penalties imposed as a result of a rehearing shall not exceed that imposed at the initial disciplinary hearing, unless additional evidence is presented at the rehearing that was not presented or available at the initial hearing and the additional evidence justifies an increased penalty.
2. Penalties imposed at a rehearing involving loss of good conduct time or time earning class shall be made effective from the date of the disciplinary infraction. This procedure applies to offenders assigned to prisons.

#### XIV. TDCJ Disciplinary Offenses

The following disciplinary offenses represent violations of the TDCJ offender rules. A violation of these rules may consist of engaging, attempting to engage in, or conspiring to engage in specified behavior or aiding others in engaging, attempting to engage in, or conspiring to engage in specified behavior.

##### A. Offense Level Category – Prisons

1. Disciplinary offenses are categorized according to the severity of the maximum penalty that may be imposed for that offense. Time earning classes are categorized according to the amount of good conduct time earned each month. All classes that earn the same number of days of good conduct time each month constitute a single time earning class.

The maximum penalties are grouped in three levels as follows:

- a. Level 1: No limit on loss of good conduct time or reduction in time earning class for specified offenses listed as 0-All on the Good Time Loss Limits chart.

Offenses with Range Limits on the Good Time Loss Limits Chart: An offender may be reduced by no more than two levels in time earning class for subsequent violations based on the offender's past one-year disciplinary history.

- b. Level 2 Offenses with Range Limits on the Good Time Loss Limits Chart: An offender may be reduced no more than two levels in time earning class for subsequent violations based on the offender's past 180 days disciplinary history.

- c. Level 3 Offenses with Range Limits on the Good Time Loss Limits Chart: An offender may be reduced by no more than one level in time earning status based on the offender's past 180 days disciplinary history.

2. To assess a penalty of loss of good conduct time, an offender shall be reduced to Line Class I or below.



B. Offenders Participating in Treatment Programs

Disciplinary offense codes 1-14, 17, 20, 21, 22, and 25.2 listed below will usually result in an offender's removal from the treatment program; however, offenders participating in a sex offender rehabilitation program shall not be removed from the treatment program but shall be subject to progressive sanctions in accordance with the Sex Offender Rehabilitation Programs policies and procedures. Additionally, a pattern of multiple or repeated less serious offenses may also result in removal from the program.

**LEVEL 1 OFFENSES**

**1.0 Escape**

Intentionally committing an overt act resulting in the unauthorized departure from custody or failure to return to custody following an authorized temporary leave, including unauthorized departure from a work assignment or the extended limits of a unit.

**1.1 Attempted escape**

Intentionally or knowingly attempting to commit an overt act that would result in the unauthorized departure from custody, including possession of contraband intended to be used in attempting to escape.

**2.0** *(Offense code is idle and used only for definitions of terms below.)* Definitions of terms below: a weapon is any instrument used for the purpose of inflicting physical injury on another person; a serious injury is any injury that requires treatment beyond first aid, as determined by unit medical staff; and a non-serious injury is any injury that requires treatment up to first aid, as determined by unit medical staff.

**2.1 Fighting or assaulting an offender with a weapon that results in a non-serious injury or no injury**

**2.2 Fighting or assaulting an offender with a weapon that results in a serious injury**

**2.3 Fighting or assaulting an offender without a weapon that results in a serious injury**

**3.0** *(Offense code is idle and used only for definitions of terms below.)* Definitions of terms below: a weapon is any instrument used for the purpose of inflicting physical injury on another person; a serious injury is any injury that requires treatment beyond first aid, as determined by unit medical staff; and a non-serious injury is any injury that requires treatment up to first aid, as determined by unit medical staff.

**3.1 Assaulting another person, who is not an offender, with a weapon that results in a non-serious injury or no injury**

**3.2 Assaulting another person, who is not an offender, with a weapon that results in a serious injury**

**3.3 Assaulting another person, who is not an offender, without a weapon that results in a non-serious or no injury**

**3.4 Assaulting another person, who is not an offender, without a weapon that results in a serious injury**

**3.5 Exposure to bodily fluids**

Causing another person, who is not an offender, to come into contact with blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the offender, any other person, or an animal.

**4.0 Threatening to inflict harm, physical or otherwise, on another person who is not an offender**

Offenders may not be penalized for threatening to take legally entitled action, such as filing a grievance or lawsuit.

**5.0 Court Prohibited Contact with a Victim**

Contacting the offender's victim or a member of the victim's family for which the offender is serving a sentence and the court has included in the judgment and sentence that the offender is not to contact the victim or a member of the victim's family. [AD-04.82; Texas Government Code § 498.0042; Article 42.24 of the Texas Code of Criminal Procedure]

**6.0 Possession of a weapon**

A weapon is any instrument that can be used to inflict injury on another person.

**7.0 Sexual abuse**

Sexual abuse of an offender by another offender includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- a. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
- b. Contact between the mouth and the penis, vulva, or anus; or
- c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.

**8.0 Riot**

When two or more offenders participate in conduct that creates danger of damage to property or injury to persons and substantially obstructs the performance of unit operations.

**9.0 Defeating mechanical restraints or defeating a secure cell**

Intentionally slipping out of restraint devices, such as handcuffs or leg irons, or gaining exit from a secure cell.

**10.0 Act defined as a felony by laws of the state of Texas or the United States**

Specific reference shall be made in the Disciplinary Report to the statute in question.

**10.1 Unauthorized contact with a victim**

Contacting without authorization the offender's victim or member of the victim's family, if the victim was under the age of 17 at the time of the offense for which the offender is serving a sentence. [AD-04.82; Texas Government Code § 498.0042]

**10.2 Possession of a certain amount of contraband**

- (a) Money (\$20 or more); or (b) Tobacco (20 cigarettes or 0.6 ounces or more).

**10.3 Unauthorized contact with a victim by a sex offender [AD-04.82; Texas Penal Code § 38.111]**

**12.0 Use or possession of marijuana or an unauthorized controlled substance or associated paraphernalia, and/or use, possession, distilling, or brewing any alcoholic beverage**

A controlled substance is a drug or chemical for which the manufacturing, possession, or use is prohibited by the TDCJ. This includes alcohol, amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, inhalants, opiates, phencyclidine, and other substances as defined in Texas Health and Safety Code §§ 481.102-.105. Paraphernalia includes any apparatus, equipment, material, or product used to ingest, inhale, or inject a controlled substance.

**12.1 Refusal to submit to urinalysis**

**LEVEL 2 OFFENSES**

- 1.4 Threatening to escape**  
Expressing an intention to escape from custody.
- 2.4 Assaulting an offender without a weapon that results in a non-serious injury or no injury**  
Victim of assault should be clearly identified as a non-participant in the incident.
- 5.1 Extortion of money**  
Appropriation of currency by coercion, violence, or threats of violence.
- 5.2 Extortion of property**  
Appropriation of property by coercion, violence, or threats of violence.
- 5.3 Extortion**  
Demanding the performance of an action by coercion, violence, or threats of violence.
- 11.0 Act defined as a misdemeanor by laws of the State of Texas or the United States**  
Specific reference shall be made in the Disciplinary Report to the statute in question.
- 12.2 Use or possession of unauthorized prescription drugs**  
Any medication that can be obtained only by a physician's prescription.
- 13.0 Offense moved to Level 1 under 12.0**
- 14.0 Use or possession of any intoxicating inhalants**
- 15.0 Offense moved to Level 3.**
- 15.1 Offense moved to Level 3.**
- 15.2 Physical possession of or use of personal items or personal information about another, gathered by means from a work program operated by the TDCJ**
- 15.3 Offense moved to Level 3.**
- 16.0 Possession of contraband**  
For the purpose of these rules, contraband is:
- a. Any item not allowed when the offender arrived at the TDCJ, not given or assigned to an offender by the TDCJ, and not bought by an offender for their use from the commissary;
  - b. Any item changed from its original condition if the change jeopardizes institutional safety or security;
  - c. Any item which, in the judgment of TDCJ staff, unreasonably hinders the safe and effective operation of the unit;
  - d. Any item possessed in excess of the amounts authorized;
  - e. Any item received or sent through the mail that is not approved in accordance with the

TDCJ or facility correspondence rules; and

- f. Anything an offender is not supposed to have, including:
- (1) Money (less than \$20);
  - (2) Items used for gambling, such as dice and playing cards;
  - (3) Books, magazines, or newspapers that are not approved for an offender to have;
  - (4) Clothes that are not approved for an offender to have; and
  - (5) Handcuffs or other items used for restraining offenders, including keys.

**16.1 Use or possession of tobacco products**

Consists of all items such as cigars, cigarettes, snuff, or similar goods prepared for smoking, chewing, dipping, or other such personal use, including matchers or lighters.

**16.2 Use or possession of tattooing paraphernalia or possession of an undocumented or un-inventoried tattoo**

**17.0 Stealing**

Intentionally taking state property or property belonging to another person.

**18.0 Damaging or destroying property**

Intentionally damaging or destroying state property or property belonging to another person.

**18.1 Unauthorized use of state property**

**18.2 Tampering with a locking mechanism or a food tray slot**

Obstructing, jamming, or interfering with the operation of a locking mechanism or a food tray slot.

**18.3 Offense moved to Level 3.**

**19.0 Offense moved to Level 3.**

**20.0 Sexual misconduct**

Masturbating in such a way that others become aware the of the offender's conduct, exposing an offender's anus or any part of the offender's genitals with intent to arouse or gratify the sexual desire of any person, or sexual conduct involving physical contact, such as kissing.

**20.1 Discourteous conduct of a sexual nature**

Spoken or written words or actions of a sexual nature toward any non-offender that a reasonable person would find offensive.

**20.2 Abusive Sexual Contact**

Any intentional touching, either directly or through the clothing, of another offender if the other offender does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse, of the genitalia, anus, groin, breast, inner thigh, or buttocks, excluding contact incidental to a physical altercation.

**20.3 Engaging in consensual sexual acts with another offender**

Intentional contact between the genitals of one offender and the genitals, mouth, anus, or hands of another offender with the consent of both participants.

**20.4 Sexual Harassment**

Repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an offender towards another offender.

**21.0 Fighting an offender without a weapon that results in non-serious injury or no injury (injury that requires treatment up to first aid, as determined by medical staff)**

**22.0 Offense moved to Level 3.**

**23.0 Creating a disturbance**

Any act or activity resulting in a significant disruption of institutional operations or breach of security.

**24.0 Refusing or failing to obey orders**

Noncompliance with a legitimate order from a staff member.

**24.1 Offense moved to Level 3.**

**24.2 Refusing to accept a housing assignment**

Noncompliance with a legitimate order to accept a housing assignment, including refusing to accept the current housing assignment when another offender is assigned to live in the same cell.

**24.3 Refusing to submit to a DNA specimen collection**

Refusal or failure to provide a blood or tissue sample for creating a DNA record.

**24.4 Refusing to submit to HIV testing**

Refusal or failure to submit to Human Immunodeficiency Virus (HIV) testing.

**25.0 Refusing to work**

- a. Refusing or failing to begin a work assignment without a legitimate reason, such as illness;
- b. Refusing or failing to complete a work assignment, or obey an order from a work supervisor to perform a certain task, without a legitimate reason, such as illness;
- c. Failure to complete a reasonable amount of an offender's work assignment within a reasonable period of time;
- d. Sleeping on the job; and
- e. Reporting late to work, without a legitimate reason.

**25.1 Refusing to attend school or complete school assignments**

- a. Refusing to attend an academic or vocational program in which the offender is enrolled, without a legitimate reason, such as illness;
- b. Refusal or failure to complete a school assignment, without a legitimate reason, such as illness;
- c. Sleeping in school; and
- d. Reporting late to school, without a legitimate reason.

**25.2 Refusing to attend or participate in a required treatment program**

A required treatment program is any program that offenders are required to attend and participate such as the substance abuse treatment program (SATP), including therapeutic communities:

- a. Refusal or failure to attend a required treatment program, without a legitimate reason;
- b. Refusal or failure to complete treatment assignments, without a legitimate reason, as instructed by staff; and
- c. Reporting late to a required treatment program.

**26.0 Recruiting membership in a security threat group or any other group that engages in criminal or prohibited activity**

Coercing, inducing, or soliciting an offender to become a member of or actively participate in activities of a security threat group or any other group that engages in activity prohibited by statute or TDCJ rules.

**27.0 Out of place**

- a. In any unauthorized area, such as a cell or wing to which one is not assigned; or
- b. Failure to be at a designated area at a specified time, for example, the offender has a lay-in for a medical appointment but goes to the library instead.

**27.1 Walk away**

Offender departed without authorization or failed to return from a designated area within a reasonable amount of time.

**29.0 Offense moved to Level 3.**

**30.0 Soliciting assistance from an offender, staff member, or any other person to violate TDCJ policies**

**30.1 Attempting to establish an inappropriate relationship with a staff member, approved volunteer, or contract employee**

Attempting to establish any type of personal relationship with staff or volunteers that jeopardizes or has the potential to jeopardize the security of the TDCJ, or that compromises the effectiveness of the staff member, volunteer, or contract employee.



**30.2 Establishing an inappropriate relationship with a staff member, approved volunteer, or contract employee**

Establishing or continuing any type of personal relationship with, or soliciting sexual acts from staff, contract employees, or volunteers that jeopardizes or has the potential to jeopardize the security of the TDCJ or that compromises the effectiveness of the staff member, volunteer, or contract employee. Offenders may only be disciplined for engaging in a sexual act or sexual contact with an employee upon a finding that the employee did not consent to such contact.

**37.0 Soliciting money or gifts from an offender, staff member, or any other person for any purpose or beneficiary**

**46.0 Offense moved to Level 3.**

### LEVEL 3 OFFENSES

**15.0 Trafficking and trading**

The unauthorized buying, selling, exchange, or transfer of any commodity from any individual, other than making authorized purchases from the commissary (evidence may include an excessive inventory of marketable items). This includes the unauthorized transfer of money from one offender to another, whether the transfer is direct or indirect.

**15.1 Establishing or operating an unauthorized business**

The exchange of offender produced goods or services for financial gain to the offender or to a third party on behalf of the offender, if the activity:

- a. Creates a risk to the safety, security, or administration of the TDCJ;
- b. Involves the sale of pornographic depictions that would be denied pursuant to the TDCJ Correspondence Rules if delivered to the TDCJ;
- c. Has not been the subject of prior notification to the unit safe prisons program coordinator in accordance with the TDCJ *Safe Prisons/PREA Plan* (the offender failed to provide such notice);
- d. Involves the sale of a depiction, in any medium, of a reenactment of any offense of conviction of the offender; or
- e. Involves the sale of tangible property the value of which is increased by the notoriety of any offense of conviction of the offender.

**15.3 Fraud**

- a. Misrepresentation of personal information about oneself or one's intentions to an employee;
- b. Use of false information with the intent to harm or defraud another person; or
- c. Attempting to, conspiring to, or appropriating currency (funds) or property by deception.

**18.3 Failure to maintain possession of TDCJ-issued property**

Failing to maintain possession of an item issued to an offender, provided the offender had a secure place to store the item.

**19.0 Gambling**

Betting on the outcome of any event, including sporting contests (possession of gambling paraphernalia may be sufficient evidence).

**22.0 Threatening to inflict harm, physical or otherwise, on another offender**

**NOTE:** Offenders shall not be penalized for taking legally entitled action, such as filing a grievance or lawsuit.

**24.1 Refusing to comply with grooming standards**

Offenders who refuse to shave, get a haircut, or who have an extreme haircut or extreme hairstyle (see the *Offender Orientation Handbook* for a description of extreme haircuts; extreme hairstyle consists of styling one's hair in a manner that is not ordinary, and includes the changing of hair color without authorization).

**29.0 Knowingly making false statements for the purpose of harming another person or during an official investigation**

Offenders may not be penalized for filing a grievance or lawsuit, participating in a lawsuit, or discussing with or writing to others about actual or potential legal action or other forms of grievance or complaint.

**31.0 Self-inflicted bodily injury for secondary gain or threatening to self-inflict bodily injury**

Physical injury to an offender's body that is self-inflicted or inflicted by others with the offender's permission, assisting another offender in mutilating the offender's body, or threatening to self-inflict bodily injury. However, it is not a violation if a mental health professional determines that the offender's conduct is the result of a mental health condition.

**32.0 Failing or refusing to respond to a staff member's question(s)**

**33.0 Lying to a staff member**

**35.0 Unauthorized storage of property**

Storage of property in an unauthorized manner in accordance with AD-03.72, "Offender Property."

**40.0 Abusive treatment of an animal, including carnal relations with an animal**

**41.0 Creating unnecessary noise**

**42.0 Use of indecent or vulgar language or gestures in the presence of or directed at an employee or any person who is not an offender**

**43.0 Exerting any authority over another offender**

Other than authority inherent in the hierarchical structure of the therapeutic community setting prescribed in treatment guidelines and closely supervised by staff. This authority does not include any form of the following:

- a. Administering any penalty or other form of discipline to other offenders;
- b. Granting or denying another offender access to any benefit or activity;
- c. Controlling the movement or activities of other offenders;
- d. Escorting another offender from one place to another, with or without a staff member, except as required by a bona fide emergency;
- e. Inventorying, with or without a staff member, another offender's property or searching another offender or another offender's living area or property;
- f. Mailing or distributing another offender's correspondence;
- g. Participating in the taking of any count. (A clerk may record the turnout for the field force officer);
- h. Enforcing TDCJ rules or regulations, except that it shall not be a violation of this rule to be an officer of an authorized offender organization; or
- i. Regularly performing the functions of a janitor without formal assignment to a janitorial

job. *(This rule applies to offenders assigned to prisons.)*

**44.0 Safety regulations**

- a. Failing to wear safety goggles when performing any grinding, chiseling, filing, chipping, or buffing operation;
- b. Failing to wear hearing protection on all work stations designated as high-noise level areas;
- c. Failing to wear work or safety shoes when required to do so;
- d. Continuing to work in an area or on any machinery or equipment deemed unsafe or improperly guarded by the work supervisor or safety officer;
- e. Operating machines or equipment or performing any operation that has not been specifically assigned;
- f. Operating equipment without using the safety guards provided or removing the safety guards;
- g. Unauthorized fabrication or repairing of personal items using state equipment;
- h. Riding on the draw bars of farm vehicles;
- i. Standing up while riding in moving vehicles or allowing legs to hang over sides of trailers while moving;
- j. Failing to fasten seat belt when operating equipment in which seat belts have been installed;
- k. Riding as a passenger on a tractor or forklift;
- l. Operating any vehicle in an unsafe manner;
- m. Wearing unauthorized clothing when operating machinery;
- n. Not reporting safety hazard(s) to job supervisor;
- o. Failing to report job related injury to job supervisor;
- p. Failing to report non-work-related injuries to security staff promptly, within 24 hours of the injury; or
- q. Engaging in negligent behavior or in an unsafe act that results in injury.

**45.0 Violation of written or posted TDCJ rule not contained in these rules but consistent with these rules**

**46.0 Unauthorized contact**

Unauthorized physical contact with any person who is not an offender.

Informal Resolution App?			
Accusing Officer	Y	N	
Supervisor	Y	N	

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

Interpreter Required?	Y	N
MHMR Rest?	Y	N
PHD	Y	N

**OFFENSE REPORT**

(1) TDCJ No. \_\_\_\_\_ (2) Offender \_\_\_\_\_ (3) Unit \_\_\_\_\_  
(Last Name, First Name)

(4) Housing Assign. \_\_\_\_\_ (5) Job Assignment \_\_\_\_\_

(6) Offense Level, Code Title \_\_\_\_\_

OFFENSE DESCRIPTION On \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m., and at \_\_\_\_\_  
(7) Date (8) Time (9) Enter specific location

Offender \_\_\_\_\_ TDCJ No. \_\_\_\_\_

(10) Additional Information \_\_\_\_\_

(Continue on an additional sheet if necessary)

(11) Witnesses \_\_\_\_\_

(12) Accusing Officer/Employee \_\_\_\_\_

(13) Signature \_\_\_\_\_ (14) Shift/Card \_\_\_\_\_ (15) Date \_\_\_\_\_ (16) Time \_\_\_\_\_  
Printed Name and Rank

(17) Approving Supervisor \_\_\_\_\_ Date \_\_\_\_\_  
Printed Name

(19) Grading Official \_\_\_\_\_ (20) Rank \_\_\_\_\_ (21) Date \_\_\_\_\_  
(Print Name)

(22) Grade (circle one) IR UP MI MA

(23) Justification to override informal resolution \_\_\_\_\_



**TDCJ DISCIPLINARY REPORT AND HEARING RECORD**

CASE NO: \_\_\_\_\_ TDCJ NO: \_\_\_\_\_ NAME: \_\_\_\_\_ EA: \_\_\_\_\_  
UNIT: \_\_\_\_\_ HSNQ: \_\_\_\_\_ JOB: \_\_\_\_\_ IQ: \_\_\_\_\_  
CLASS CUST: \_\_\_\_\_ PRIMARY LANGUAGE: \_\_\_\_\_ MHMR RESTRICTIONS: \_\_\_\_\_  
GRADE: \_\_\_\_\_ / \_\_\_\_\_ OFF DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ LOCATION: \_\_\_\_\_  
TYPE: JC / TF / ID / SA

**OFFENSE DESCRIPTION**

CHARGING OFFICER: \_\_\_\_\_ SHIFT/CARD: \_\_\_\_\_

**OFFENDER NOTIFICATION:**

TIME & DATE NOTIFIED: \_\_\_\_\_ BY:(PRINT) \_\_\_\_\_ (IF APPLICABLE)  
INTERP RETER: \_\_\_\_\_

YOU WILL APPEAR BEFORE A DISCIPLINARY HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS NOTICE.

DO YOU WANT TO ATTEND THE DISCIPLINARY HEARING? YES / NO IF NO, HOW DO YOU PLEAD? GUILTY / NOT GUILTY

OFFENDER NOTIFICATION SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE DISCIPLINARY HEARING OFFICER TO PROCEED WITH THE HEARING.

OFFENDER WAIVER SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**DISCIPLINARY HEARING INFORMATION**

HEARING DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ INTERPRETER SIGNATURE: \_\_\_\_\_

EXPLAIN BELOW IF DISCIPLINARY HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING WEEKENDS AND HOLIDAYS AFTER THE OFFENSE DATE:

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

**OFFENDER STATEMENT:**

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

OFFENSE CODES:

OFFENDER PLEA: (G, NG, NONE)

FINDINGS: (G, NG, DS)

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PENALTY**

LOSS OF PRIV (DAYS) \_\_\_\_\_ REPRIMAND \_\_\_\_\_

\*COMMISSARY (DAYS) \_\_\_\_\_ CONT. VISIT SUSP. THRU \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

\*PROPERTY (DAYS) \_\_\_\_\_ CELL RESTR(DAYS) \_\_\_\_\_

OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT: \_\_\_\_\_

HEARING OFFICER (PRINT) \_\_\_\_\_ WARDEN \_\_\_\_\_

CONTACT A STAFF MEMBER, IF YOU DO NOT UNDERSTAND THIS FORM.  
COMUNIQUESE CON SU CONSE JERO SUSTITUTO SI NO ENTIENDE ESTA FORMA.

**TDCJ DISCIPLINARY REPORT AND HEARING RECORD**

CASE NO: \_\_\_\_\_ TDCJ NO: \_\_\_\_\_ NAME: \_\_\_\_\_ EA: \_\_\_\_\_  
UNIT: \_\_\_\_\_ HSNB: \_\_\_\_\_ JOB: \_\_\_\_\_ IQ: \_\_\_\_\_  
CLASS CUST: \_\_\_\_\_ PRIMARY LANGUAGE: \_\_\_\_\_ MHMR RESTRICTIONS: \_\_\_\_\_  
GRADE: \_\_\_\_\_ / \_\_\_\_\_ OFF DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ LOCATION: \_\_\_\_\_  
TYPE: JC / TF / ID / SA

**OFFENSE DESCRIPTION**

CHARGING OFFICER: \_\_\_\_\_ SHIFT/CARD: \_\_\_\_\_

**OFFENDER NOTIFICATION:**

(IF APPLICABLE)  
TIME & DATE NOTIFIED: \_\_\_\_\_ BY: (PRINT) \_\_\_\_\_ INTERP REFER: \_\_\_\_\_  
YOU WILL APPEAR BEFORE A DISCIPLINARY HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS NOTICE.  
DO YOU WANT TO ATTEND THE DISCIPLINARY HEARING? YES / NO IF NO, HOW DO YOU PLEAD? GUILTY / NOT GUILTY  
OFFENDER NOTIFICATION SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE DISCIPLINARY HEARING OFFICER  
TO PROCEED WITH THE HEARING.  
OFFENDER WAIVER SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**DISCIPLINARY HEARING INFORMATION**

HEARING DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ UNIT: \_\_\_\_\_ FOLDER NO: \_\_\_\_\_ FILE NO: \_\_\_\_\_  
COUNSEL SUBSTITUTE AT HEARING: \_\_\_\_\_ FOLDER NO: \_\_\_\_\_ FILE NO: \_\_\_\_\_  
EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING, (2) IF  
ACCUSED OFFENDER WAS CONFINED IN PRE-HEARING DETENTION MORE THAN 72 HOURS PRIOR TO HEARING, (3) IF  
ACCUSED OFFENDER WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE, (4) IF ANY WITNESSES OR (5)  
DOCUMENTATION WAS EXCLUDED FROM HEARING, (6) IF OFFENDER WAS DENIED CONFRONTATION AND/OR CROSS-  
EXAMINATION OF A WITNESS AT THE HEARING (7) IF HEARING NOT HELD WITHIN SEVEN DAYS, EXCLUDING WEEKENDS  
AND HOLIDAYS, FROM THE OFFENSE DATE AND (8) IF INTERPETER USED: (SIGNATURE)  
\_\_\_\_\_

OFFENDER STATEMENT:

OFFENSE CODES:

OFFENDER PLEA: (G, NG, NONE)

FINDINGS: (G, NG, DS)

REDUCED TO MINOR (PRIOR TO DOCKET) \_\_\_\_\_ (DOCKET) \_\_\_\_\_ (HEARING BY: (INITIAL) \_\_\_\_\_

IF GUILTY, EVIDENCE PRESENTED, CONSIDERED, AND REASON(S) FOR DETERMINATION OF GUILT: A) ADMISSION OF GUILT,  
B) OFFICER'S REPORT, C) WITNESS TESTIMONY, D) OTHER. EXPLAIN IN DETAIL:

**PENALTY**

LOSS OF PRIV (DAYS) \_\_\_\_\_ REPRIMAND \_\_\_\_\_  
\*RECREATION (DAYS) \_\_\_\_\_ EXTRA DUTY (HOURS) \_\_\_\_\_ REMAIN LINE III \_\_\_\_\_  
\*COMMISSARY (DAYS) \_\_\_\_\_ CONT. VISIT SUSP. THRU \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ REDUC. CLASS FROM \_\_\_\_\_ TO \_\_\_\_\_  
\*PROPERTY (DAYS) \_\_\_\_\_ CELL RESTR(DAYS) \_\_\_\_\_ GOOD TIME LOST(DAYS) \_\_\_\_\_  
\* OTS (DAYS) \_\_\_\_\_ SPECIAL CELL RESTR (DAYS) \_\_\_\_\_ DAMAGES \$ \_\_\_\_\_

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PENALTY IMPOSED:

CREDIT FOR PRE-HEARING DETENTION TIME? YES (DAYS) \_\_\_\_\_ NO/ NA DISCIPLINARY HEARING LENGTH \_\_\_\_\_ (MINUTES)

DATE PLACED IN PRE-HEARING DETENTION \_\_\_\_\_

OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT: \_\_\_\_\_

HEARING OFFICER (PRINT) \_\_\_\_\_

WARDEN \_\_\_\_\_

REVIEWER SIGNATURE \_\_\_\_\_

CONTACT COUNSEL SUBSTITUTE, IF YOU DO NOT UNDERSTAND THIS FORM.  
COMUNIQUESE CON SU CONSE JERO SUSTITUTO SI NO ENTIENDE ESTA FORMA.



**MAJOR DISCIPLINARY HEARING SCRIPT**  
OFFENDER PRESENT AND REPRESENTED BY COUNSEL SUBSTITUTE

**A. OPENING STAGE**

The purpose of this disciplinary hearing is to treat the matter before me with fundamental fairness and arrive at a just decision. All parties must conduct themselves properly. Failure to do so will result in removal.

**B. HEARING IDENTIFICATION STAGE**

Offender, state your name and number \_\_\_\_\_. My name is Captain \_\_\_\_\_, Disciplinary Hearing Officer for the \_\_\_\_\_ Unit. This is the disciplinary hearing of Offender (state offender's name and TDCJ number), being recorded at (time) on the (date) day of (month), 20\_\_\_. Offender \_\_\_\_\_ is being represented by Counsel Substitute \_\_\_\_\_.

**C. ADMONITION STAGE**

Counsel Substitute \_\_\_\_\_, are you and the accused ready to proceed?

Offender \_\_\_\_\_, Disciplinary Report No. \_\_\_\_\_, alleges that (Read offense report).

1. Do you understand these charges? Yes or No.
2. Did you receive a copy of these charges on (state date and time of notice)? Yes or No.  
The following is said only if the offender waives right to 24-hour notice of charges: This is to advise you that you have a right to 24 hours from the time you were notified of the charges to the time this hearing can begin. Do you want to give up this right and proceed now with this disciplinary hearing? Yes or No.
3. At the time of notification, did a counsel substitute advise you of your right at this hearing to present documentary evidence and to have witnesses testify, including the charging officer? Yes or No.
4. Do you understand that through your counsel substitute you may ask questions of any witness testifying against you? Yes or No.
5. Have you had the opportunity to discuss fully with your counsel substitute the evidence you wish to present at this hearing and give them your statement as to what took place? Yes or No.

**D. PLEA STAGE**

Offender \_\_\_\_\_, how do you plead? (to charges 1,2,3,4). Guilty, Not Guilty or None.

**E. DEFENSE STAGE**

We will now receive evidence on behalf of the accused.

1. Offender \_\_\_\_\_, do you wish to make a statement on your behalf? Yes or No.
2. Counsel Substitute \_\_\_\_\_, please call the offender's witnesses and present documentary evidence.
  - a. The counsel substitute calls and questions each of the accused offender's witnesses. The DHO has the opportunity to ask witnesses any questions.
  - b. The counsel substitute introduces any documentary evidence on the accused offender's behalf.
3. Do either of you (counsel substitute or offender) wish to call any other witnesses or present any additional documentary evidence. Yes or No.

**F. PROSECUTION STAGE**

We will now receive evidence to support the charge(s) against Offender \_\_\_\_\_.

1. Disciplinary Report No. \_\_\_\_\_, which was read at the beginning of the hearing will be considered as evidence against you.
2. The DHO calls any witnesses including the charging officer. (Is the report true and correct? Please give us a brief description of the incident). The DHO gives the counsel substitute the opportunity to question any witness including the charging officer.
3. The DHO introduces any documentary evidence against the accused.

**G. ARGUMENT STAGE**

The counsel substitute is given the opportunity to make a statement on the offender's behalf. (Summation/mitigation)

**H. CLOSING STAGE**

1. I have heard the charge and provided an opportunity for the accused to make a statement, present evidence, and call witnesses on their behalf. I have also considered evidence and witnesses against the accused. I will now recess this hearing to arrive at a decision.
2. Offender \_\_\_\_\_, I find you (Guilty or Not Guilty) of the charges brought against you.
3. The evidence relied upon to reach this decision was: \_\_\_\_\_.
4. Your penalty will be: \_\_\_\_\_.
5. The penalty is given because: \_\_\_\_\_.

Here is a copy of the record of the hearing. You have the right to appeal my decision with respect to the determination of guilt and the penalty imposed, within 15 days of this hearing. You may appeal the decision by filing an I-127 with the warden. If you are dissatisfied with his/her response, you may then file an I-128 at Step 2. Your counsel substitute will assist you in the appeals process if you need or request their assistance. You are dismissed and this disciplinary hearing is concluded.

GOOD-TIME LOSS LIMITS

August 2019

LEVEL 1					LEVEL 2					LEVEL 3							
Offense	1st	2nd	3rd	4th &	Offense	1st	2nd	3rd	4th &	Offense	1st	2nd	3rd	4th &			
	MA	MA	MA	Subsequent Majors		MA	MA	MA	Subsequent Majors		MA	MA	MA	Subsequent Majors			
1.0	Escape			0-All	1.4	Threatening to Escape	0-90	0-180	0-365	0-730	15.0	Trafficking and Trading	0-15	0-30	0-45	0-60	
1.1	Attempt to escape	0-365	0-730	0-1,095	0-All	2.4	Assaulting an offender without a weapon, which results in a non-serious injury, or no injury.	0-90	0-180	0-365	0-730	15.1	Establishing or Operating an Unauthorized Business	0-15	0-30	0-45	0-60
2.0	IDLE			NA	5.1	Extortion of money	0-90	0-180	0-365	0-730	15.3	Fraud	0-15	0-30	0-45	0-60	
2.1	Assault on Offender w/wpn - Non-Serious	0-365	0-730	0-1,095	0-All	5.2	Extortion of property	0-90	0-180	0-365	0-730	18.3	Failure to maintain TDCJ property	0-15	0-30	0-45	0-60
2.2	Assault on Offender w/wpn - Serious			0-All	5.3	Extortion	0-90	0-180	0-365	0-730	19.0	Gambling	0-15	0-30	0-45	0-60	
2.3	Assault on Offender w/o wpn - Serious			0-All	11.0	Misdemeanor (Cite Statute)	0-90	0-180	0-365	0-730	22.0	Threatening an Offender	0-15	0-30	0-45	0-60	
3.0	IDLE			NA	12.2	Use or possession of unauthorized prescription drugs	0-90	0-180	0-365	0-730	24.1	Refuse to comply w/grooming standards	0-15	0-30	0-45	0-60	
3.1	Assault on another person, not offender w/wpn - Non-Serious			0-All	14.0	Use or Possession of Intoxicating Inhalants	0-30	0-45	0-60	0-120	29.0	Making false statements	0-15	0-30	0-45	0-60	
3.2	Assault on another person, not offender w/wpn - Serious			0-All	15.2	Physical Possession of and/or Use of Personal Information	0-30	0-45	0-60	0-120	31.0	Self inflicted bodily injury	0-15	0-30	0-45	0-60	
3.3	Assault on another person, not offender w/o wpn - Non-Serious	0-365	0-730	0-1,095	0-All	16.0	Contraband	0-30	0-45	0-60	0-120	32.0	Refuse to respond to questions	0-15	0-30	0-45	0-60
3.4	Assault on another person, not offender w/o wpn - Serious			0-All	16.1	Use or possession of tobacco products	0-30	0-45	0-60	0-120	33.0	Lying	0-15	0-30	0-45	0-60	
3.5	Exposure to body fluids	0-365	0-730	0-1,095	0-All	16.2	Possession of tattooing paraphernalia	0-30	0-45	0-60	0-120	35.0	Unauthorized storage of property	0-15	0-30	0-45	0-60
4.0	Threatening to Inflict Harm on an Officer	0-365	0-730	0-1,095	0-All	17.0	Stealing	0-30	0-45	0-60	0-120	40.0	Abusive treatment of an animal	0-15	0-30	0-45	0-60
5.0	Court Prohibited Contact With a Victim			0-All	18.0	Damaging or destroying property	0-30	0-45	0-60	0-120	42.0	Indecent or vulgar language or gestures	0-15	0-30	0-45	0-60	
6.0	Possession of a weapon	0-365	0-730	0-1,095	0-All	18.1	Unauthorized use of TDCJ property	0-30	0-45	0-60	0-120	43.0	Exerting authority over another Offender	0-15	0-30	0-45	0-60
7.0	Sexual Abuse			0-All	18.2	Tampering with a locking mechanism	0-90	0-180	0-365	0-730	44.0	Violation of safety regulations	0-15	0-30	0-45	0-60	
8.0	Riot	0-365	0-730	0-1,095	0-All	20.0	Sexual Misconduct	0-30	0-45	0-60	0-120	45.0	Violation of written/posted rule	0-15	0-30	0-45	0-60
9.0	Defeating mechanical restraints	0-365	0-730	0-1,095	0-All	20.1	Discourteous conduct of a sexual nature	0-30	0-45	0-60	0-120	46.0	Unauthorized Contact	0-15	0-30	0-45	0-60
10.0	Felony (Cite Statute)			0-All	20.2	Abusive sexual contact	0-30	0-45	0-60	0-120							
10.1	Unauthorized contact with victim	0-365	0-730	0-1,095	0-All	20.3	Engaging in consensual sex with another offender	0-30	0-45	0-60	0-120						
10.2	Possession of a certain amount of contraband (a) money (\$20 or more), (b) tobacco (20 cigarettes or 0.6 oz. or more)	0-365	0-730	0-1,095	0-All	20.4	Sexual Harassment	0-30	0-45	0-60	0-120						
10.3	Unauthorized contact with a victim by a sex offender	0-365	0-730	0-1,095	0-All	21.0	Fighting without a weapon - Non-Serious	0-90	0-180	0-365	0-730						
12.0	Use or possession of marijuana or an unauthorized controlled substance or associated paraphernalia, and use, possession, distilling, or brewing of alcohol	0-365	0-730	0-1,095	0-All	23.0	Creating a Disturbance	0-30	0-45	0-60	0-120						
12.1	Refusal to Submit to Urinalysis	0-365	0-730	0-1,095	0-All	24.0	Refusing to obey orders	0-30	0-45	0-60	0-120						
						24.2	Refuse to accept housing assignment	0-30	0-45	0-60	0-120						
						24.3	Refuse DNA specimen collection	0-30	0-45	0-60	0-120						
						24.4	Refuse HIV testing	0-30	0-45	0-60	0-120						
						25.0	Refuse to work	0-30	0-45	0-60	0-120						
						25.1	Refuse to attend school	0-30	0-45	0-60	0-120						
						25.2	Refuse to attend treatment program	0-30	0-45	0-60	0-120						
						26.0	Recruiting membership in a STG	0-90	0-180	0-365	0-730						
						27.0	Out of Place	0-30	0-45	0-60	0-120						
						27.1	Walk-away	0-90	0-180	0-365	0-730						
						30.0	Soliciting a person to violate policies	0-30	0-45	0-60	0-120						
						30.1	Attempting inappropriate relationship with staff	0-15	0-30	0-45	0-60						
						30.2	Establish inappropriate relationship with staff	0-90	0-180	0-365	0-730						
						37.0	Soliciting money or gifts	0-30	0-45	0-60	0-120						

Criteria:

- Past 12 months (1 yr.) disciplinary history
- Based on number of major cases for Level 1 offenses
- Seriousness of offense
  - Damage to property
  - Threat to safety of others
  - Threat to safety of unit
  - Threat to order of unit
- Penalties given to other offenders for similar violations
- Good time loss range limits for Level 1 offenses may be exceeded whenever "exceptional circumstances" arise
  - 0-All - any time taken over 1,000 days notify the regional director prior to taking time.
  - Range limits- Anything over limit notify the regional director; if concur, forward to the deputy director of Prison and Jail Operations prior to taking time
- Level 1 Offenses- Offenders may be reduced no more than two levels in time-earning class.

Criteria:

- Past 180 days disciplinary history
- Based on number of major cases
- Seriousness of offense
  - Damage to property
  - Threat to safety of others
  - Threat to safety of unit
  - Threat to order of unit
- Penalties given to other offenders for similar violations
- Good-time loss range limit may not be exceeded.
- Level 2 Offenses - Offenders may be reduced no more than two levels in time-earning class.

Criteria

- Past 180 days disciplinary history
- Based on number of major cases
- Seriousness of offense
  - Damage to property
  - Threat to safety of others
  - Threat to safety of unit
  - Threat to order of unit
- Penalties given to other offenders for similar violations
- Good-time loss range limit may not be exceeded
- Level 3 Offenses -- Offenders may be reduced no more than one level in time-earning class