


<u>ADMINISTRATIVE REGULATION</u>		REGULATION NUMBER 150-01	PAGE NUMBER 1 OF 33
		CHAPTER: Boards	
COLORADO DEPARTMENT OF CORRECTIONS		SUBJECT: Code of Penal Discipline	
RELATED STANDARDS: ACA Standards 2-CO-3C-01, 4-4047, 4-4226 through 4-4228, 4-4230 through 4-4248, 4-4250, 4-4252, 4-4255, 4-4263, and 4-4400	EFFECTIVE DATE: February 15, 2006		Joe Ortiz Executive Director
	SUPERSESSION: 07/15/05		
	OPR: OOS	REVIEW MONTH: February	

I. POLICY

It is the policy of the Department of Corrections (DOC) to provide written guidelines to ensure that offender control and discipline [2-CO-3C-01] [4-4226] [4-4227] are established and maintained, in accordance with the following objectives:

- A. Require individual offender compliance with reasonable behavior standards and limitations.
- B. Ensure the general welfare and safety of all persons living and working within the institution.
- C. Establish and maintain fair disciplinary procedures and practices consistent with case law.

II. PURPOSE

To establish procedures, responsibilities, prohibitions, and sanctions which govern offender conduct at all DOC facilities, or those under contract with the DOC, and establish procedural guidelines to assist prison officials in regulating the conduct of offenders.

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III. DEFINITIONS

- A. **Attempt** - An offender commits an attempt when, with intent to commit an offense, he engages in conduct which tends to effect the commission of such offense. It is an affirmative defense to the charge of attempt that the offender voluntarily abandoned his effort to commit the offense, prior to the discovery of his active participation in the offense(s), or before it is substantially completed.
- B. **Complicity** - An offender may be charged, tried, and convicted of any offense based upon the conduct of another person if, with the intent that the offense be committed, he commands, induces, encourages, procures, or aids the other to commit it. It is an affirmative defense to the charge of complicity that the offender, prior to the commission of the offense, voluntarily withdrew from any active participation in the offense. In any prosecution where the liability of the accused offender is based upon the conduct of another offender, it is no defense that the other offender has been found not guilty, or has not been prosecuted, or has been convicted of a different offense.

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- C. **Contraband** - Any item that a staff, visitor, or offender is not specifically authorized to have in his/her possession; any item that has been altered and/or is being used for other than its intended purpose; any item(s) over the three cubic foot allowable personal property limit; any item listed in the "Consent to Search Authorization;" any item listed in the Code of Penal Discipline; any item listed on the administrative head's "Declaration of Contraband;" any item that may threaten the safety and security of a DOC facility, offenders, staff, or visitors, or any item listed as contraband in an administrative regulation, implementation/adjustment or operational memorandum.
- D. **Dangerous Contraband** - A firearm, knife, bludgeon, or other weapon, device, instrument, material or substance, whether animate or inanimate, which is readily capable of causing or inducing fear of death or physical injury. This may include needles and Class "A" and "B" tools.
- E. **Dangerous Drugs and Paraphernalia** - Alcohol; all controlled substances as listed under Schedules I-V of the Colorado Revised Statutes, 18-8-203(2) through 18-18-207(2); marijuana and marijuana concentrates including all parts of the plant cannabis sativa L.; and any volatile substance inhaled for its mood-altering effect, including but not limited to, cleaning fluids, glue, lacquer, petroleum distillates and/or any drug controlled by regulations of federal or state law. This area should also include drug paraphernalia. (Definition should always be that of the most current statutes).
- F. **Date of Discovery** - The date at which the initiating officer determined an offense has occurred and the identity of the offender to be charged. This is determined by the date that the initiating officer signs the "Notice of Charge."
- G. **Disciplinary Officer** - A person, or persons, designated by the warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, whose duty it should be to present the DOC's case at disciplinary proceedings. Where feasible, this person should be at or above the level of correctional officer III or the equivalent.
- H. **Executive Director** - Executive director of the Colorado Department of Corrections, or designee. The highest command employee in the DOC.
- I. **Group Living Team** - A panel comprised of at least two staff members who should determine informal disposition of charges against the offender.
- J. **Hearing Board** - A three member board comprised of employees of, or under contract with, the DOC of which one serves as chairperson of the hearing board.
- K. **Hearing Officer and Chairperson of the Hearing Board** - Any employee of or under contract with the DOC, at or above the level of correctional officer III, or the equivalent, designated by the executive director, or designee, as eligible to be a hearing officer or chairperson of the hearing board for the purpose of administering this code.
- L. **Housing Supervisor/Shift Leader** - The COIII or COIV assigned to supervision of a housing unit or shift.
- M. **Intentionally** - An offender acts intentionally with respect to a result or to conduct described by this code when he knowingly causes that result or engages in that conduct.

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- N. ***Non-disciplinary Resolution*** - A voluntary alternative to formal Code of Penal Discipline charges, which involves imposition of minor sanctions without a Code of Penal Discipline conviction.
- O. ***Physical Injury*** - Any physical injury which creates substantial risk of death or which causes death, serious disfigurement, substantial pain, impairment of health, loss or impairment of any major bodily function, or which requires any medical attention.
- P. ***Possess*** - To knowingly exercise physical control over an object. Knowledge should be conclusively presumed when an object is found on an offender's person, his clothing, or in plain view. Knowledge should be rebuttably presumed when an object is found anywhere in an offender's cell or in a place where it is likely that only the offender could have placed it. This presumption may be rebutted by evidence that the offender was not responsible for the object's presence. Offenders are presumed responsible for items found in a common area in a multi-occupancy cell. The presumption of responsibility can be rebutted if proven otherwise.
- Q. ***Preponderance of Evidence*** - Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not.
- R. ***Probated Sanctions*** - Sanctions imposed by the hearing officer or board, which are withheld until a specified time, no greater than 90 days, or in accordance with section IV.E.3.p.(3).
- S. ***Public Official*** - An elected or appointed official of any local, state, or federal entity.
- T. ***Reckless*** - An offender's conduct is reckless if he performs an act or fails to perform an act which it is his duty to do, knowing or having reason to know facts which would lead a reasonable person to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.
- U. ***Reviewing Supervisor*** - Shift commander or housing supervisor, and/or CSS III, Food Service captain, or designee, where infraction occurred.
- V. ***Security Items*** - Locks, locking systems, windows, vents, telephones, computers, electronic devices, fire and smoke detection and suppression equipment, or other similar items which are used for security/safety.
- W. ***Staff*** - DOC employees (temporary or permanent), volunteers, contractors, on-site vendors, and persons from other agencies/organizations/businesses whose assignment is primarily on the premises of DOC facilities, centers, or offices, regardless if property is owned by the state of Colorado.
- X. ***Supervising Officer*** - The officer who will oversee the extra duty work done by the offender being disciplined.
- Y. ***Working Days***- Monday through Friday, excluding state recognized holidays. **[4-4238]**

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IV. PROCEDURES

Masculine gender should also refer to the feminine gender if the context so requires. Whenever the singular is used herein, it should also refer to the plural if the context so requires.

A. **PUBLICATION:** Amendments and/or supplements to this code may be issued at any time by the executive director of the DOC as provided herein. Notice of any amendment and/or supplement to this code should be provided to offenders in a manner determined by the facility warden/director. No amendments and/or supplements will become effective sooner than 15 days after publication and notice to the offenders.

B. **JURISDICTION:**

1. ***Offenders Subject to Code*** - All offenders in the custody of the executive director of the DOC should be subject to this code. All violations of this code should be punishable as disciplinary violations.

2. ***Criminal Prosecution*** - In addition to being subject to this code, all offenders in the custody of the executive director of the DOC are subject to all laws of the United States and the state of Colorado. If a violation of this code would also be a violation of a federal, state, or local law, an offender should be subject to the provisions of this code as well as to the applicable law.

When an offender allegedly commits an act covered by statutory law, the case should be referred to the appropriate local or federal agency for criminal prosecution. [4-4231] Pursuant to CRS 17-1-103.8(2)(a) the case should first be referred to the Office of the Inspector General (IG). The IG's office will pursue case filings and follow-up as necessary.

3. ***Relationship to DOC Regulations 600-1 and 600-2:***

a. All decisions relating to offender classification, removal from population, and placement in administrative segregation should be made in accordance with administrative regulations 600-01, *Offender Classification*, and 600-02, *Administrative Segregation*. In the event that the facts of a particular disciplinary case make it appropriate for a classification officer or board to review a particular case, the disciplinary hearing officer or board may, at its discretion, forward a summary of facts to the classification officer or committee for its review. Such recommendations should not be binding upon the appropriate classification officer or committee.

In addition, pursuant to administrative regulations 600-01 and 600-02, the appropriate classification officer or committee may review any offender's status without regard to any recommendation from the disciplinary hearing officer or board.

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b. Disciplinary hearing officers or boards should have no authority to modify, change, or otherwise affect an offender's classification, except through the process of recommending that the classification officer or board review a particular case, as outlined in Section IV.B.3.a. above.

C. **DISPOSITION:** Class I and II offenses require a formal hearing. ***All Class III offenses will be handled through the informal disposition procedure, [4-4230]*** unless they are in combination with Class I or II charges resulting out of the same incident.

D. **VIOLATIONS:**

CLASS I OFFENSES:*

(1) ***Murder*** - an offender commits this offense when he intentionally causes the death of another person. Self-defense should be a defense to a charge of Murder.

If the evidence presented is insufficient to sustain a conviction on a charge of Murder, the hearing officer or board should have the discretion to modify the charge to convict the offender of the offense of Manslaughter or Assault, if such conviction is justified by the evidence presented.

(2) ***Manslaughter*** - an offender commits this offense when he recklessly causes the death of another person, or without premeditation, upon a sudden heat of passion caused by a serious and highly provoking act affecting the offender sufficiently to excite an irresistible passion in a reasonable person, causes the death of another person. Self-defense should be a defense to a charge of Manslaughter.

If the evidence presented is insufficient to sustain a conviction on a charge of Manslaughter, the hearing officer or board should have the discretion to modify the charge to convict the offender of the offense of Assault, if such conviction is justified by the evidence presented.

(3) ***Kidnapping*** - an offender commits this offense when he seizes; or carries any person from one place to another; or holds a person without his consent with the intent thereby to force the victim or any other person to make any concessions or give up anything of value in order to secure the release of the person under the offender's actual or apparent control.

(4) ***Assault*** - an offender commits this offense when he intentionally, or through negligence or recklessness, causes injury to another person, or applies any physical force, offensive substance (such as feces, urine, mucous, blood, saliva), or any other item or hazardous substance against any person regardless of whether or not injury occurs. Self-defense should be a defense to a charge of Assault.

If the evidence presented is insufficient to sustain a conviction on a charge of Assault, the hearing officer or board should have the discretion to modify the charge and convict the offender of the offense of Fighting, if such conviction is justified by the evidence presented.

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- (5) ***Escape with Force*** - an offender commits this offense when he, by force or threat of force, without proper authority removes himself from the confines of the institution or from official custody while beyond the confines of the institution.

If the evidence presented is insufficient to sustain a conviction on a charge of Escape with Force, the hearing officer or board should have the discretion to modify the charge and to convict the offender of Escape without Force, if such conviction is justified by the evidence presented.

- (6) ***Escape Without Force*** - an offender commits this offense when, without proper authority, he removes himself from the confines of the institution or fails to return to official custody following temporary leave granted for a specific purpose and for a specified period of limited duration. The hearing officer or board should have the discretion of treating tardiness as Unauthorized Absence, rather than Escape without Force, so long as the offender voluntarily returns from the temporary leave within four hours of his scheduled return time. For an offender on community corrections placement, the hearing officer or board should have the discretion to reduce such Escape without Force charge to Failure to Remain or Return, provided the offender voluntarily returns within 48 hours of the designated return time.

- (7) ***Engaging in Riot*** - an offender commits this offense when he, with two or more persons, participates in conduct that creates danger of damage or injury to property or persons and obstructs the performance of facility functions.

If the evidence is insufficient to sustain a conviction on a charge of Engaging in Riot, the hearing officer or board may have the discretion to modify the charge to convict the offender of the offense of Advocating or Creating Facility Disruption, if such conviction is justified by the evidence presented.

- (8) ***Inciting to Riot*** - an offender commits this offense when he urges or organizes two or more offenders to imminently engage in a riot and such incitement is likely to produce a riot, or once a riot begins, he assumes a position of command or instruction in furtherance of the riot.

If the evidence is insufficient to sustain a conviction on a charge of Inciting to Riot, the hearing officer or board may have the discretion to modify the charge to convict the offender of Advocating or Creating Facility Disruption, if such conviction is justified by the evidence presented.

- (9) ***Rape*** - an offender commits this offense when he/she uses physical force or intimidation upon another person for the purpose of sexual contact of any kind, and,-

- (a) He has impaired the power of the other person to apprise or control his conduct by administering or employing drugs, intoxicants, or similar means, or,
- (b) He compels or induces the other person to submit by any misrepresentation such as bartering and extortion or threat of violence, or,

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- (c) The other person suffers from mental disease, defect, or inadequacy that is reasonably apparent or known to the accused offender, which, in fact, renders the other person incapable of understanding the nature of his conduct or being aware of the nature of the act committed, or,
- (d) The other person is unconscious or otherwise physically incapable of resisting.

If the evidence presented is insufficient to sustain a conviction on the charge of Rape, the hearing officer or board should have the discretion to modify the charge and to convict the offender of Sexual Harassment or Sexual Abuse, if such conviction is justified by the evidence presented.

- (10) **Arson** - an offender commits this offense when he sets fire to, burns, causes to be burned, or by the use of any explosive or combustible device, damages or destroys or causes to be damaged or destroyed, any structure or property.
- (11) **Robbery/Extortion** - an offender commits this offense when he uses or threatens the use of physical force or improper pressure upon another person for the purpose of:
 - (a) Preventing or overcoming resistance to the taking of property or to the retention thereof immediately after the taking, or,
 - (b) Compelling the owner of such property or another person to deliver or give up possession of the property.

If the evidence presented is insufficient to sustain a conviction on a charge of Robbery/Extortion, the hearing officer or board should have the discretion to modify the charge and convict the offender of the offense of Theft or Bartering, if such conviction is justified by the evidence presented.

- (12) **Possession of Dangerous Contraband** - an offender commits this offense when he possesses, uses, has under his control or in his custody any item defined as dangerous contraband. Offenders in possession of any unauthorized Class "A" or "B" tools may be found guilty of this violation.
- (13) **Dealing in Dangerous Drugs** - an offender commits this offense when he sells or gives away any quantity of any item defined as dangerous drugs.
- (14) **Possession of Key or Key Pattern** - an offender commits this offense when he possesses a key or key pattern to any lock. A key pattern is any substance upon which the impression of a key is made. This offense should not prohibit possession of keys authorized by the warden/director, or designee.
- (15) **Possession of Escape Paraphernalia** - an offender commits this offense when he has in his possession, in his cell, in his immediate sleeping area, locker, or immediate place of work or other program assignment, or receives from or gives to another offender, or fashions or manufactures, or introduces or arranges to introduce into the facility any escape paraphernalia including, but not limited to:

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- (a) Lock, lock picks, trip wires, locking devices, chain, rope, ladder, tool(s) (Class “A” or “B”), or other items which could be used to effect an escape; and/or,
 - (b) Mask, wig, disguise or any other means of altering normal physical appearance which would make ready identification of an offender difficult; and/or,
 - (c) Mannequin, dummy, replica of a human body, or any item or device which would cause any offender to be counted as being present at a designated time and place when, in fact, he would be absent, or in any way would aid or abet the escape or walkaway of an offender; and/or any,
 - (d) Form of securities, bonds, coins, currency, legal tender, official papers or documents (other than papers or documents relative to judicial or administrative proceedings), unless expressly and specifically authorized by the warden/director, or designee, of the correctional facility concerned; and/or
 - (e) Item of an officer’s uniform, civilian clothing, or staff clothing, including badges, buttons, name tags, or items of personal identification, unless expressly and specifically authorized by the warden/director, or designee, of the correctional facility concerned.
- (16) ***Tampering with Locks or Security Items*** - an offender commits this offense when he without authorization, locks, unlocks, alters or modifies, in any way, any lock, locking system or security item within the facility and/or uses any unauthorized lock or security item.
- (17) ***Refusal to Submit to Drug Test*** - an offender commits this offense when he fails or refuses to submit to any test for the unauthorized use of dangerous drugs requested by any employee of or under contract to the DOC. This includes tampering, dilution, and or adulteration of urine samples, oral swabs, or hair samples. Refer to AR 300-20, *Offender Drug Screening*, for established time frames.
- (18) ***Threats or Intimidation of Public Officials*** - an offender commits this offense when he communicates to a public official a determination, scheme, or intent to cause, or to instill, the fear of death, injury, terrorism, or intimidation. Such communication may be verbal, physical, or written.
- (19) ***Solicitation of Staff Misconduct*** - an offender commits this offense when he attempts or is complicit to an act(s) where he seeks to obtain as by persuasion, intimidation or influence, to entice any staff into an unlawful act and/or violation of CDOC policy for any reason.
- (20) ***Unauthorized Possession of Electronic Communication Device*** - An offender commits this offense when he possesses or uses a communication device, to include but not limited to: cell phone, computer, pager, or DTR (digital trunk radio).

* **Attempt or Complicity** - The charges of complicity and/or attempt may be used in conjunction with any appropriate Class I offense and the hearing officer or board may impose the same penalty prescribed for the substantive offense.

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CLASS II OFFENSES:*

- (1) **Theft** - an offender commits this offense when he knowingly obtains or exercises control over property or services belonging to someone else, without authorization. Value of property or services should be substantiated by written documentation if restitution is to be sought or ordered as a sanction.

If the evidence is insufficient to sustain a conviction on a charge of Theft, the hearing officer or board should have the discretion to modify the charge and to convict the offender of the offense of Bartering, if such conviction is justified by the evidence presented.

- (2) **Damage to Property** - an offender commits this offense when he intentionally or through recklessness, damages, or causes to be damaged any property of another. Value of property should be substantiated by written documentation if restitution is to be sought or ordered as a sanction.
- (3) **Bribery** - an offender commits this offense when he offers to confer, confers, or agrees to confer anything of value upon any DOC staff member or other offenders with the intent to influence that person's or offender's exercise of discretion or other action in any capacity.
- (4) **Forgery** - an offender commits this offense when he creates or alters a document with intent to deceive.
- (5) **Fraud** - an offender commits this offense when he:
- (a) Through deception, trickery, or false claims, attains anything for personal gain or benefit.
 - (b) Alters, destroys, conceals, or removes anything with intent to impair its authenticity or availability.
 - (c) Presents or uses anything which he knows to be false with intent to deceive.
- (6.5) **Sexual Abuse** - an offender commits this offense when he has active or passive contact or fondling between his genitals, hand(s), mouth, buttocks, anus, or breast and the genitals, hand(s), mouth, buttocks, anus, or breast of another person. Contact can be with or without clothing being worn by one or both parties.
- (7) **Receiving Stolen Property** - An offender commits this offense when he receives stolen property of another, knowing that it has been stolen or believing that it has been stolen, unless he has notified a staff member of his knowledge or belief or otherwise made reasonable efforts to restore the property to its owner. Proof that the accused offender acquired stolen property for a consideration far below its economic value or that he was found in possession of recently stolen property will create a rebuttal presumption that it had been stolen. Where the presumption exists, the offender has the burden of proof of showing lawful possession of the property.

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If the evidence is insufficient to sustain a conviction on a charge of Receiving Stolen Property, the hearing officer or board should have the discretion to modify the charge and to convict the offender of the offense of Bartering, if such conviction is justified by the evidence presented.

- (8) **Possession or Use of Dangerous Drugs** - an offender commits this offense if he possesses or uses any quantity of unauthorized dangerous drugs.
- (9) **Possession or Use of Tobacco or Tobacco Products** - an offender commits this offense when he possesses or uses any tobacco (smoking or smokeless) or tobacco products/paraphernalia including but not limited to rolling papers, pipes, and lighters.
- (10) **Perjury** - an offender commits this offense when he makes a false statement under oath or affirmation, or swears or affirms the truth of a statement previously made and does not believe the statement to be true.
- (11) **Possession of Syringe or Drug Paraphernalia** - an offender commits this offense when he possesses a syringe or other implement capable of injecting a substance under the skin of any individual, including himself and/or possesses an article, equipment, or apparatus capable of administering a dangerous drug or volatile substance.
- (12) **Fighting** - an offender commits this offense when he engages in a physical altercation including, but not limited to: exchange of blows, shoves, kicks, or any offensive physical contact without authorization from the warden/director, or designee. Self-defense should be a defense to a charge of Fighting.
- (13) **Threats** - an offender commits this offense when he communicates a determination or intent (either verbally, physically, or in writing) to injure another person or to commit a crime of violence or an unlawful act presently or in the future, and the probable consequence of such threat or threats (whether or not such consequence, in fact, occurs) is:
- (a) To place another person in fear of bodily injury; or,
 - (b) To cause damage to property; or,
 - (c) To jeopardize the security of the facility.
- (14) **Abuse of Medication** - an offender commits this offense when he, in any way, stores, saves, gives away, possesses, or removes any prescription medication without authorization.
- (15) **Interference with Search** - an offender commits this offense when he refuses to allow, obstructs, or hinders in any way, a DOC staff member in his search of any person, housing unit, or property.
- (16) **Advocating or Creating Facility Disruption** - an offender commits this offense when he transmits or attempts to transmit through any form of communication or action, threats, demands, actions, or suggestions which advocate disruption; or if he actually disrupts operations of any segment of a facility.

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- (17) ***Inter-Agency Visitation*** - an offender commits this offense when he visits another facility without first obtaining authorization from any DOC staff member at his facility assignment and any facility(ies) he wishes to visit.
- (18) ***Association*** - an offender commits this offense when he:
- (a) While at a community placement facility or non-resident status, associates outside the facility, with a person he knows or has reason to know is a convicted felon or a validated member of a security threat group without first obtaining authorization of an appropriate DOC staff member, or,
 - (b) While assigned to an off-grounds or outside crew, associates with the general public without first receiving authorization.
- (19) ***Unauthorized Possession*** - an offender commits this offense when he has in his possession, in his cell, in his immediate sleeping area, locker, or immediate place of work or other program assignment or fashions, manufactures, introduces or attempts to arrange or arranges to introduce into the facility any item defined as contraband.
- Offenses under this subsection should not include unauthorized possession of dangerous contraband, dangerous drugs, key or key pattern, syringes or drug paraphernalia, tattooing/piercing/branding paraphernalia, or escape paraphernalia.
- (20) ***Tattooing/Piercing/Branding and/or Possession of Tattooing/Piercing/Branding Paraphernalia*** - an offender commits this offense when he receives or gives a tattoo/piercing/brand or has in his possession any tattooing/piercing/branding paraphernalia to include, but not limited to: patterns, ink, needles, piercing jewelry, irons, or altered electrical appliances.
- (21) ***Count Interference*** - an offender commits this offense when he causes or participates in any interference, delay, disruption, or deception with regard to the process of counting part or all of the offender population, including, but not limited to: hanging, fastening, or attaching any sheet, blanket, curtain, drapery, or other material whether transparent or not on any part or all of the front or door of a cell or around a dormitory bed or other immediate sleeping area without the permission of an authorized DOC staff member.
- (22) ***Failure to Work*** - an offender commits this offense when he:
- (a) Fails to perform work assigned; and/or,
 - (b) Fails to report to work; and/or,
 - (c) Departs from his appointed place of duty or assignment without authorization.

Medical authorization by clinical staff is a defense to this code violation.

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- (23) ***Gambling*** - an offender commits this offense when he plays for money or other things of value at any game including, but not limited to: those played with cards or dice, or bets on the side or hand of those playing, or bets anything of value on the outcome of any observable event or ascertainable happening or organizes or is in possession of any game of chance, lottery, betting pool, betting slips or records, or is in possession of other similar devices.
- (24.5) ***Sexual Harassment*** - an offender commits this non-contact offense when he subjects another person to verbal or written statements or gestures of a sexual nature and:
- (a) He uses obscene or profane language, makes demeaning references to gender or derogatory comments about body or clothing, or,
 - (b) Makes sexually harassing gestures, or,
 - (c) Makes threats of physical force or improper pressure for sexual acts, or requests for sexual acts, or
 - (d) Displays his/her anus, genitals, or breasts (female) to another person, or,
 - (e) Masturbates in the presence or direct vision of another person, or
 - (f) To include any behavior of a sexual or romantic nature whether verbal or non-verbal.
- (25) ***Disobeying a Lawful Order*** - an offender commits this offense when:
- (a) He refuses to obey a verbal or written order or instruction given by a DOC staff member which is reasonable in nature and which gives reasonable notice of the conduct expected; or,
 - (b) He violates any special condition(s) of his community placement.
- Violating a posted operational rule is not an offense under this subsection; however, refusing a verbal or written order to comply with a posted operational rule is.
- (26) ***Bartering, Selling Goods and Commodities or Services*** - ***an offender commits this offense when he barter, loans, sells, gives, receives, borrows, or buys any item without the prior knowledge and permission of a DOC staff member including, but not limited to: those items sold in the canteen, clothing, housing furnishings, art and craft items, services, or transfers or attempts to transfer funds from the trust or banking account of one offender to that of another offender and/or when an offender arranges the payment from one offender to another through outside resources without proper authorization. [4-4047]***
- (27) ***Verbal Abuse*** - an offender commits this offense when he subjects another person to abusive, offensive, or defamatory language or gestures.

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- (28) ***Operating Motor Vehicles*** - an offender commits this offense when he operates any motor vehicle without permission of a DOC staff member.
- (29) ***Habitual Class III Convictions*** - an offender commits this offense when he receives four or more Class III informal convictions during a six month period.
- (30) ***Unauthorized Absence*** - an offender commits this offense when he, without proper authority:
- (a) Departs from any place where he was directed to remain by a DOC staff member or facility regulations.
 - (b) Is away from his assigned area or is found in an area without authorization from a DOC staff member of his assigned area.
- (31) ***Failure to Remain or Return*** - an offender commits this offense if he fails to remain within or return as specified in the limits on his confinement as established under any community corrections placement, but voluntarily returns within 48 hours of designated return time. If the offender voluntarily returns within six hours of designated return time, the hearing officer or board should have the discretion to reduce such Failure to Remain or Return charge to Unauthorized Absence.
- (32) ***Possession of Unauthorized Legal Documents*** - an offender commits this offense when he possesses legal documents of another offender outside the immediate presence of the offender to whom the documents belong.
- (33) ***Misuse of Clinical Services*** - an offender commits this offense when he causes the use, or expense, of medical, dental, or mental health care, without good reason, or fails to cooperate with the care without good reason.

* **Attempt or Complicity** - The charges of complicity and/or attempt may be used in conjunction with any appropriate Class II offense and the hearing officer or board may impose the same penalty prescribed for the substantive offense.

CLASS III OFFENSES:

- (1) ***Failure to Display Name and/or Identification Number and/or Card*** - an offender commits this offense when he fails to display his name and/or identification number and/or card in the manner prescribed by the warden/director's written directives.
- (2) ***Failure to Obtain Permit*** - an offender commits this offense when he fails to obtain a permit for any item or activity as prescribed by the warden/director.
- (3) ***Violating a Posted Operational Rule*** - an offender commits this offense when he violates any posted facility rule or regulation of which he has, or through the exercise of reasonable diligence, should have, knowledge. The written report should include the specific operational rule alleged to have been violated.

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- (4) ***Failure to Pay Subsistence*** - an offender commits this offense when he fails to pay the subsistence fee(s) or ISP fees.
- (5) ***Entering Into Contract*** - an offender commits this offense when he enters into a contract or engages in any business without the written approval of a DOC administrative head, or designee.
- (6) ***Littering*** - an offender commits this offense when he disposes of any form of trash or waste in any place other than those specifically designated for waste disposal.
- (7) ***Sanitary Violation*** - an offender commits this offense when he:
 - (a) Willfully urinates or defecates in other than the facilities provided for such functions, or,
 - (b) Willfully fails or refuses to shower at least once a week, or,
 - (c) Willfully fails to keep his body, hair, and clothes in as clean, sanitary, neat, and odor-free condition as possible under the circumstances of his particular custody, or,
 - (d) Willfully fails to keep his cell or immediate sleeping area clean, odor-free, sanitary, free of trash and debris and available to the visual observation of a staff member, or,
 - (e) Intentionally commits acts hazardous to the health of any person within the facility.
- (8) ***Personal Appearance Violation*** - an offender commits this offense when he fails to follow the warden/director's written directives on personal appearance.

E. **FORMAL DISCIPLINARY PROCEDURES:**

- 1. ***Hearing Officer/Hearing Board Composition and Authority:***
 - a. Disciplinary hearings may be held before either a hearing officer or a three-member board, at the discretion of the DOC. Upon the offender's request, Class I offenses should be heard by a hearing board, if feasible.
 - b. For each facility operated by the DOC, the warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, should designate an approved list of DOC staff members who may serve as hearing officers or chairperson of hearing boards for each such facility and such list should be approved by the executive director, or designee. Persons so designated should be at or above the rank of correctional officer III, or community parole officer I, II, or the equivalent, and should be trained in the principles of jurisprudence and due process and should be thoroughly familiar with the provisions of this code.

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- c. ***The hearing officer and the board should be impartial. [4-4240] A hearing officer should not be directly involved in the incident; [4-4230]*** however, the hearing officer or member of the hearing board may be aware of investigations and information about the incident without being biased. A brief description of involvement should be made a part of the record. No hearing officer or board member should discuss a case to which he is assigned with any other person, except at the hearing on the matter, or after its conclusion.
 - d. The hearing officer or board at each facility should have original and exclusive jurisdiction in all disciplinary matters except that Class III offenses will be handled through the informal disposition process, unless they are in combination with Class I or II charges resulting out of the same incident.
 - e. The hearing officer or board should administer an oath or affirmation to all parties testifying in a hearing. The hearing officer or board should have the power to compel the attendance of any DOC staff member. The hearing officer or board should have the power to obtain copies of document(s) held by the DOC for the purpose of conducting a hearing.
 - f. Staff who are formally approved to participate in the Mentoring Program may participate in the COPD process as a hearing officer. Such staff member should have completed COPD Hearing Officer Training and may conduct hearings only under direct, on-site supervision of a certified hearing officer at the level of correctional officer III or above. All staff participating in the Mentoring Program as a hearing officer should have prior approval from the manager of Offender Services.
2. ***Detention of Community Facility Offenders:***
- a. An offender assigned to a community facility may be placed and held in a local detention facility (e.g., city or county jail), if required for security purposes upon notification of a charge for a Class I or II violation.
 - b. Detention prior to hearing should not exceed ten working days, except upon request for continuance by the offender or approval from the director of Adult Parole, Community Corrections, and the Youthful Offender System for justifiable cause and documented in the record.
3. ***Formal Disposition Procedures:***
- a. Initiation and Review of Charges:
 - 1) ***If a Class I or Class II charge(s) is brought against an offender, appropriate supervisor(s) must begin an independent review, [4-4232] as soon as possible, but no later than two working days after the date of discovery of the alleged violation.***

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- 2) The supervisory review may be delegated to a staff member at or above the level of correctional officer III or equivalent. The reviewing supervisor may consult with anyone, including the offender, during his review. If the reviewing supervisor finds cause to believe that any violation was committed by the offender charged, he should approve the Notice of Charge(s).
- b. The initiating officer(s) should be kept informed of all stages of the process as well as final disposition.
 - c. Notice of Charge(s):
 - 1) ***The accused should receive a written Notice of Charge(s) [4-4236]*** not later than six working days after the date of discovery of the violation, or not later than six working days after the offender has been returned to the facility, if the offender is temporarily absent during the period after discovery, or not later than six working days after the incident is reported in writing to the director of Adult Parole, Community Corrections, and the Youthful Offender System, or designee.
 - 2) ***The Notice of Charge(s) should contain the place, date, and time of the incident, date of discovery, the name of the initiating employee, the citation of the offense charged, a description of the offense [4-4236] and the witnesses to the offense. [4-4233]*** Copies of all available, relevant, non-confidential, non-repetitious information and/or documentation should be included in, or attached to, the Notice of Charge(s). The offender should be informed on the notice of the general substance of any confidential information and/or evidence to be used against him without breaching confidentiality. ***The Notice of Charge(s) should notify the offender of the date and time set for the hearing. [4-4238]***
 - d. Service and Receipt of Notice of Charge(s):

The Notice of Charge(s) should be personally served to the offender [4-4236] by DOC staff and a copy should be forwarded to the hearing officer or board with a record of the time and date served and the person serving the notice. ***The offender should be served at least 24 hours prior to any disciplinary hearing. [4-4236]*** If an offender refuses to accept his copy of the Notice of Charge(s), the serving officer should note such refusal on a copy of the Notice of Charge(s). Non-English speaking offenders should be offered assistance by translation or other effective means.

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e. Amendment to Notice of Charge(s):

If any amendment of the charges or other information on the notice is made, the offender should be informed in writing of the amendment at least 24 hours prior to the hearing, unless waived by offender. The correction of clerical mistakes will not be an amendment and can occur at anytime, and should be made part of the record.

f. Date and Time of Hearing:

The hearing should be scheduled to be heard and held no sooner than 24 hours and should not be held later than seven working days after the discovery of the alleged violation, [4-4238] unless a continuance of the case is granted at the request of the offender, hearing officer, or board, for good cause and documented in the record. [4-4236] In Community Corrections, the hearing should be held within seven working days of the incident reported in writing to the director of Adult Parole, Community Corrections, and the Youthful Offender System, or designee. An offender may request the hearing officer or board to schedule a hearing at the earliest possible time. Priority in scheduling hearings should be given to offenders who have been segregated prior to the hearing. The reporting officer(s) should be notified of the date and time of the hearing.

g. Segregation Prior to Hearing/Removal from Population (RFP):

1) ***An offender should not be placed in punitive segregation prior to a hearing; [4-4250] however, if the offender poses an imminent and substantial threat to the security of the institution, other offenders, staff, or to himself, he may be segregated prior to hearing. [4-4252] Segregation prior to hearing should only be ordered by the shift supervisor. [4-4250]*** This is also known as removal from population (RFP) (see AR 600-01, *Offender Classification*, Attachment "A"), which is a temporary classification action as detailed in administrative regulation 600-01. The shift supervisor will, immediately following segregation, document in writing the circumstances surrounding the incident and the need for pre-hearing segregation. ***Within one working day, the warden, or designee, should review the report and determine whether there is a continued need for segregation prior to hearing. [4-4235]***

2) In cases in which pre-hearing segregation is found necessary but the offender is housed at a facility where segregation is not feasible, the offender may be removed to a more secure facility.

h. Burden of Proof/Pleading:

1) The DOC should have the burden of proof in all formal disciplinary proceedings under this code to establish guilt in accordance with the standard of the preponderance of the evidence.

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2) At the hearing, the offender may plead “not guilty,” “guilty,” or “guilty with explanation.”

i. Evidence:

1) The hearing officer or board should admit all reliable, non-repetitious evidence which is probative of the facts of the incident from which the charge arises. The hearing officer or board may exclude irrelevant, incompetent, or unduly repetitious evidence. Hearsay evidence may be admitted through the person to whom the statement was made if such evidence possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Evidence may also be admitted through a sworn, notarized statement. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. **Physical evidence [4-4233]** or replicas thereof, may be presented at the hearing upon the hearing officer or board’s determination of necessity. Photocopies of physical evidence deemed to be dangerous contraband by the disciplinary officer may be presented at the hearing in lieu of the physical evidence.

2) Offender Evidence: **The offender should be permitted to offer explanation, defense, or rebuttal to the charge. [4-4242]** An offender’s defense should be relevant to the specific charge and may be limited at the discretion of the hearing officer or board.

j. Witnesses:

1) **The offender and the disciplinary officer should have the right to request the testimony of witnesses** at the hearing, but no offender witness should be required to appear or testify against his will. Testimony may be obtained from witnesses in person, telephonically, or by sworn statement. Staff should cooperate with all hearing officer requests to testify. **Witnesses may be limited by the hearing officer or board if their testimony is determined to be irrelevant, incompetent, or unduly repetitious and that determination is documented in the record. [4-4242]** The offender may request testimony of persons [4-4242] who witnessed and/or investigated the violations charged, whenever feasible, except when an offender witness refuses to appear or testify. **Refusal to testify should be documented in writing by the refusing witness** and made a part of the record of the hearing. The hearing officer or board may deny any offender victim as a witness, based on protection of the witness from verbal or physical harassment. **Any denial of a witness by the hearing officer, and the reason therefore, should be made part of the record. [4-4242]**

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- 2) Offer of Proof: In situations where the testimony made through an offer of proof (the hearing officer or board asks the offender to summarize what a proposed witness would say, if allowed to testify) is of a sort where further questioning of the absent witness is not necessary, the hearing officer can simply accept the offer of proof as evidence and go on with the hearing without actually calling the witness.
- 3) In no event should an accused offender, or his representative, be allowed to question, or to continue addressing questions to a witness, when it appears that the questions are primarily intended to harass the witness or are unduly repetitious or irrelevant.

k. **Confidential Informants/Information: [4-4241]**

- 1) **Confidential testimony will only be used when it is determined by the disciplinary officer that public testimony would present danger to the safety of an informant [4-4241]** or would divulge security sensitive information or operations. Confidential testimony should be taken under oath and recorded on audio tape or by sworn statement in confidence by the disciplinary officer and must be made available to the hearing officer or board prior to the hearing. Confidential documentary evidence should also be provided to the Board prior to the hearing. **The disciplinary officer should record specific evidence of dangerousness together with the confidential testimony and/or evidence in a separate written record [4-4241]** which should not be revealed to the accused offender at any time.
- 2) The accused offender should, however, be informed in the Notice of Charge(s) of the general substance of the confidential testimony and/or evidence including the place, date, and time (where known) of the offense(s) alleged.
- 3) The hearing officer, or board, should evaluate the information gathered by the disciplinary officer to determine the reliability of the information and state on the record, either verbally or in a written determination using Attachment "F," "Evaluation to Determine Dangerousness and Reliability of Confidential Information," their grounds for finding the information reliable. The reliability of the informant should be based on the informant having provided reliable information in the past, the information being offered is based on first hand observations, or there is corroboration from another source or through physical evidence showing the reliability of the information. Immunity is not presumed for confidential informants.
- 4) Confidential information that may lead to criminal charges should be coordinated with the Office of the Inspector General. The confidential informant must be advised that confidentiality may not be maintained in a criminal proceeding.

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l. Continuance:

- 1) **The hearing officer or board may grant a continuance for a reasonable period of time for good cause [4-4239]** upon the request of the offender or the DOC, or staff under contract with DOC.
- 2) The offender should receive a hearing at the earliest date practicable. Continuances for offenders segregated prior to hearing will not exceed five working days.
- 3) The offender should receive a hearing within 30 working days of his return to the facility, if absent from the facility prior to the scheduled hearing.
- 4) The reason for any continuance should be stated in the record of the proceeding and the offender and the disciplinary officer should be notified of such continuances at or prior to scheduled hearing. Continuances should be granted for a period of no less than 24 hours.

m. Rights of Offenders at Hearings:

1) Appearances:

- a) The hearing officer or board should conduct the hearing with due regard for the rights of the accused offender. At commencement of the hearing, the offender should be given advisement of his rights to remain silent and informed that any statement he makes may be used against him in a criminal proceeding. The offender should be informed of the evidence against him, including the general substance of confidential information as provided above, and afforded the opportunity to present evidence at the hearing.
- b) **The accused offender will have the right to be present at the hearing. If any person, including, but not limited to: the offender, a witness, or the offender's representative, engages in conduct at the hearing that is disruptive or poses a threat to the security of the facility, he may be removed from the hearing and the hearing should proceed in his absence. Such conduct should constitute a waiver of the right to have such person, including the offender, present at the hearing. [4-4241]** If an offender refuses to attend the hearing, the hearing may proceed in his absence, and the refusal will be documented by the hearing officer on the record.

2) Representation:

- a) An attorney should not be allowed to represent an offender(s) or be present at the COPD hearing.

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- b) Offenders may request representation at the time of service of Notice of Charges.
- c) ***Offenders who the hearing officer determines on the record are not capable of understanding the proceedings or articulating a defense, should be provided representation by an offender or staff person. [4-4243]***
- d) Offenders Who May Represent Other Offenders: The warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, may designate offenders as representatives only at their facility, and such representative should meet the following minimum requirements:
 - (1) Be neither classified as administrative segregation or in punitive segregation.
 - (2) Be housed within the same facility.
 - (3) Not have been convicted of a violation of a Class I or II offense in the last six months.
 - (4) Should have a working knowledge of the Code of Penal Discipline as verified by the hearing officer.
- e) Offender representation of other offenders is limited to the hearing process. An offender representative does not have powers of investigation, discovery, etc.
- f) Offenders Who May Not Represent Other Offenders: The warden, or the director of Adult Parole, Community Corrections, and the Youthful Offender System, may remove an offender from eligibility to represent other offenders when he determines that the offender:
 - (1) Demonstrates an inability to work with the code.
 - (2) Demonstrates unduly, disruptive behavior in a hearing before hearing officers or boards.
 - (3) Performs services as an offender representative for any type of compensation (other than authorized offender pay).
 - (4) Demonstrates any other reason which results in an inability to render effective representation.

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g) Failure to request representation at the time of service of Notice of Charges should constitute a waiver of representation.

3) Waiver of Offender Rights:

Any right waived by an offender under the code should be documented in the record or on the record [4-4241] and allowed only if the hearing officer or board is persuaded that the offender has made a knowing and voluntary waiver of his right [4-4230] [4-4237] and the waiver is reviewed by the administrative head, or designee. [4-4237]

n. Record of Hearing:

1) Recording: ***All hearings should be recorded on audio tape. The tape should be preserved for a minimum of five years from the hearing date, [4-4240]*** or until all administrative review is completed or longer, upon reasonable request to the hearing officer or board.

2) All written documentation of the hearing should be maintained, per administrative regulation 100-27, *Records Management*.

o. Findings:

1) ***Upon completion of the hearing, the hearing officer or board should decide by majority vote the offender's guilt or innocence, as determined by a preponderance of the evidence [4-4244]*** and what disciplinary sanctions, if any, should be imposed. The hearing officer or board may also decide to dismiss the charge. This decision should be forwarded to the administrative head, or designee, for final approval. This decision will remain as part of the permanent record unless expunged. The hearing officer or board should advise the offender of the decision and his right to appeal. At that time, upon request by the offender, the hearing officer or board may, at its discretion, stay the imposition of sanctions pending any appeal of the decision by the offender. The reporting officer(s) will be notified of the decision of the hearing officer or board.

2) If an offender is found guilty of an offense, the hearing officer or board should state on the record, and in the written decision, all reasons for the decision and for the penalty imposed and should specify any aggravating or mitigating factors considered in their written decision. Dissenting votes should be noted on the record. Any dissenting member of a board may state the basis of his opinion on the record. The hearing officer or board should then prepare a written statement of the evidence relied upon.

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p. Hearing Officer or Board Authority/Authorized Sanctions:

- 1) When a hearing officer or board finds that an offender has violated a provision of this code, the hearing officer or board may impose all or any part of the sanctions prescribed for such violation except as limited herein. In cases where a loss of privileges is imposed, the hearing officer or board should specifically state the extent of the restriction imposed.
- 2) The hearing officer or board should have the power to suspend any sanction or any part thereof imposed under this code, provided that if a sanction is imposed, it should be imposed within the limitations set forth herein.
- 3) The hearing officer or board should have the power to probate the sanction or any part thereof provided that the period of probation should be for a definite period of time not to exceed 90 days and the conditions for revocation should be specifically set forth in the Disposition of Charges. Warnings and reprimands will only apply to Class III violations.
- 4) Monetary restitution, if imposed as a sanction, should be specified and should be equal to an amount up to, but not exceeding, the cost of any damaged or stolen property or service. If apportioned, collection for restitution should not exceed 50% of any money deposited to the offender's account each month. In all cases an offender should be assured access to items necessary for personal hygiene. Restitution may be ordered on any charge for the value of service or property. The identified specific amount/cost of restitution should be included in the Disposition of Charges.
- 5) Privileges will be suspended during the period of punitive segregation and should be restored consistent with the offender's classification upon release from punitive segregation. Punitive segregation and loss of privileges should not be used together as a single sanction. Time spent by the offender in segregation due to charged offense, prior to hearing, should be credited toward the satisfaction of any punitive segregation sanctions subsequently imposed for the offense charged.
- 6) Loss of specific privileges, if imposed as a sanction, will be set forth in the written decision and may include, but not limited to, canteen, movies, television, radio, gymnasium, yard, library, hobby shop, or social visitation including contact visitation. Loss of privileges will not include work, academic, or mental health programs, except when affected by classification or segregation. In cases where a loss of privileges is imposed, the hearing officer or board should specifically state the extent of the restriction imposed.

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- 7) Loss of good time, if imposed as a sanction, should be within the maximum range set forth in the tables included in this code. Such sanction should be consistent with administrative regulation 950-07, *Sentence Computation*.
 - 8) Sanctions should be implemented at the conclusion of the hearing unless a stay of sanctions or probation has been granted.
 - 9) Under no circumstances should corporal punishment of any kind be administered to any offender.
 - 10) Sanctions should be imposed concurrently for cumulative offenses arising out of the same act and/or incident.
 - 11) Sanctions may be suspended by the facility warden should the offender be moved from the facility on out to court status, CMHIP or extended medical and may then be initiated upon return to complete the unsatisfied portion of the sanction(s) imposed.
- q. Disposition: The offender should receive oral notice at the conclusion of the hearing of the hearing officer or board's actions. **The offender should receive a formal written disposition of charges which will include the reasons for the disciplinary action [4-4245]** and evidence relied on, within ten working days of the date of the hearing.
- r. Final Approval of Formal Disciplinary Actions: **Actions taken by the hearing officer or board should be forwarded to the warden/director, or designee, who must review all decisions to assure conformity with administrative regulations. [4-4247]** The hearing officer or board chairperson will inform the offender, at the conclusion of the hearing, that the action is subject to approval or modification by the warden/director, or designee. The warden/director, or designee, may approve, reduce, or modify the decision or reverse the decision and order a new hearing if the warden/director, or designee, determines that the decision was not based on a preponderance of evidence or was based on incomplete information. The warden/director may not increase sanctions.
- Private Prison Monitoring Unit: CDOC is obligated to review all COPD convictions of offenders charged by the contractor per CRS 17-1-203. In the event a hearing officer or board determines an offender has violated provisions of the COPD, the following sequence will occur:
- 1) The facility warden will review the COPD Disposition of Charge(s) and the offender should receive a formal written Disposition on Charges, in accordance with AR 150-01.
 - 2) The facility will fax all guilty COPD Disposition of Charge(s) to PPMU for review.

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- 3) PPMU will review the Disposition of Charge(s) for appropriateness to COPD criteria.
 - 4) PPMU will sign, date, and stamp the Disposition of Charge(s) fax.
 - 5) PPMU monitors will return the signed Disposition of Charge(s) fax to the facility.
 - 6) The facility will file the signed Disposition of Charge(s) fax in the working file and retain a copy in the hearing case file.
 - 7) PPMU will retain a copy of the signed Disposition of Charge(s) fax.
- s. Appeals: At the conclusion of the formal hearing, ***the hearing officer or board should advise the offender of his right to appeal the decision to the warden/director, or designee, within 15 working days after the offender receives the notice of disposition. [4-4248]***
- 1) The offender will have 15 working days from the day he receives the written formal disposition to outline and forward to the warden/director, or designee, in writing, the basis for the appeal, including any newly discovered evidence. Failure to submit written notice of appeal within the deadline will constitute waiver of the offender's right to appeal.
 - 2) All appeals are limited to the appeal form. Additional supporting documents may be included by reference. The offender should assume all documents used in the disciplinary hearing process are available to the warden.
 - 3) Upon receipt of the appeal materials, the warden/director, or designee, will review the case and reverse or remand the hearing officer or board's decision if he finds any of the following factors:
 - a) A failure to comply with the procedures set forth in this code which substantially undermines the fairness of the process.
 - b) That the decision of the hearing officer or board was not supported by a preponderance of evidence.
 - c) That there has come to light newly discovered substantial exculpatory or mitigating evidence since the hearing.
 - 4) The warden/director, or designee, after reviewing the appeal materials, may modify the hearing officer or board's decision if he/she finds that the disciplinary sanction was not proportionate to the offense. Modification may include the reduction, suspension, or probation of any part to the sanction imposed. In no case may he increase the severity of the sanctions imposed.

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- 5) ***The appeal should be decided within 30 days of its receipt and a written decision is then promptly forwarded to the offender. [4-4248]*** The warden/director, or designee's, judgment on such appeal should be final.

Private Prison Monitoring Unit - CDOC is obligated to review all appeals of COPD convictions of offenders charged by the contractor per CRS 17-1-203. In the event a hearing officer or board determines an offender has violated provisions of the COPD, the following sequence will occur:

- a) The facility will fax all offender appeal forms (Attachment "D") to PPMU for review.
- b) PPMU will review the "Offender Appeal Form" fax for appropriateness to COPD criteria.
- c) PPMU will sign, date, and stamp the "Offender Appeal Form" fax.
- d) PPMU monitors will return the signed "Offender Appeal Form" fax to the facility.
- e) The facility will file the signed "Offender Appeal Form" fax in the working file and retain a copy in the hearing case file.
- f) PPMU will retain a copy of the signed "Offender Appeal Form" fax.

t. Expungement and Restoration:

- 1) ***When a conviction is reversed on an appeal, or for administrative reasons, an expungement order should be completed. [4-4246]***
- 2) When an offender is found not guilty or a conviction is reversed on an appeal, the DOC will attempt to restore the offender to the greatest extent practicable all programs, privileges, and jobs lost during any period where such were suspended or removed as a result of the charges against him. In the event that a particular program, privilege, or job is no longer available, the offender's case manager may obtain for the offender the first available equivalent which opens for which the offender is qualified, when feasible.
- 3) A record of expunged COPD convictions may be maintained for statistical purposes.

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4. ***Conditions of Punitive Segregation for DOC Facilities:*** The intent of detention of an offender in punitive segregation is disciplinary in nature and will, of necessity, preclude participation in most institutional group activities. Any restriction of the offender's activities beyond those necessitated by the differing nature of the physical facility and surrounding circumstances should be assessed as a result of a disciplinary hearing. ***The maximum period of confinement in punitive segregation should not exceed 60 consecutive days. [4-4255]***

In facilities under control of the DOC none of the following conditions may be removed as punishment and may only be removed or restricted upon the written notice of the warden/director, after declaration of an emergency or by a physician, employed by or under contract with the DOC, after a finding by him/her of a substantial and immediate danger to the offender's health and safety:

- a. Regular food portions will be served to offenders in punitive segregation, including special dietary meals, if prescribed, unless the warden/director, or designee, authorizes a special management diet as prescribed by administrative regulation 1550-04, *Alternative Meal Service in Segregation*.
- b. Normal health and sanitary conditions should be maintained. All offenders should be provided with normal hygiene items (e.g., toothbrush, soap, etc.). All offenders should be provided with the necessary materials to clean their cells. All offenders should be allowed to shower at least three times per week and shave and wash daily. All offenders should be provided with a complete change of clean clothing twice per week and linens at least once per week. ***[4-4263]*** Daily rounds will be made of those offenders in punitive segregation by the housing unit supervisor and by qualified medical staff.
- c. Appropriate medical or mental health personnel should be notified immediately of any physical health emergency. ***Clinical Services will be informed immediately when an offender is transferred to punitive segregation. [4-4400]***
- d. An installed bunk, mattress, and bed covering adequate for the season should be provided.
- e. A commode, lavatory, and drinking water or frequent escort to such facilities should be provided.
- f. No more than one offender should occupy a punitive segregation cell at one time. If sufficient cells are unavailable necessitating the placement of more than one offender in a cell, the warden/director should take the necessary action and as soon thereafter as is feasible, obtain pertinent instructions from the appropriate director.

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- g. Every offender in punitive segregation should be afforded at least one hour of exercise per day outside their cells, five days per week, unless security or safety consideration dictates otherwise.
- h. Offenders in punitive segregation should have access to law library materials, religious counseling, books and pamphlets.

F. **INFORMAL DISPOSITION PROCEDURES: [4-4230]**

1. **An offender who is charged with a violation of a Class III offense should have an informal conference by a group living team unless it is in combination with Class I or II charges resulting out of the same incident.**
2. The offender will receive a **written statement supporting the rule violated** prior to the conference. **The conference will be conducted within seven working days by a person not involved in the rule violation. Offenders may waive their appearance at the conference. [4-4230]**
3. Non-Disciplinary Incident Resolution Procedures
 - a. Non-disciplinary incident resolution procedures will be initiated immediately, but no later than 72 hours of the incident, by the COIII, COIV, or community parole officer (CPO) who has direct knowledge of the incident. Offenders do not have a right to informal resolution.
 - 1) The initiating employee will document violations of the COPD, in accordance with IV.F.1., by an offender on an incident report form.
 - 2) The COIII, COIV, or CPO will read the incident report(s) and discuss the matter with the initiating employee. If the incident is appropriate for non-disciplinary resolution and the initiating employee agrees, a conference will be held with the offending offender to determine his willingness to agree to the terms set by the non-disciplinary incident resolution.
 - a) Non-disciplinary resolution will be considered for any Class III report, unless it is in combination with Class I or II charges resulting out of the same incident.
 - b) Non-disciplinary resolution may be considered for any Class II report.
 - c) Non-disciplinary resolution will not be considered on Class I reports.
 - b. Upon the agreement of a supervising officer, the COIII, COIV, or CPO will complete the "Offender Non-Disciplinary Incident Resolution" form documenting the offender's extra work assignment. Maximum sanctions for extra work assignments will not exceed two hours per day for more than ten days.

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- 1) The original is maintained in cellhouse operations files;
 - 2) A copy is forwarded to the COIII, COIV, or CPO and;
 - 3) A copy is immediately forwarded to the case manager for inclusion of a notation in the chronological log of the working file. The case manager will review the incident and make any determinations regarding earned time for that month.
- c. If the offender performs the extra work assignment satisfactorily, the supervising officer will document participation on his/her copy of the "Offender Non-Disciplinary Incident Resolution" form and return a copy to the cellhouse operations office and the case manager.
- d. If the offender fails to perform the entire work assignment satisfactorily, the supervising officer will document the offender's refusal and return it to the COIII, COIV, or CPO who initiated the document.
- The initiating COIII, COIV, or CPO will, no later than one working day, forward the original incident report to the disciplinary officer or cell house group living team, for initiation of the formal COPD process.
- e. In exchange for this administrative hearing, the parties agree that a Code of Penal Discipline complaint by service of a Notice of Charges will not be filed, provided the imposed sanction of this specific case being addressed is satisfied. The parties further agree that any timelines contained in administrative regulation 150-01, *Code of Penal Discipline*, will be tolled.
4. Sanctions: When the group living team finds that the offender has violated a Class III rule, the team may impose all or any part of the prescribed sanctions. The offender will be provided with a written decision, containing sanctions imposed on a finding of guilty. **[4-4230]**
 5. Non-disciplinary incident resolutions are not appealable.
- G. **AUTHORITY OF WARDEN/DIRECTOR TO MODIFY PROVISIONS OF CODE:** In the event that a warden/director desires to modify any provision of this code with regard to facility requirements, such modification should be requested, in writing, to the executive director. No modification to the code should be considered to be authorized until approved by the executive director.
- H. **DECLARATION OF EMERGENCY:** In the event an emergency is declared by the executive director of the DOC, the provisions of this code at the affected facility should be suspended for a period of no more than ten working days. The executive director may establish alternative procedures for offender discipline during the suspension.

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1. An emergency may be declared only upon a documented and written finding by the executive director that a riot, fire, or other disaster, or the substantial and imminent danger of a riot, fire or other disaster, renders following of standard disciplinary procedures an imminent threat to the safety of offenders, safety of staff, the facility for which the emergency is declared, or to the community where the facility is located.
2. The emergency state may be renewed for subsequent periods of five working days by the executive director.

V. RESPONSIBILITY

- A. The warden of the ***Denver Reception and Diagnostic Center should provide to each offender a copy of this code and all changes/revisions thereto and should instruct illiterate offenders, or offenders with a primary language other than English, about the nature and importance of this code when they receive their copies. A signed, dated receipt for the code or any subsequent changes/revisions should be forwarded to offender records. The warden/director, upon reasonable request, should make available to illiterate offenders or offenders with a primary language other than English, a staff member knowledgeable of the code to discuss with such offenders the provisions of the code. [4-4228]*** However, a complete reading of the code to such offenders by the staff should not be required. The warden/director should provide all changes/revisions of the code to offenders prior to their effective date.
- B. It will be the responsibility of every warden to ensure their hearing officers have been trained initially and annually.
- C. It should be the responsibility of every offender subject to this code to be aware of its provisions and have an understanding of its requirements.
- D. ***It should be the responsibility of the managers of Correctional Legal Services and Offender Services to review and update the COPD annually. [4-4226] [4-4227]***
- E. The executive director should appoint a designee, in writing, to administer the code.

VI. AUTHORITY

- A. Wolff vs. McDonnell 418 US539 (1974)
- B. Warden vs. Hill 472US445 (1985)

VII. HISTORY

July 15, 2004
June 15, 2004
September 1, 2003
September 1, 2002

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September 1, 2001
August 1, 2001
August 1, 2000
August 1, 1999
May 1, 1999

- ATTACHMENTS:
- A. DC Form 150-01A, Notice of Charges
 - B. DC Form 150-01B, Disposition of Charges
 - C. DC Form 150-01C, Hearing Continuance
 - D. DC Form 150-01D, Offender Appeal Form
 - E. DC Form 150-01E, Offender Non Disciplinary Incident Resolution
 - F. AR Form 150-01F, Evaluation to Determine Dangerousness and Reliability of Confidential Information
 - G. AR Form 100-1A, Administrative Regulation Implementation/Adjustments

CLASS I OFFENSES & AUTHORIZED SANCTIONS

[4-4255]

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
1. MURDER	180	60	90
2. MANSLAUGHTER	120	45	60
3. KIDNAPPING	120	45	60
4. ASSAULT	90	30	45
5. ESCAPE WITH FORCE	90	30	45
6. ESCAPE WITHOUT FORCE	90	30	45
7. ENGAGING IN A RIOT	90	30	45
8. INCITING TO RIOT	90	30	45
9. RAPE	90	30	45
10. ARSON	90	30	45
11. ROBBERY/EXTORTION	90	30	45
12. POSSESSION OF DANGEROUS CONTRABAND	90	30	45
13. DEALING IN DANGEROUS DRUGS	90	30	45
14. POSSESSION OF KEY OR KEY PATTERN	90	30	45
15. POSSESSION OF ESCAPE PARAPHERNALIA	90	30	45
16. TAMPERING WITH LOCKS OR SECURITY DEVICES	90	30	45
17. REFUSAL TO SUBMIT TO DRUG TEST	90	30	45
18. THREATS OR INTIMIDATION OF PUBLIC OFFICIALS	90	30	45
19. SOLICITATION OF STAFF MISCONDUCT	90	30	45
20. UNAUTHORIZED POSSESSION OF ELECTRONIC COMMUNICATION DEVICE	90	30	45

CLASS II OFFENSES & AUTHORIZED SANCTIONS

[4-4255]

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
1. THEFT	60	20	30
2. DAMAGE TO PROPERTY	60	20	30
3. BRIBERY	60	20	30
4. FORGERY	60	20	30
5. FRAUD	60	20	30
6.5. SEXUAL ABUSE	60	20	30
7. RECEIVING STOLEN PROPERTY	60	20	30
8. POSSESSION OR USE OF DANGEROUS DRUGS	60	20	30
9. POSSESSION OR USE OF TOBACCO OR TOBACCO PRODUCTS	60	20	30
10. PERJURY	60	20	30
11. POSSESSION OF SYRINGE OR DRUG PARAPHERNALIA	60	20	30
12. FIGHTING	60	20	30
13. THREATS	60	20	30
14. ABUSE OF MEDICATION	60	20	30
15. INTERFERENCE WITH SEARCH	60	20	30
16. ADVOCATING OR CREATING FACILITY DISRUPTION	60	20	30
17. INTER-AGENCY VISITATION	60	20	30
18. ASSOCIATION	60	20	30
19. UNAUTHORIZED POSSESSION	60	20	30
20. TATTOOING/PIERCING/BRANDING AND OR POSSESSION OF TATTOOING/PIERCING/BRANDING PARAPHERNALIA	60	20	30

OFFENSE	LOSS OF PRIVILEGES (MAX. DAYS)	PUNITIVE SEGREGATION (MAX. DAYS)	LOSS OF GOOD TIME (MAX. DAYS)
21. COUNT INTERFERENCE	60	20	30
22. FAILURE TO WORK	40	15	20
23. GAMBLING	40	15	20
24.5. SEXUAL HARASSMENT	40	15	20
25. DISOBEYING A LAWFUL ORDER	40	15	20
26. BARTERING AND/OR SELLING GOODS & COMMODITIES OR SERVICES	40	15	20
27. VERBAL ABUSE	40	15	20
28. OPERATING MOTOR VEHICLE	40	15	20
29. HABITUAL CLASS III CONVICTIONS	40	15	20
30. UNAUTHORIZED ABSENCE	40	15	20
31. FAILURE TO REMAIN OR RETURN	60	20	30
32. POSSESSION OF UNAUTHORIZED LEGAL DOCUMENTS	60	20	30
33. MISUSE OF CLINICAL SERVICES	60	20	30

CLASS III OFFENSES & AUTHORIZED SANCTIONS

OFFENSE	CONFINEMENT TO HOUSING UNIT (MAX. DAYS)	AND/OR	EXTRA DUTY (MAX. DAYS)
1. FAILURE TO DISPLAY NAME AND/OR I.D. NUMBER AND/OR CARDS	14		14
2. FAILURE TO OBTAIN PERMIT	14		14
3. VIOLATING A POSTED OPERATIONAL RULE	14		14
4. FAILURE TO PAY SUBSISTENCE	14		14
5. ENTERING INTO CONTRACT	14		14
6. LITTERING	7		7
7. SANITARY VIOLATION	7		7
8. PERSONAL APPEARANCE VIOLATION	7		7
Reprimands and warnings may also be imposed as sanctions for Class III Offenses.			
*Extra duty may not exceed two hours per day.			

DEPARTMENT OF CORRECTIONS
NOTICE OF CHARGE(S)

DC FORM 150-01A
(Revised 09/02)

FACILITY _____ CASE NO. _____

1. OFFENDER
NAME

DOC
NUMBER

CURRENT HOUSING
UNIT

CURRENT SECURITY
DESIGNATION

2. ALLEGED CHARGES Date _____ Time _____ Location _____
Class _____ Rule _____ Specific Charge (Code of Penal Discipline) Use extra sheets if necessary

3. SUMMARY (Factual Reporting, including who, what, when, where, and how).

4. CONTRABAND: (Description and disposition. Also including same type information as required in number 3 if not listed.)

5. NAMES OF WITNESSES TO VIOLATION: (Including employees)

I certify that aforementioned charges and summary are true and correct to my knowledge. The date of my signature reflects the discovery date of the violation.

_____/_____
Initiating Employee Date _____
_____/_____
Reviewing Supervisor Date _____

6. INVESTIGATIONS/PHARMACY REPORT (When required) Date _____

Signature _____ Comments _____

7. HEARING SCHEDULE: This case is scheduled for: _____ at: _____
Formal Hearing { } Informal Conference { }

8. SERVING EMPLOYEE: You are hereby served with a copy of alleged charges this _____ day of _____ 20____ at _____ (am) (pm). If you desire witnesses, in accordance with the Code of Penal Discipline, please notify the Reviewing Supervisor as soon as possible, but no later than 24 hours prior to scheduled hearing, to avoid a continuance.

Signature _____ Date _____

9. OFFENDER ACKNOWLEDGMENT. I acknowledge receipt of a copy of the Notice of Charge.

I do { } do not { } desire an offender representative.

Signature _____ Date _____

Distribution: White - Department File Canary - Working File Pink - Warden/Director Gold - Offender

Attachment "A"

DEPARTMENT OF CORRECTIONS
DISPOSITION OF CHARGE(S)

DC FORM 150-01B

(Revised 02/15/06)

Informal Conference [] Formal Hearing [] FACILITY _____

OFFENDER NAME: _____ DOC NUMBER _____ CASE NO. _____

CURRENT HOUSING UNIT: _____ CURRENT CUSTODY LEVEL DESIGNATION: _____

Continuation of hearing: Yes No If yes, describe date/time continued from: _____

Disciplinary Officer name and position: _____

FINDINGS OF FACT: (List **SPECIFIC** evidence relied upon to support finding(s) including the general substance of confidential information and/or evidence.)

Charge(s): _____ **Plea:** Not Guilty Guilty Guilty w/explanation **Finding:** Not Guilty Guilty Dismissed
 Charge(s): _____ **Plea:** Not Guilty Guilty Guilty w/explanation **Finding:** Not Guilty Guilty
 Dismissed

Offender Representative Requested: Yes No Offender Representative Allowed Yes No Offender Representative Name: _____

Was Confidential Information Used: Yes No If yes, was information determined reliable by Hearing Officer: Yes No N/A

Describe accused offender testimony:

Describe staff testimony and evidence presented:

Identify **all** offender witnesses requested:

Briefly describe all called witness testimony, or justification for not allowing requested witnesses:

Briefly describe **specific** evidence and testimony relied upon to reach finding:

Briefly describe how offender behavior violated COPD:

Other comments (describe any offender rights waived, justification for non-allowance of representation, explanation of extended recess and any other pertinent information):

SUMMARY OF PENALTIES:

Describe any aggravating or mitigating factors considered:

Describe any stayed or probated sanctions:

Description of Penalties Imposed:

Date of sanction start and end; Explanation of Pre-Hearing segregation time credit:

Explanation of monetary restitution imposed / Information relied upon to determine amount imposed:

S/ _____
Chairperson [TYPED NAME HERE] Date

DATE OF HEARING _____ TIME OF HEARING _____ LOCATION OF HEARING _____

COMMITTEE MEMBERS PRESENT _____

WARDEN/DIRECTOR REVIEW: (Not required for informal) { } AFFIRM { } MODIFY { } REVERSE

COMMENTS:

S/ _____
Administrative Head or Designee Date

Offender Acknowledgment: I acknowledge receipt of a copy of this Disposition of Charge.

Name _____ Signature _____ Date _____

**DEPARTMENT OF CORRECTIONS
HEARING CONTINUANCE**

**DC FORM 150-01C
(Revised 02/97)**

OFFENDER NAME _____ DOC NUMBER _____

CURRENT FACILITY _____ CELL HOUSE/UNIT _____

FACILITY AT TIME OF OFFENSE

Case Number _____
Type of hearing Disciplinary Administrative Segregation

Your hearing scheduled for _____
Date Time

has been continued until _____
Date Time

for the following reason(s): _____

CONTINUANCE

Requested By: Offender Disciplinary Officer
 Hearing Officer Other:

Specify: _____

Hearing Officer _____ Date

Offender Acknowledgment _____ Date/Time

Serving Officer _____ Date/Time

DEPARTMENT OF CORRECTIONS
OFFENDER APPEAL FORM

DC FORM 150-1D (REVISED 09/02)

CASE NO. _____

1. Offender Name _____ 2. DOC No. _____
3. Current Facility _____ 4. Facility Initiating Hearing _____
5. Type of Appeal: _____ Disciplinary _____ Classification _____ 6. Date Hearing Held: _____
7. Basis of Appeal (Check the boxes which apply) Please Print. **Be Brief - no additional attachments allowed.**

- PROCEDURES NOT FOLLOWED: (State specifically what procedures were not followed)
 LACK OF SUBSTANTIAL EVIDENCE: (State specifically what evidence was not present in this hearing)
 NEW EVIDENCE: (State specifically what new evidence exists to affect the decision)

Do **NOT** attach additional page. **Additional attachments may not be considered.**

8. Offender Signature _____ Date _____

RECEIPT BY FACILITY

Appeal Received by: _____
Name Title Date

HEARING DECISION (please type)

10. Conviction is: Upheld Reversed Modified Remanded Explanation: (must respond)

By: _____
Administrative Head Date

RECEIPT BY OFFENDER

11. Appeal Decision received by: _____
Offender Name DOC # Date

Staff Witness Date

Offender Non-Disciplinary Incident Resolution

1. I accept non-disciplinary resolution of an incident in which my involvement failed to comply with acceptable standards of offender behavior. I understand that I do not have to accept this resolution, and I have the right to have these alleged infractions heard under the Code of Penal Discipline.

I understand that if I complete the terms of this resolution, Code of Penal Discipline charges will not be brought against me for any known actions arising out of this incident. This is not a conviction under the Code of Penal Discipline and does not affect my cell assignment, work, or hobby privileges. However, I understand that my actions may affect any earned time for the month.

Date of Incident: _____

Description of Incident: _____

Resolution is _____ hours of extra work for _____ days; supervising officer _____

MAXIMUM SANCTIONS WILL NOT EXCEED TWO HOURS PER DAY FOR MORE THAN TEN DAYS.

The supervising officer will schedule and assign the extra work. If the supervisor is unsatisfied with my work; and I fail to correct it or if I fail to comply with the terms of this resolution or any instructions from my supervisor, the non-disciplinary resolution will be withdrawn and COPD charges will be filed on the original incident.

I understand and request non-disciplinary resolution of my failure to comply with acceptable standards of offender behavior. I will report to the supervising officer at (time) _____ on (date) _____.

Offender Name (printed) _____ Date _____

Offender Signature DOC No. COIII, COIV, or CPO Date

2. Non-disciplinary resolution should be agreed upon by the initiating employee.

Initiating Employee name (printed) Signature Date

The COIII, COIV, or CPO will ensure that the case manager receives a copy of this document for chronological entry in the offender=s working file, will maintain the original document in a unit operations file for statistical reporting purposes, and will forward a copy to the supervising officer.

3. The above offender has completed his extra work for _____ days for satisfactory resolution of this incident.

Supervising Officer Date

Department of Corrections
Evaluation to Determine Dangerousness and Reliability of Confidential Information

Information taken by:	on:	at approximately:
Informant:	Hearing Date:	Case Number:
Evidence of Dangerousness:		
Confidential Information Relied Upon:		
Reliability of Information: (If and why-past reliability, first-hand observation, corroboration)		
Hearing Officer	Date	

ADMINISTRATIVE REGULATION
IMPLEMENTATION/ADJUSTMENTS

AR FORM 100-1A (11/15/05)

CHAPTER	SUBJECT	AR #	EFFECTIVE
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(FACILITY/WORK UNIT NAME) _____
WILL ACCEPT AND IMPLEMENT THE PROVISIONS OF THE ABOVE ADMINISTRATIVE REGULATION:

AS WRITTEN NOT APPLICABLE WITH THE FOLLOWING ADJUSTMENTS TO MEET
LOCALIZED OPERATIONS/CONDITIONS

(SIGNED) _____ (DATE) _____
Administrative Head