



**POLICY STATEMENT**  
**Commonwealth of Pennsylvania • Department of Corrections**

<b>Policy Subject:</b> <b>Inmate Discipline</b>		<b>Policy Number:</b> <b>DC-ADM 801</b>
<b>Date of Issue:</b> <b>January 9, 2024</b>	<b>Authority:</b> <b>Signature on File</b> <b>Dr. Laurel R. Harry</b>	<b>Effective Date:</b> <b>January 22, 2024</b>

#### **I. AUTHORITY**

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

#### **II. APPLICABILITY**

This policy is applicable to all facilities operated under the jurisdiction of, or conducting business with the Department of Corrections, Department employees, volunteers, contract personnel, visitors, and inmates.

#### **III. POLICY**

It is the policy of the Department to operate a disciplinary process that provides clear notice or prohibited behavior, outlines a fundamentally fair hearing process, and establishes consistent sanctions for violations of Department rules and regulations.<sup>1</sup> It is also the policy of the Department that information concerning an inmate's criminal acts shall be forwarded to appropriate court or law enforcement officials for consideration for prosecution.<sup>2</sup>

#### **IV. PROCEDURES**

All applicable procedures are contained in the procedures manual that accompanies this policy document.

<sup>1</sup> 5-ACI-3C-01, 5-ACI-3D-08, 4-ACRS-3A-01, 4-ACRS-3A-02

<sup>2</sup> 5-ACI-3C-02, 5-ACI-3C-07, 5-ACI-4A-04

## V. SUSPENSION DURING AN EMERGENCY

In an emergency or extended disruption of normal facility operation, the Secretary/designee may suspend any provision or section of this policy for a specific period.

## VI. RIGHTS UNDER THIS POLICY

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

## VII. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY

### A. Release of Information

#### 1. Policy

This policy document is public information and may be released upon request.

#### 2. Confidential Procedures (if applicable)

Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Secretary of Corrections/designee. Confidential procedures may be released to any Department of Corrections employee on an as needed basis.

### B. Distribution of Policy

#### 1. General Distribution

The Department of Corrections policy and procedures shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis. Distribution of confidential procedures to other individuals and/or agencies is subject to the approval of the Secretary of Corrections/designee.

#### 2. Distribution to Staff

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of the policy and procedures either in hard copy or via email, whichever is most appropriate.

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## VIII. SUPERSEDED POLICY AND CROSS REFERENCE

### A. Superseded Policy

#### 1. Department Policy

DC-ADM 801, Inmate Discipline, issued May 16, 2022, by former Acting Secretary George M. Little.

#### 2. Facility Policy and Procedures

This document supersedes all facility policy and procedures on this subject.

### B. Cross Reference(s)

#### 1. Administrative Manuals

- a. DC-ADM 005, Collection of Inmate Debts
- b. DC-ADM 007, Access to Provided Legal Services
- c. DC-ADM 802, Administrative Custody Procedures
- d. DC-ADM 803, Inmate Mail and Incoming Publications
- e. DC-ADM 812, Inmate Visiting Privileges
- f. DC-ADM 820, Co-Payment for Medical Services
- g. 1.1.10, Videoconferences
- h. 6.3.12, Drug Interdiction
- i. 6.5.1, Administration of Security Level 5 Housing Units
- j. 7.4.1, Substance Use Disorder (SUD) Treatment Programs

#### 2. ACA Standards

- a. Adult Correctional Institutions: 5-ACI-3C-01, 5-ACI-3C-02, 5-ACI-3C-05, 5-ACI-3C-07, 5-ACI-3C-08, 5-ACI-3C-09, 5-ACI-3C-10, 5-ACI-3C-11, 5-ACI-3C-12, 5-ACI-3C-13, 5-ACI-3C-14, 5-ACI-3C-15, 5-ACI-3C-16, 5-ACI-3C-17, 5-ACI-3C-18, 5-ACI-3C-19, 5-ACI-3C-20, 5-ACI-3C-21, 5-ACI-3C-22, 5-ACI-3C-23, 5-ACI-3D-08, 5-ACI-4A-02, 5-ACI-4A-04, 5-ACI-4A-06, 5-ACI-4A-15, 5-ACI-4A-21, 5-ACI-4A-22, 5-ACI-4A-23, 5-ACI-4A-26, 5-ACI-4B-21, 5-ACI-4B-22, 5-ACI-4B-23, 5-ACI-4B-25, 5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33, 5-ACI-6B-12

- b. Adult Community Residential Services: 4-ACRS-3A-01, 4-ACRS-3A-02, 4-ACRS-3A-03, 4-ACRS-3A-04, 4-ACRS-3A-07, 4-ACRS-6C-01, 4-ACRS-6C-02, 4-ACRS-6C-03
  
- c. Correctional Industries: 2-CI-5A-5, 2-CI-5A-6



**PROCEDURES MANUAL**  
**Commonwealth of Pennsylvania • Department of Corrections**

**Policy Subject:**

**Inmate Discipline**

**Policy Number:**

**DC-ADM 801**

**Date of Issue:**

**January 9, 2024**

**Authority:**

**Signature on File  
Dr. Laurel R. Harry**

**Effective Date:**

**January 22, 2024**

Release of Information:

**Policy Document:** This policy document is public information and may be released upon request.

**Procedures Manual:** The procedures manual for this policy may be released in its entirety or in part, with the prior approval of the Secretary/designee. Unless prior approval of the Secretary/designee has been obtained, this manual or parts thereof may be released to any Department employee on an as needed basis only.

**DC-ADM 801, Inmate Discipline Procedures Manual**  
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## Section 1 – Misconducts/Rule Violations

### A. General

1. Every inmate under the jurisdiction of the Department is expected to follow Department rules and regulations. If an inmate violates Department rules and regulations, the violation shall be reported and disposed of either by an informal or formal process.<sup>1</sup> The informal resolution process shall be used for those violations that are considered less serious in nature, while the formal resolution process shall be used for violations of a more serious nature. The **Misconduct Charges (Attachment 1-A)** provides a list of prohibited behavior that may result in the commencement of disciplinary procedures. As explained in **Section 2** of this procedures manual, only Class I charges #26 through #46 are subject to informal resolution by the Unit Management Team. Class I charges #1 through #25 shall be disposed of formally by the Hearing Examiner.
2. For inmates on the active Mental Health/Intellectual Disability (MH/ID) Roster, those suffering from a serious mental illness (SMI) (refer to Department policy **13.8.1, “Access to Mental Health Care,” Section 10**), **youthful inmates (under the age of 18), pregnant inmates,<sup>2</sup> inmates eight weeks postpartum, and those with an Individualized Education Plan (IEP)**, informal resolution to include assignment to the Residential Treatment Unit (RTU) or other appropriate treatment program/unit can be considered with input from the Psychiatric Review Team (PRT).

### B. Misconduct/Rule Violations Reports

Every rule violation is to be reported via a **DC-141, Part 1, Misconduct Report (Attachment 1-B)**. An inmate charged with any of the listed violations shall receive a copy of the report.<sup>3</sup>

1. The **DC-141, Part 1** is to be used to give notice to the inmate of the rule violation(s) with which he/she has been charged and to report the facts upon which the charges are based. The **DC-141, Part 1** shall be used as evidence against the inmate during the misconduct hearing or informal resolution **meeting**.<sup>4</sup>
2. The **DC-141, Part 1** shall be written by either the charging staff member or contract service provider who has personal knowledge of the rule violation. On an as-needed basis, the **DC-141, Part 1** may be written by a staff member at the direction of a person who has personal knowledge of the misconduct; in such cases, the **DC-141, Part 1** must include a justification as to why the individual with personal knowledge did not write the report.

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<sup>1</sup> 5-ACI-3C-01, 4-ACRS-3A-07, 2-CI-5A-5, 2-CI-5A-6

<sup>2</sup> 5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33

<sup>3</sup> 4-ACRS-6C-02

<sup>4</sup> 5-ACI-3C-07, 5-ACI-3C-08



3. The **DC-141, Part 1** shall be written and submitted to the Shift Commander or Officer in Charge before the tour of duty concludes, **or** the same day/shift that the charging staff member or contract service provider has knowledge of the violation. If not, the report shall include a justification for the delay.<sup>5</sup>
4. The **DC-141, Part 1** shall be investigated as required, reviewed and approved by the Shift Commander, prior to service of the **DC-141, Part 1** on the inmate. The Shift Commander, as an alternative to approving the misconduct, may refer the matter for informal resolution in accordance with **Section 2** of this procedures manual. The Shift Commander shall enter all pertinent information regarding the misconduct into the Department Misconduct Tracking System.
  - a. The Shift Commander's investigation shall include a determination of the inmate's mental health status. The Licensed Psychologist Manager (LPM)/Mental Health Coordinator (MHC) or designee will provide the active MH/ID Roster daily to the Shift Commander.
  - b. If the inmate is carried on the active MH/ID Roster, **a youthful inmate (under the age of 18), pregnant,<sup>6</sup> eight weeks postpartum, or has an IEP** and the misconduct is non-violent in nature (i.e., misconduct charges #26 to #53) the Shift Commander will refer the misconduct for informal resolution except in cases where the Shift Commander determines after investigation that the nature of the misconduct warrants a formal hearing.<sup>7</sup> In such cases, the Shift Commander must provide material justification for his/her decision. A material justification must include specific articulated details about why the behavior/incident presented an imminent security risk to the orderly operation of the facility. If the Hearing Examiner determines that the justification is insufficient, the referral for formal hearing will be denied.
  - c. If the inmate is carried on the active MH/ID Roster, the Shift Commander must complete the general information section of the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form (Attachment 1-C)** as part of the investigation of the misconduct. Upon completion of the general information section, the Shift Commander shall forward the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form**, along with a copy of the **DC-141, Part 1**, to the designated e-mail resource account for the facility's LPM/MHC/designee.
  - d. If the misconduct is drug-related, the charged inmate will immediately be prohibited from having contact visits. Drug-related misconducts include dealing, using (including positive drug test results or refusal to submit to drug testing), or possessing illegal or non-prescribed drugs and/or drug paraphernalia. This special security precaution will commence immediately and shall continue pending disposition of the charge(s) as outlined in Section 4 of this procedures manual. These misconducts will not be

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<sup>5</sup> 5-ACI-3C-07

<sup>6</sup> 5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33

<sup>7</sup> 5-ACI-3C-05

referred for informal resolution. Prior to service of the misconduct report, the Shift Commander shall document, “Non-Contact Visitation Imposed – Drug-Related Misconduct” within the Immediate Action Taken And Reason section of the **DC-141, Part 1**.

5. The staff member authoring the misconduct report or the Shift Commander may make a referral to psychology utilizing the **DC-97, Mental Health Referral Form** (refer to Department policy **13.8.1, Section 1**), regardless of roster status, if the inmate’s behavior suggests serious mental illness.

### **C. Attempted Suicide or Self-Injurious Behavior**

1. An inmate who attempts suicide or engages in self-injurious behavior (SIB) whether mentally ill or otherwise, shall not be subjected to discipline for that behavior. Attempted suicide or SIB may include, but is not limited to the following:
  - a. Superficial Self-Injury – a socially unaccepted behavior that is generally a response to a psychological crisis **resulting** in tissue damage and **occurring without** subjective suicidal intent, **including** non-life threatening scratching and cutting;
  - b. Stereotypic Self-Injury – intense repetitive behaviors to include:
    - (1) biting self;
    - (2) head banging;
    - (3) punching self; and/or
    - (4) jumping.
  - c. Major Self-Injury – the most extreme form of SIB which may result in serious injury or death to include:
    - (1) setting fire to self;
    - (2) amputation of limb or other tissue;
    - (3) ingestion of a toxic substance or a foreign body; and/or
    - (4) hanging.
2. A **DC-141, Part 1 Misconduct Report** shall NOT be issued for the following:
  - a. to discipline an inmate for any of the criteria listed in **Subsection C.1. above** or related behaviors. An incident report shall be written and a **DC-141, Part 1**, Other report may be written to confine the inmate in Administrative Custody (AC), including Psychiatric Observation Cell (POC) or Diversionary Treatment Unit (DTU), if his/her

behavior presents a danger to him/herself or others. The staff member authoring the misconduct report or the Shift Commander shall make a referral to psychology utilizing the **DC-97** when filing the incident report;

- b. destruction of property or possession of contraband when related to an attempted suicide or SIB. For example, misconduct reports shall not be issued in cases involving destruction of sheets to fashion a noose, inmate's use of a razor or broken glass to cut himself/herself; in such cases, misconduct reports should not be issued for destroying, altering, tampering with, or damaging property.
  - c. for an inmate's non-assaultive behavior in aid of an attempted suicide or SIB. For example, cases where an inmate covers camera or cell door and engages in a suicide attempt or SIB, a misconduct report should not be issued for refusing to obey an order or destroying, altering, tampering with, or damaging property; and/or
  - d. for any threatening statements made as an immediate precursor to, while engaged in, or in the immediate aftermath of an SIB. Such threats should be documented via incident report.
3. A **DC-141, Part 1 Misconduct Report** MAY be written for assaultive behavior engaged in by the inmate during suicidal behavior or SIB (i.e., an inmate spits on, strikes, etc. staff who have responded to the scene or who are restraining or in the process of transporting the inmate).

#### **D. Service of Misconduct Report**

1. The inmate shall be personally served with the **DC-141, Part 1** the same day the report is written.<sup>8</sup> If the **DC-141, Part 1** is not served the same day the report is written, the Shift Commander/designee shall determine why the report was not served and supply justification on the **DC-141, Part 1**.
  - a. An inmate admitted to the POC shall not be served with the **DC-141, Part 1** until after the inmate is released from the POC. Once the inmate is released from the POC the **DC-141** may be served and the justification on the **DC-141, Part 1** shall document that the POC commitment was the reason for the delayed service.
  - b. The hearing room officer is responsible to maintain unserved **DC-141** reports for inmates housed in the POC and to ensure that service is effectuated once the inmate is released from the POC.
2. Someone other than the charging staff member or contract service provider shall serve the **DC-141, Part 1**. At Community Corrections Centers (CCCs) the charging staff member or contract service provider may serve the **DC-141, Part 1**.

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<sup>8</sup> 5-ACI-3C-11, 4-ACRS-6C-03

3. The staff member or contract service provider who serves the **DC-141, Part 1** shall record the date and time of service on the **DC-141, Part 1** immediately prior to giving the inmate a copy of the **DC-141, Part 1**.
4. The **DC-141, Part 2(A), Inmate Request for Representation and Witnesses Form (Attachment 1-D)** and the **DC-141, Part 2(C), Hearing Supplement, Inmate Version and Witness Statements Form (Attachment 1-E)** shall be delivered to the charged inmate with the **DC-141, Part 1**. The inmate shall fill out the **DC-141, Part 2(A)**, if he/she wishes representation and/or witnesses, and submit it to the block officer or CCC staff member no later than 9:00 a.m. the next day. The block officer shall sign the **DC-141, Part 2(A)**, give a copy to the inmate, and forward to the Hearing Examiner. The inmate shall bring the **DC-141, Part 2(C)** to the hearing. The **DC-141, Part 2(A)** and **DC-141, Part 2(C)** shall be properly filled out with the inmate's court commitment name and Department number, be free of unrelated symbols, including © and/or assumed titles, have a basis in Pennsylvania law and/or Department policy, and be specific to the misconduct.
5. If the inmate is an active MH/ID inmate, the Shift Commander will provide the LPM/MHC/designee a copy of the **DC-141, Part 1** and the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form** with the general information section completed by the end of his/her shift. The forms shall be submitted electronically to the designated Outlook resource account for the facility's LPM/MHC/designee.
6. Within 24 hours (or as soon as normal facility operations permit) of receipt of a copy of the **DC-141, Part 1** and the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form**, the LPM/designee will conduct an interview with the inmate to assess the inmate and complete the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form**. The inmate will be offered the opportunity to have the interview occur out-of-cell.
7. The **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form** will be signed off by the LPM/designee. The evaluating mental health professional shall not have a current treatment relationship with the inmate.
8. If during the assessment the mental health professional determines the inmate requires a more urgent level of treatment, an appropriate referral shall be made (e.g., mental health commitment).
9. Following the interview with the inmate on the active MH/ID Roster, the LPM/designee will report his/her findings to the Hearing Examiner or other appropriate decision maker for use in his/her decision making process.
10. The Hearing Examiner or other decision maker shall consider the mental health recommendations, if any, before making a disposition in such a case.

## **E. Pre-Hearing Confinement**

Pre-hearing confinement is not to be used routinely and shall be used only upon approval of the Shift Commander. The Shift Commander shall assess the incident and make the determination for pre-hearing confinement. When an alleged rule violation is reported, an appropriate investigation is begun within 24 hours of the time the violation is reported, unless there are exceptional circumstances for delaying the investigation.<sup>9</sup> The Facility Manager/designee shall review the placement of the inmate within **24** hours of placement in pre-hearing confinement.<sup>10</sup> Before utilizing pre-hearing confinement with inmates on the active MH/ID Roster, all other alternative measures shall be explored, including confinement in their housing unit.

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<sup>9</sup> 5-ACI-3C-09

<sup>10</sup> 5-ACI-3C-10

**A. Class I Charges (Formal Resolution Only)**

1. Assault	14. Involuntary deviate sexual intercourse
2. Murder	15. Threatening an employee or their family with bodily harm
3. Rape	16. Fighting
4. Arson	17. Threatening another person
5. Riot	18. Threatening, harassing, or interfering with a Department K-9 or mounted patrol horse
6. Escape	19. Engaging in sexual acts with others or sodomy
7. Robbery	20. Wearing a disguise or mask
8. Burglary	21. Failure to report an arrest for any violation of the Pennsylvania Crimes Code (CCCs only)
9. Kidnapping	22. Possession or use of a dangerous or controlled substance
10. Unlawful restraint	23. Possession or use of intoxicating beverage
11. Aggravated assault	24. Extortion or blackmail
12. Voluntary manslaughter	25. Sexual harassment
13. Extortion by threat of violence	

**B. Class I Charges (Eligible for Informal Resolution)**

26. Any criminal violation of the Pennsylvania Crimes Code not set forth above (shall be specified)	37. Violation of visiting regulations
27. Tattooing	38. Destroying, altering, tampering with, or damaging property
28. Indecent exposure	39. Refusing to work, attend school, attend mandatory programs, or encouraging others to do the same
29. Engaging in, or encouraging unauthorized group activity.	40. Unauthorized use of the mail, tablet, kiosk, or telephone
30. Breaking restriction, quarantine, or informal resolution sanction.	41. Failure to stand for count or interference with count
31. Gambling, or conducting a gambling operation, or possession of gambling paraphernalia.	42. Lying to an employee
32. Possession or circulation of a petition, which is a document signed by two or more persons or a mass-produced document sent from an outside source that seeks the signature of one or more inmates and in either case, requests or demands that something happen or not happen, without the authorization of the Facility Manager.	43. Presence in an unauthorized area
33. Using abusive, obscene, or inappropriate language to or about an employee.	44. Loaning or borrowing property
34. Violation of conditions of <b>SDTP</b>	45. Failure to report the presence of contraband
35. Refusing to obey an order	46. Theft of services (i.e., cable TV or other facility services)
36. Possession of contraband including money, implements of escape, non-prescribed drugs (or drugs which are prescribed, but the inmate is not authorized to possess), drug paraphernalia, poisons, intoxicants, materials used for fermentation, property of another, weapons, or other items which in the hands of an inmate present a threat to the inmate, others, or to the security of the facility.	

When an inmate is charged under this section with possession of an item of contraband which is a weapon or item which in the **inmate's** hands presents a threat to others or to the security of the facility, and the item also has a legitimate use in the area discovered, credible evidence that the item has been used only for the legitimate purpose shall be considered to mitigate the rule violation to a Class II.

Possession of drugs (as determined by laboratory analysis), alcohol, poisons, and/or weapons are not eligible for informal resolution.

Large quantities of tobacco products determined to be a threat to the security of the facility may be charged under this section. Otherwise, contraband tobacco will fall under the C. Class II #50 charge below.

**C. Class II Charges (Eligible for Informal Resolution)**

47. Body punching or horseplay	51. Possession of any item not authorized for retention or receipt by the inmate not specifically enumerated as Class I contraband
48. Taking unauthorized food from the dining room or kitchen	52. Any violation of a rule or regulation in the Inmate Handbook not specified as a Class I misconduct charge
49. Failure to report or unexcused absence from work, school, or mandatory programs	53. Kissing or inappropriate physical contact.
50. Smoking where prohibited or possession of any tobacco products	

Any attempt to commit any of the above listed charges shall constitute a misconduct of the same classification as the completed act.



DC-141 PART 2(C)  
Rev. 9/2009 HEARING SUPPLEMENT  
INMATE VERSION AND WITNESS STATEMENTS

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS

DC Number	Name	Facility	No. from PART I
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<b>INMATE'S VERSION</b>			

WHITE – DC-15 YELLOW – Inmate Cited PINK – Staff Member Reporting Misconduct GOLDENROD – Deputy Superintendent



## **Section 2 – Informal Resolution<sup>1</sup>**

### **A. Eligibility**

1. The rule violation charges eligible for informal resolution are:
  - a. all Class I charges **#26** through **#46**; and
  - b. all Class II charges.
2. The Shift Commander shall review all eligible **DC-141 Part 1, Misconduct Reports** for informal resolution. The staff member issuing the **DC-141, Part 1** may recommend informal resolution for eligible charges, but the Shift Commander, who shall base his/her choice on the relative seriousness of the misconduct, the inmate's status on the MH/ID Roster, and the inmate's previous misconduct history, shall make the decision subject to the following:
  - a. the Shift Commander shall justify the reason why an eligible charge was not referred for informal resolution under the immediate action section of the **DC-141, Part 1**; and
  - b. if the inmate is **pregnant or eight weeks postpartum**, a youthful **inmate (under the age of 18)**, **has an Individualized Education Plan (IEP)**, or carried on the active MH/ID Roster and the misconduct is non-violent in nature (i.e., misconduct charges **#26** through **#53**) the material justification must include specific articulated details about why the behavior/incident presented an imminent security risk to the orderly operation of the facility. If the Hearing Examiner determines that the justification is insufficient, the referral for formal hearing will be denied.
3. All misconducts selected for informal resolution shall be logged on the informal resolution log, entered into the Automated Misconduct Tracking System, and forwarded to the Unit Management Team for disposition. The **DC-141, Part 1s** selected for a hearing shall be forwarded to the Hearing Examiner after being logged into the Automated Misconduct Tracking System.
4. The Unit Manager/designee, and at least one other member of the Unit Management Team shall meet with the inmate for disposition of the charges within seven working days. The reporting staff member is encouraged, but not required, to attend the meeting. No assistance or witnesses are permitted at these meetings. The inmate shall not submit a **DC-141, Part 2(C), Inmate Version and Witness Statements Form** (refer to **Section 1** of this procedures manual) but shall be permitted to give his/her version of the events at the meeting.

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<sup>1</sup> 5-ACI-3C-02, 5-ACI-3C-05

**B. Informal Resolution Action Form**

1. The Unit Manager/designee may take one of the following actions and note the action taken on the **Informal Resolution Action Form (Attachment 2-A)**:
  - a. no action;
  - b. reprimand and warning;
  - c. up to 14 days cell restriction as described in **Section 4** of this procedures manual;
  - d. up to 14 days loss of specified privileges (telephone, yard, day room, **tablet usage, kiosk access**, etc.);
  - e. 14 days loss of commissary;
  - f. assignment of additional work duties for which the inmate shall not be compensated, for up to 14 days;
  - g. loss of job for work-related misconducts;
  - h. if the inmate is carried on the active MH/ID Roster, a youthful ***inmate (under the age of 18), pregnant,<sup>2</sup> eight weeks postpartum, or has an IEP***, assignment to the Residential Treatment Unit (RTU) or other appropriate treatment program/unit can be considered with input from the Psychiatric Review Team (PRT);
  - i. assess restitution for damaged/destroyed state items/property, with the inmate's agreement for payment ***which shall require the inmate's signature on both the Informal Resolution Action Form, and the DC-138A, Cash Slip***. If the inmate refuses to agree to make restitution ***or sign the documents described above***, the matter shall be referred to the Hearing Examiner for formal resolution; or
  - j. refer back to the Hearing Examiner for formal resolution if additional information indicates that the situation is more serious than determined initially and provide the rationale for such referral. The rationale for referral to formal hearing must be provided on the **Informal Resolution Action Form** by the Unit Manager/designee who made the determination. In this case, the **DC-141, Part 1** shall be returned to the Shift Commander, logged into the Automated Misconduct Tracking System, and forwarded to the Hearing Examiner for a hearing. The 24-hour to seven-day hearing time limit starts when the Shift Commander receives the **DC-141, Part 1** back from the Unit Management Team.
2. The copy of the **Informal Resolution Action Form** designated for the inmate is given to him/her at the conclusion of the meeting. All other copies of the **Informal Resolution Action Form** are to be disseminated as indicated on the form.

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<sup>2</sup> 5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33

### **C. Completion of Informal Resolution**

1. Upon the completion of the informal resolution meeting, the Unit Manager will forward a copy of the completed **Informal Resolution Action Form** to the staff member responsible for maintaining the data in the Automated Misconduct Tracking System.
2. The inmate may appeal the informal resolution, in accordance with **Section 5** of this procedures manual, only in those cases where the inmate believes that the sanction is disproportionate to the offense.
3. If the inmate refuses to attend **and participate in** the informal resolution meeting, **to include signing the Informal Resolution Action Form**, the Unit Manager shall return the **DC-141, Part 1** to the Shift Commander to be logged into the Automated Misconduct Tracking System, and forwarded to the Hearing Examiner for formal resolution. The 24-hour to seven-day hearing time limit begins when the Shift Commander receives the **DC-141, Part 1** back from the Unit Management Team. The refusal to attend the informal resolution shall also be recorded on the **Informal Resolution Action Form** and the form should then be forwarded with the misconduct packet as rationale for referral to the formal hearing process.
4. For the purpose of the Pennsylvania Additive Classification Tool (PACT), informal resolutions are not considered as misconducts, but should be reflected on applicable block and work reports.

## **Section 3 – Misconduct Hearings**

### **A. General**

1. The Hearing Examiner shall conduct the misconduct hearing.<sup>1</sup> The facility is responsible for providing security for the Hearing Room, the Recorder, and **an** Escorting Officer. The facility will provide at least one Corrections Officer for Hearing Room security. This officer will be physically present in the Hearing Room any time an inmate is in the room. The Recorder may assume this function at the discretion of the facility.
2. The misconduct hearing shall be scheduled no less than 24 hours and no more than seven working days, excluding weekends and state holidays, after notice of the charge is served. The inmate shall be **afforded at least 24 hours to prepare for the hearing from the date and time that the misconduct report is served. The inmate may elect to waive the 24 hours preparation in writing by signing the DC-141, Part 2(D), Waiver of Disciplinary Procedures (Attachment 3-A).**<sup>2</sup> The Hearing Examiner may be involved in the scheduling process where a case is continued or postponed.
3. An inmate with a serious mental illness (SMI) (refer to Department policy **13.8.1, “Access to Mental Health Care,” Section 10**), may be assisted in preparing for a misconduct hearing by a Certified Peer Specialist as part of the Certified Peer Specialist’s duties. Assistance shall consist of:
  - a. meeting with the inmate and ensuring that the inmate has obtained the correct documents, policies, copies and forms;
  - b. that the inmate has access to this procedures manual and understands procedure and requirements related to the disciplinary process; and
  - c. assistance in preparing documents that are stylistically and grammatically suitable for submission.

**NOTE:** Assistance in preparing for a misconduct hearing will not include providing legal advice, advocacy or representation. The assigned Certified Peer Specialist will have no connection with the underlying facts of the misconduct and cannot have been a witness in the underlying case.

4. The Hearing Examiner is solely responsible for decisions of credibility and guilt or innocence. Any sanction is to be decided by the Hearing Examiner.

**NOTE:** An inmate who receives a misconduct, while sentenced to **State Drug Treatment Program (SDTP)**, and if found guilty of any charge, will have the sanction deferred pending referral to and review by the **Division** of Treatment Services (DTS), Chief of

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<sup>1</sup> 5-ACI-3C-15, 4-ACRS-6C-03

<sup>2</sup> 5-ACI-3C-11, 5-ACI-3C-13, 5-ACI-3C-16, 4-ACRS-6C-02

Treatment/designee, the Hearing Examiner shall be advised of the same and shall hand the sanction down to the charged inmate.

5. The Hearing Examiner may elect to conduct the misconduct hearing in the hospital area, Restricted Housing Unit (RHU) or location other than the Hearing Room.
6. Videoconferencing equipment may be used to conduct misconduct hearings and/or hearings involving assessment of costs in accordance with Department policy **1.1.10, “Videoconferences.”**
7. The inmate shall be present during the misconduct hearing unless the inmate waives that right using the **DC-141, Part 2(D)** or refuses to attend.<sup>3</sup>
8. If the charged inmate becomes disruptive at the hearing or refuses to follow the **Hearing Examiner’s** instructions, **the inmate** shall be removed and the hearing conducted without the inmate being present.<sup>4</sup>
9. Before conducting a hearing with an inmate who is on the active Mental Health/Intellectual Disability (MH/ID) Roster, the Hearing Examiner will ensure he/she has received a **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form** (refer to **Section 1** of this procedures manual) from the Licensed Psychologist Manager (LPM)/Mental Health Coordinator (MHC)/designee to utilize in his/her deliberations and sanctioning.
10. When conducting a hearing with an inmate who is not on the active MH/ID Roster, but who appears to be exhibiting active mental health symptoms or behavior suggesting intellectual disability, the Hearing Examiner will postpone the hearing in accordance with **Subsection G. below** and will complete and forward the **DC-97, Mental Health Referral Form** (refer to Department policy **13.8.1, Section 1**) immediately following the hearing and submit it to the psychology department for review in accordance with Department policy **13.8.1, Section 1**.
11. The appeal process will comply with **Section 5** of this procedures manual and Department policy **DC-ADM 804, “Inmate Grievance System.”**
12. The Hearing Examiner will ensure complete records of all proceedings are maintained for a period of two years in the Hearing Examiner’s Office.<sup>5</sup>

## **B. Assistance During a Hearing**

1. In cases when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his/her own behalf, assistance shall be permitted.<sup>6</sup> The criteria for

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<sup>3</sup> 5-ACI-3C-16

<sup>4</sup> 5-ACI-3C-16

<sup>5</sup> 5-ACI-3C-15

<sup>6</sup> 5-ACI-3C-18

capability is the inability of the inmate to understand the English language or the inability to read or understand the charges and/or the evidence. The requested assistant may decline to provide assistance.

2. The Hearing Examiner shall approve/disapprove requests for an inmate to have assistance at the hearing.
3. If approved by the Hearing Examiner, the inmate shall be permitted assistance at the hearing from any staff member or any inmate in the same population status.<sup>7</sup>
4. The inmate shall be permitted to meet with the assistant for an appropriate period before the hearing.
5. Hearing Examiners will only utilize the Department's contracted service provider for interpretation/translation for inmates during hearings.
6. If the charged inmate refuses to recognize the jurisdiction of the Department and/or refuses to swear or affirm that his/her testimony shall be truthful, this shall be interpreted as a lack of good faith that taints any testimony given. The Hearing Examiner may opt to conduct a hearing in absentia based upon the inmate's refusal to comply with the affirmation direction.

### **C. Inmate Version**

At the hearing, the charge(s) shall be read to the inmate. The Hearing Examiner shall request the inmate's plea to each individual charge. The inmate may submit a written version or may orally present his/her version that shall be summarized as part of the hearing record.<sup>8</sup>

### **D. Witnesses**

1. The Hearing Examiner may approve the presence of a staff member or witness, only if the staff member or witness has knowledge of the incident, is present on facility grounds, and only if the testimony is needed to establish the guilt or innocence of the inmate.<sup>9</sup>
2. Up to three relevant witnesses, who have been properly requested, may be permitted. One of the three witnesses may be the staff member who witnessed the misconduct violation, or the charging staff member.<sup>10</sup>
  - a. The inmate shall state on the **DC-141, Part 2(A), Inmate Request for Representation and Witnesses Form** (refer to **Section 1** of this procedures manual) why the witness is relevant to the hearing. The witness shall be a staff member, official volunteer, contract service provider, or an inmate, unless the hearing is

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<sup>7</sup> 5-ACI-3C-18

<sup>8</sup> 5-ACI-3C-17

<sup>9</sup> 5-ACI-3C-17

<sup>10</sup> 5-ACI-3C-17

conducted at a Community Corrections Center (CCC), where civilian witnesses may be permitted. If the Hearing Examiner denies the requested witnesses, the reasons for denying such a request shall be stated in writing.<sup>11</sup>

- b. If the inmate properly requests a witness who is not available at the time of the hearing, the inmate may elect to either waive the seven working days requirement or have the witness execute a written statement under oath which shall be presented in lieu of live testimony (subject to the penalties for un-sworn falsification to authorities). If the inmate elects to have the witness present, the hearing shall be rescheduled at the earliest time after the witness is available.
  - c. If an inmate witness or assistant becomes disruptive at the hearing or refuses to follow the instructions given by the Hearing Examiner, he/she shall be removed and the hearing conducted without the witness or assistant being present.
3. The Hearing Examiner may question any witness. The charged inmate shall be permitted a reasonable opportunity to pose relevant questions to any adverse witness. The Hearing Examiner shall control the extent of questioning.
  4. The Hearing Examiner shall make determinations of credibility.
  5. All testimony shall be under oath.
  6. If the inmate elects to plead guilty or waive his/her right to a hearing, no witnesses shall be required.
  7. When a misconduct charge is based upon information supplied by a confidential informant, the procedures listed below shall be followed:
    - a. An in-camera hearing (without the charged inmate present) shall be conducted to determine the reliability of the informant.<sup>12</sup>
      - (1) how, where, and when the informant was in a position to observe the violation or gain personal knowledge of the violation;
      - (2) what other witnesses have corroborated the informant's statement and how; or
      - (3) how and when the informant gave reliable information in the past.
    - b. The information provided by the informant, but not the identity of the informant, shall be disclosed to the charged inmate during the hearing. The charged inmate shall have the opportunity to respond to the facts presented in the informant's statement.

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<sup>11</sup> 5-ACI-3C-17

<sup>12</sup> 5-ACI-3C-16

- c. In cases where the information provided by the informant could itself reveal the identity of the informant, the Hearing Examiner may withhold identifying information from the charged inmate.<sup>13</sup>

**E. Waivers<sup>14</sup>**

1. An inmate may voluntarily waive the hearing process outlined in this policy at any time prior to the hearing's completion. The inmate may also waive any witness request or time limitations relating to the hearing or notice of service.<sup>15</sup>
2. Every waiver shall be in writing and shall be signed by the charged inmate.

**F. Inmate Refusal to Attend Hearing<sup>16</sup>**

1. An inmate who refuses to attend a hearing shall be asked to sign a **DC-141, Part 2(D)** advising that he/she has a right to a hearing but may waive that right.
2. If the inmate refuses to attend the hearing or sign a waiver, two staff members who witness the refusal shall sign the **DC-141, Part 2(D)**. The hearing shall be conducted without the charged inmate present. The Hearing Examiner shall determine guilt or innocence, and a sanction shall be imposed if the inmate is found guilty.
3. The inmate may not appeal the results of a hearing he/she refused to attend.

**G. Inmate Unable to Attend Hearing<sup>17</sup>**

1. If in the opinion of the Hearing Examiner, the inmate is unable to participate in a hearing, the Hearing Examiner shall postpone the hearing until the inmate is able to participate. The decision to postpone a hearing under this section shall be in writing and shall be made at the time the hearing would have been held.

**NOTE:** In cases where the hearing is postponed and the inmate appears to be exhibiting active mental health symptoms or behavior suggesting intellectual disability, the Hearing Examiner will complete and forward the **DC-97** immediately following the meeting with the inmate and submit it to the psychology department for review in accordance with Department policy **13.8.1, Section 1**.

2. A postponement will not exceed 90 calendar days unless otherwise approved by the Hearing Examiner Supervisor.

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<sup>13</sup> 5-ACI-3C-16

<sup>14</sup> 5-ACI-3C-12

<sup>15</sup> 5-ACI-3C-05

<sup>16</sup> 5-ACI-3C-12

<sup>17</sup> 5-ACI-3C-14



## **Section 4 – Disposition of Charges and Misconduct Sanctions**

### **A. Disposition of Charges**

1. No later than seven calendar days after hearing all evidence, the Hearing Examiner shall determine: based upon the evidence obtained in the hearing process, including staff reports, the statements of the inmate charged, and the evidence derived from witnesses and documents, if a preponderance of evidence exists that the inmate committed the misconduct and issue a finding of guilt.<sup>1</sup>

**NOTE:** If an inmate is classified as seriously mentally ill (SMI) or is carried on the active Mental Health/Intellectual Disability (MH/ID) Roster, the Hearing Examiner should consider the assessment of mental health staff and any recommendations obtained from the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form** (refer to **Section 1** of this procedures manual).

2. After the Hearing Examiner reaches the decision, the inmate shall be called before the Hearing Examiner to **receive** the decision.
3. If the inmate is found not guilty, that finding shall be recorded in writing. The inmate shall be given a copy of the decision. No rationale for the decision is required. All record of the misconduct shall be removed from the inmate's facility file and retained in a separate facility file until the inmate is released or transferred.<sup>2</sup>
4. If the inmate is found guilty, a written summary shall be prepared by using the **DC-141, Part 2(B), Disciplinary Hearing Report (Attachment 4-A)** that includes the facts relied upon by the Hearing Examiner to reach the decision, and the reasons for the decision. The **DC-141, Part 2(B)** shall also include findings of fact concerning the testimony of each witness presented. A copy of the **DC-141, Part 2(B)** shall be given to the inmate.<sup>3</sup> The inmate shall be advised that he/she has up to 15 calendar days to submit a written appeal to the Program Review Committee (PRC).<sup>4</sup>
5. The Hearing Examiner may impose costs against the inmate in accordance with **Section 8** of this procedures manual, if the inmate's misconduct results in financial loss or cost.
6. To permit recharge without determination of guilt or innocence, the Hearing Examiner may dismiss any misconduct charge without prejudice.
7. If an inmate is found guilty of a drug-related misconduct, the Hearing Examiner shall submit a **Drug-Related Misconduct Form** in accordance with Department policy **6.3.12, "Drug Interdiction"** to the Intelligence Captain. The **Drug-Related Misconduct Form** shall also include a copy of the **DC-141, Part 2(B)**. A copy of the **Drug-Related**

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<sup>1</sup> 5-ACI-3C-19

<sup>2</sup> 5-ACI-3C-21

<sup>3</sup> 5-ACI-3C-20

<sup>4</sup> 5-ACI-3C-23

**Misconduct Form** shall be given to the inmate and shall serve as notification to an inmate found guilty of a misconduct for illegal drugs, non-prescribed drugs, or controlled substances that he/she shall be prohibited from having contact visits for the period specified below (commencing from the date that the non-contact visitation order was issued in accordance with **Section 1** of this procedures manual). Drug-related misconducts include dealing, using (including positive drug test results or refusal to submit to drug testing), or possessing illegal or non-prescribed drugs and/or drug paraphernalia. The **Drug-Related Misconduct Form** will not be submitted for those misconducts involving the possession or use of intoxicating beverages. In addition, any case where an inmate is found guilty of a drug-related misconduct will be immediately referred to Alcohol and Other Drug (AOD) treatment.

1st offense - 180 days

2nd offense - one year

3rd offense - indefinite ban

8. After three years of an inmate's contact visiting privileges being suspended, and provided that the inmate has successfully participated in AOD Treatment, the inmate may request reinstatement of his/her visiting privileges by submitting a written request to the Facility Manager. Upon receipt of such a request, the Facility Manager shall review the request, make a recommendation of approval/disapproval, and forward it to the Executive Deputy Secretary for Institutional Operations (EDSI)/Regional Deputy Secretary. The EDSI/Regional Deputy Secretary shall determine if the inmate's visiting privileges are to be reinstated and inform the Facility Manager of the determination. The Facility Manager/designee shall inform the inmate of the decision.

## **B. Misconduct Sanctions<sup>5</sup>**

1. The Hearing Examiner shall impose misconduct sanctions.<sup>6</sup>
2. An inmate found guilty of a Class I Misconduct (charges #1 through and including #33) may be removed from his/her job assignment.
3. An inmate who is found guilty of a misconduct for #39 (refusing to work, attend school, or attend mandatory programs or encouraging others to do the same) for a second time, including an informal resolution, shall, in addition to any other penalty imposed, not be permitted the privilege of telephone (**except for access to the judicial process or family emergencies<sup>7</sup>**), tablet, or television until he/she returns to work, school, or the mandatory program. After a period of 90 days, upon application by the inmate, the PRC may terminate this restriction if the inmate's failure to return to the assignment is of no fault of his/her own.

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<sup>5</sup> 5-ACI-3C-01

<sup>6</sup> 5-ACI-4A-06

<sup>7</sup> 5-ACI-4B-25

4. In addition to the possible removal from his/her job assignment, one or more of the following sanctions may also be imposed for a Class I Misconduct:
  - a. assignment to Disciplinary Custody (DC) status for a period not to exceed 90 days per misconduct charge. **All time served in pre-hearing confinement, including any time confined for investigatory purposes, shall be credited to the sanction;**<sup>8</sup>
  - b. for an inmate who is a youthful **inmate** (under the age of 18), who is SMI, **pregnant, eight weeks postpartum, or has an Individualized Education Plan (IEP)**, DC assignments will be served under the Diversionary Treatment Unit (DTU); such inmates will not be housed in the Restricted Housing Units (RHUs) **or Extended Restricted Housing (ERH)**.<sup>9</sup> Operation of the DTU is governed by Department policy 13.8.1, “Access to Mental Health Care.” **Youthful inmates shall serve DC assignments under DTU conditions within their designated housing units to maintain sight and sound separation from all adult inmates as required by 28 C.F.R. §115.14(a);**

**NOTE:** In exceptional circumstances, such as when DTU or Secure Residential Treatment Unit (SRTU) beds are not immediately available, an inmate who is a youthful **inmate**, who is SMI, **pregnant, eight weeks postpartum, or has an IEP** may be temporarily placed in an RHU until a transfer to a DTU or SRTU can be effectuated; however, an inmate who is a youthful **inmate** or who is SMI may not be temporarily placed in the RHU **or ERH** if it has been clinically indicated (on the **Mental Health/Intellectual Disability Consultation for Disciplinary Disposition Form, refer to Section 1** of this procedures manual or otherwise) that RHU placement is inappropriate.

- (1) When a temporary RHU assignment must be made because no DTU/SRTU beds are available or expected to become available at the current facility, a transfer petition must immediately be filed requesting the inmate’s placement in a DTU bed. The petition must include a description of the exceptional circumstances that required temporary RHU placement. Upon receipt of the transfer petition, the **Bureau** of Population Management (BPM) will forward a copy of the transfer petition and the estimated transfer time to the Office of Chief Counsel.
- (2) All efforts should be made to effectuate transfers to the DTU as soon as possible and in no case may the temporary placement in the RHU exceed 13 days. If a transfer is not effectuated within 13 days, OPM will immediately notify the EDSI/Regional Deputy Secretary, the Office of Psychology, and the Office of Chief Counsel.
- (3) An inmate who is a youthful **inmate, who is SMI, pregnant, eight weeks postpartum, or has an IEP**, who is temporarily placed in the RHU will receive the same privileges available to inmates housed in the DTU including being

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<sup>8</sup>5-ACI-4B-07

<sup>9</sup>5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33

offered a minimum of 20 hours out-of-cell activity weekly. Ten of these hours are structured (e.g., run by appropriately credentialed staff), and ten of these hours are unstructured (e.g., yard/exercise, contact with peer specialists, etc.), beginning on the first day the inmate is placed in the RHU. **Sight and sound separation from adult inmates shall be maintained as noted in Subsection B.4.b. above.**

- (4) Each Monday, the RHU Unit Manager/designee will submit via email, to the Licensed Psychologist Director at Central Office and the respective Regional Licensed Psychologist Manager, the log sheet of out-of-cell hours on the **DTU Accepted/Refused Structured Out-of-Cell Program Log** (refer to Department policy **13.8.1**) and the **DTU Accepted/Refused Unstructured Out-of-Cell Program Log** (refer to Department policy **13.8.1**) for all inmates with an SMI who were housed in the RHU during the prior week.
  - c. assignment to cell restriction for a period not to exceed 30 days per misconduct charge. Cell restriction is total confinement to general population cell, dorm area or cubicle, except for meals, showers, one formal religious service per week, loss of tablet, commissary, law library, and one one-hour of specified daily exercise period. Participation in school and programs is permitted for Class II Misconducts only;
  - d. loss of privileges for up to 180 days. Privileges lost shall be specifically identified and shall, where possible, be related to the misconduct violation. Privileges include television, radio, tablets, **access to kiosks**, other electronic equipment (excluding typewriters), telephone, commissary, yard and block out, **virtual visits, in-person visits**, and/or **all** visitation (visiting restrictions shall **be in accordance with Department policy DC-ADM 812, "Inmate Visiting Privileges,"** and as defined in **Subsection A.7. above**);<sup>10</sup>
- NOTE: Access to legal counsel and family emergency telephone contact is permitted.**<sup>11</sup>
- e. assessment of costs as a result of the inmate's behavior in accordance with **Section 8** of this procedures manual;
  - f. reprimand, warning, counseling;
  - g. final disposition of confiscated contraband;
  - h. revocation of outside program codes; and/or
  - i. limitation of commissary privileges excluding television, tablet, radio, and phone cards, to \$15.00 a week for up to one year following a finding of guilt for a misconduct involving gambling.

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<sup>10</sup> 5-ACI-4A-21, 5-ACI-4B-21

<sup>11</sup> 5-ACI-4A-26, 5-ACI-4B-25

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5. The Hearing Examiner may reduce the classification of any Class I misconduct (except Class I charges #1 through #15) to a Class II Misconduct.
6. Inmates found guilty of Class II misconduct charges are subject to one or more of the above sanctions except placement in DC status.
7. Time given for misconduct charges #1 through #14 shall be served in its entirety. An exception may be permitted for an inmate on the MH/ID Roster if the facility's mental health staff recommend that the sanction be reduced. For other misconducts, the PRC must consider a release to general population upon completion of half of the sanction imposed. The Facility Manager or PRC may change an inmate from DC to Administrative Custody (AC) status only upon expiration or upon completion of half of the DC sanction and only if the proper notice and hearing procedures are provided as outlined in Department policy **DC-ADM 802, "Administrative Custody Procedures."**
8. At any time, the Facility Manager/designee may reduce the disciplinary sanction imposed on any inmate other than those with misconduct charges #1 through #14, except as noted in **Subsection B.7. above**, based on the security needs of the facility.
9. An inmate with multiple misconduct sanctions whose DC time exceeds one year may be released to general population by approval of the PRC and the Facility Manager after completion of one year of misconduct-free behavior as long as the reduction of time does not involve charges #1 through #14, except as noted in **Subsection B.7. above**.
10. The disciplinary sanctions imposed by the Hearing Examiner may be suspended in accordance with Department policy **6.5.1, "Administration of Security Level 5 Housing Units," Section 3.**
11. If a misconduct hearing is conducted for an inmate in the **State Drug Treatment Program (SDTP)** and the inmate is found guilty:
  - a. the sanction is to be documented as "sanction deferred pending referral to and review by the Chief of Treatment, **Division** of Treatment Services (DTS)/designee;"
  - b. at the conclusion of the hearing, the entire Misconduct and Hearing Record shall be faxed/electronically scanned to the Chief Hearing Examiner's Office/designee and the Chief of Treatment, DTS/designee; and
  - c. all other misconduct procedures for **SDTP** inmates shall be in accordance with Department policy **7.4.1, "Substance Use Disorder (SUD) Treatment Programs."**

**C. Review of Misconduct Proceedings**

1. After the misconduct hearing has concluded, the Misconduct and Hearing Record shall be forwarded to the Facility Manager/designee for review. This review shall ensure that

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the hearing was conducted in accordance with procedures and that the actions taken conform to facility regulations.<sup>12</sup>

2. A record of the proceedings shall be included in the **DC-15, Inmate Record** as a permanent record of the proceedings.<sup>13</sup>

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<sup>12</sup> 5-ACI-3C-22

<sup>13</sup> 5-ACI-3C-15, 5-ACI-3C-20

## **Section 5 – Appeals<sup>1</sup>**

### **A. First Level of Appeal – Program Review Committee (PRC)**

1. An inmate who has been found guilty of a misconduct charge(s) may appeal to the PRC for initial review within 15 calendar days of **receiving the Hearing Examiner’s decision** by using the **DC-141, Part 2(E), Misconduct Hearing Appeal (Attachment 5-A)**. Inmates suffering from a serious mental illness (SMI) (refer to Department policy **13.8.1, “Access to Mental Health Care,” Section 10**) will not have their appeals rejected as untimely. The three valid basis for an appeal to the PRC are:
  - a. the procedures employed were contrary to law, Department directives, or regulations;
  - b. the punishment is disproportionate to the offense; and/or
  - c. the findings of fact were insufficient to support the decision.
2. Appeal from a finding of “not guilty” is not permitted; and, an appeal from an accepted guilty plea may only be advanced on the basis of **Subsections A.1.a.-b. above**.
3. Every appeal shall be in writing and shall be signed by the inmate using his/her court commitment name and Department number. Presenting documents in some other fashion, including, but not limited to the use of “©” in connection with an appeal, may be a cause for rejection of the appeal. Only one appeal submission to the PRC is permitted for each misconduct report.
4. An inmate may seek assistance from a staff member, a Certified Peer Specialist, or an inmate in the same population status in the preparation of an appeal.<sup>2</sup> The requested assistant may decline to provide assistance. The inmate appellant shall sign the appeal using his/her court commitment name and Department number. Presenting documents in some other fashion, including, but not limited to use of “©” in connection with an appeal, may be a cause for rejection of the appeal.
5. The PRC shall discuss pending misconducts/appeals with inmates who are **a youthful inmate** (under the age of 18), **pregnant, eight weeks postpartum, have an Individualized Education Plan (IEP)**, or who are designated as SMI. For SMI inmates who desire to pursue an appeal of a misconduct and who are housed in a specialized housing unit (Diversionary Treatment Unit [DTU], Secure Residential Treatment Unit [SRTU], etc.) or for whom PRC determines it is necessary, the PRC shall direct that a Certified Peer Specialist or an inmate in the same population status is assigned to assist the inmate in filing the appeal. Assistance shall consist of:
  - a. meeting with the inmate and ensuring that the inmate has obtained the correct documents, policies, and forms to file the appeal;

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<sup>1</sup> 5-ACI-3C-23

- b. ensuring that the inmate has access to this procedures manual and understands the procedures and requirements for completing the appeal forms;
- c. assistance in preparing documents that are stylistically and grammatically suitable for submission;
- d. ensuring that the inmate understands who/where the appeal is to be submitted; and
- e. ensuring that the inmate understands the deadline for filing of the appeal.

**NOTE:** Assistance will not include providing legal advice or representation. The assigned Certified Peer Specialist should not have a connection with the underlying facts of the misconduct and cannot have been a witness in the underlying case.

- 6. The appeal shall include a brief statement of the facts relevant to the appeal and issues complained of on appeal. Appeals that are not brief or that are found to be an attempt to harass, intimidate, or burden the reviewers or to distract them from their duties by placing a hardship on them to determine the appeal points, may be rejected on that basis. Further, the text of any appeal shall be legible and presented in a courteous manner, free of vulgarity and profanity or language or symbols attempting to harass, intimidate, or extort the reviewers.
- 7. The PRC shall address each issue raised by the inmate and may, at its discretion, consider any other matter relevant to the issues raised. In all cases, the PRC shall consider the mental health status of the inmate and if he/she suffers from an SMI. The PRC is not required to address issues not raised or issues unrelated to the instant misconduct.
- 8. The PRC shall have the authority to:
  - a. reject any appeal that does not conform to **Subsections A.1.-6. above**;
  - b. uphold the Hearing Examiner’s or Unit Management Team’s decision;
  - c. uphold the finding of guilt, but modify the punishment pursuant to the notice requirements in Department policy **6.5.1, “Administration of Security Level 5 Housing Units,” Section 1 and as defined within Section 4 of this procedures manual**, dealing with early release from the Restricted Housing Unit (RHU);
  - d. vacate the decision and remand back to the Hearing Examiner for a rehearing;
  - e. vacate the decision and charge to permit recharge and rehearing; or
  - f. dismiss the charge and prohibit recharge.



9. The PRC may not impose a greater punishment than has been designated by the Hearing Examiner. The PRC shall provide a brief written statement to the inmate of the reasons for its decision within seven working days of receipt of an appeal.

### **B. Second Level of Appeal – Facility Manager**

1. The inmate may appeal the decision of the PRC to the Facility Manager/designee within seven calendar days of receipt of the written PRC decision by using the **DC-141, Part 2(E)**. Inmates suffering from an SMI (refer to Department policy **13.8.1, Section 10**) will not have their appeals rejected as untimely. The requirements of **Subsections A.2.-6. above** shall also apply to the Second Level of Appeal. An appeal to this level may be rejected for the inmate's failure to comply with the requirements of **Subsections A.2.-6. above**. The three valid basis for an appeal to the Facility Manager/designee are:
  - a. the procedures employed were contrary to law, Department directives, or regulations;
  - b. the punishment is disproportionate to the offense; and/or
  - c. the findings of fact were insufficient to support the decision.
2. The Facility Manager/designee shall address all issues raised by the inmate and may, at his/her discretion, consider any other matter relevant to the issues raised. In all cases, the Facility Manager/designee shall consider the mental health status of the inmate and if he/she suffers from an SMI. The Facility Manager/designee is not required to address issues not raised or issues unrelated to the instant misconduct.
3. The Facility Manager/designee may make any decision that the PRC was permitted to make, as defined in **Subsection A.8. above**.
4. The decision of the Facility Manager/designee shall be in writing and shall be forwarded to the inmate within seven working days of receipt of the appeal. Any day that the Facility Manager/designee is absent from the facility shall not be included in the seven working days. In the event of annual leave or an extended absence by the Facility Manager/designee, a designee who was not on the PRC that heard the inmate's first level of appeal shall respond to the second level of appeal in place of the Facility Manager.

### **C. Final Appeal – Chief Hearing Examiner**

1. The Department intends to provide every inmate with a complete and timely review of all appeals properly raised to final review. The following steps have been established to ensure timeliness at final review while continuing to provide a thorough impartial review of the issues.
2. All final appeal submissions shall be mailed ***in a single envelope for each misconduct number*** and addressed to:

The Chief Hearing Examiner's Office  
1920 Technology Parkway  
Mechanicsburg, PA 17050

3. The inmate may appeal the decision of the Facility Manager/designee within seven calendar days of the receipt of the Facility Manager/designee's decision. Appeals that are addressed to the Secretary, Chief Counsel, or other Central Office Staff, are delivered to these individuals first, and then referred to the Chief Hearing Examiner's Office. Inmates suffering from an SMI (refer to Department policy **13.8.1, Section 10**) will not have their appeals rejected as untimely. Improperly addressed appeals may cause a delay in the response at final appeal.
  
4. An inmate who appeals his/her misconduct for final review shall provide the Chief Hearing Examiner's Office with a brief statement of the facts relevant to the appeal and issues complained of on appeal by using the **DC-141, Part 2(E)** and accompanied by the documents specified in **Subsection C.5. below** or available documentation relevant to the appeal. The requirements of **Subsections A.2.-6. above** shall also apply to the Final Level of Appeal. An appeal to this level may be rejected for the inmate's failure to comply with the requirements of **Subsections A.2.-6. above**. The three valid **grounds** for an appeal to the Chief Hearing Examiner's Office are:
  - a. the procedures employed were contrary to law, Department directives, or regulations;
  - b. the punishment is disproportionate to the offense; and/or
  - c. the findings of fact were insufficient to support the decision.

**NOTE:** Only one appeal for any misconduct may be submitted for final review.

5. A proper appeal for final review **shall** include photocopies of the:
  - a. Misconduct Report;
  - b. Hearing Examiner's Report;
  - c. Inmate Version and Witness forms (**if applicable/submitted at the hearing**);
  - d. Appeal to the PRC;
  - e. PRC's Response;
  - f. Appeal to the Facility Manager; and
  - g. Facility Manager/designee's response.
  
6. In the instance where appeals are received at Final Review and are absent the **DC-141 Part 2(E)**, but include all other necessary documents, the Chief Hearing Examiner's

Office will at that point consider the valid grounds and/or basis of appeal supplied on the previous **DC-141 Part 2(E)** forms that were submitted by the inmate at the first and second appeal levels.

7. The Chief Hearing Examiner's Office will not **reference incomplete appeals submitted and will not** return or furnish copies of any of the materials sent to the office for final review. **All paperwork received that is unrelated or not relevant to the misconduct appeal shall not be addressed.**
8. The Chief Hearing Examiner's Office shall review and respond to every misconduct appeal to final review within seven working days of receipt of all necessary records, as defined in **Subsection C.5. above**. The Chief Hearing Examiner's Office shall review the misconduct, the hearing report, and all appeals arising from either, and the specific basis, as defined in **Subsection C.4. above**, actually raised by the inmate in the appeal to final review. In all cases, the Chief Hearing Examiner's Office shall consider the mental health status of the inmate and if he/she suffers from an SMI. **Obtaining the necessary documents for review or other exceptional circumstances may create a justifiable delay in response to the inmate's appeal and permit an extension of the time for ruling on the appeal accordingly.**
9. Upon completion of final review, the Chief Hearing Examiner's Office shall respond in writing directly to the inmate when the Facility Manager/designee's decision is upheld.
10. When the decision of the Hearing Examiner, the PRC, or the Facility Manager/designee is reversed or amended, or when a matter is remanded, the Chief Hearing Examiner's Office shall prepare a letter to the inmate and a memorandum to the Facility Manager/designee. The Chief Hearing Examiner's Office shall forward the letter and memorandum to the appropriate Regional Deputy Secretary for review and signature.



## **Section 6 – Disciplinary Custody Status Inmates**

### **A. General Procedures<sup>1</sup>**

1. A Disciplinary Custody (DC) inmate is housed in a cell separate from general population and Administrative Custody (AC) status inmates.
2. An inmate in DC status is prohibited from using, purchasing, or possessing **electronic cigarettes** while confined in the Restricted Housing Unit (RHU).
3. An inmate in DC status shall not have the privileges of radio, television, telephone calls (**except for access to judicial process and family emergencies**),<sup>2</sup> kiosk access/tablet usage, or personal property (except toilet articles, written materials, and prescribed medications) unless approved by the Program Review Committee (PRC). **PRC may approve privileges (radio, television, telephone, kiosk access/tablet usage, personal property) to an inmate confined on DC. These additional privileges will be based on individual needs, safety and security, and the behavioral progress of the inmate. The approval of additional privileges shall be documented in the Inmate Cumulative Adjustment Record (ICAR).**
4. Commissary purchases are limited to approved items for personal hygiene, undergarments, and items needed for personal/legal correspondence (excluding pens/pencils). Outside purchases are prohibited.
5. Visits are limited to one **video** visit per month, which may be limited to weekdays only. Legal visits shall be permitted, in accordance with Department policy **DC-ADM 812, “Inmate Visiting Privileges.”** The inmate may be permitted one non-contact visit per month with his/her religious advisor.
6. In case of a verified emergency, the Unit Manager or a Commissioned Officer may approve a telephone call. Every approved emergency telephone call shall be logged in the RHU Logbook and in the inmate’s **DC-17X, Adjustment Record for Administrative and Disciplinary Custody Inmates**.
7. A DC status inmate shall be permitted to maintain in his/her cell any combination of personal property that fits into one standard sized records center box.
8. Each facility shall establish procedures to permit an inmate to exchange legal materials from his/her cell with stored legal materials once every 30 days. The PRC may authorize more frequent exchanges based upon a demonstrated need that the inmate requires additional exchanges for active litigation. Such legal materials exchange, however, may not exceed one per week.

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<sup>1</sup> 5-ACI-4A-02, 5-ACI-4A-04

<sup>2</sup> 5-ACI-4A-26, 5-ACI-4B-25

9. An inmate in DC status shall be provided access to the facility law library by requesting legal materials and/or by using the mini law library in accordance with Department policy **DC-ADM 007, “Access to Provided Legal Services.”** Other library books may be requested on a weekly basis.<sup>3</sup>
10. An inmate in DC status shall be provided with an orange RHU jumpsuit and slip on canvas footwear. Basic issue toilet articles shall be provided upon request. Three pairs of personal undergarments are permitted. No other personal property is permitted. Outerwear for exercise shall be provided as needed to include the use of the inmate’s state-issued coat and boots.<sup>4</sup>
11. A DC status inmate shall receive one hour of exercise per day, **five** days per week **during the first 30 days of placement in restrictive housing.**
12. **A DC status inmate housed in restrictive housing beyond 30 days shall be offered three hours of cumulative out-of-cell activity (one of these three hours shall be exercise), seven days per week, in accordance with Department policy 6.5.1, “Administration of Security Level 5 Housing Units,” Section 1.**
13. **Facilities maintain latitude to develop out-of-cell activity schedules, according to their available resources, such as, but not limited to, yard, dayroom, unstructured, and structured activities. Those activities which occur infrequently, are unscheduled, or transpire on an individual basis, such as visits, phone calls, or medical appointments, shall not count towards the three hours of offered activity.**
14. **A DC status inmate** shall be permitted a minimum of three showers and three shaves per week.
15. The PRC shall interview each inmate in DC status every 90 days unless recommended for earlier review by the inmate’s Unit Management Team.
16. The Counselor shall see each inmate weekly. Each inmate’s Unit Management Team shall review his/her case monthly. The Counselor’s weekly interview and the Unit Management’s monthly review are to be documented in the ICAR. The Unit Management Team shall forward a recommendation for early release to the PRC, if appropriate.
17. A psychology staff member will be assigned to the RHU and will provide services consistent with Department policies **13.8.1, “Access to Mental Health Care”** and **6.5.1.**
18. When an inmate’s service of consecutive DC status is interrupted, for example, the inmate goes out on an Authorized Temporary Absence (ATA), his/her DC time is tolled. Any remaining DC time shall be served upon return to the facility or to the Department’s custody.

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<sup>3</sup> 5-ACI-4A-22, 5-ACI-4A-23, 5-ACI-4B-22, 5-ACI-4B-23

<sup>4</sup> 5-ACI-4A-15

**B. Youthful Inmates, Pregnant/Postpartum Inmates, Individualized Education Plans (IEP), and Inmates with a Serious Mental Illness (SMI)**

Youthful *inmates* (under the age of 18), *pregnant inmates*,<sup>5</sup> *inmates eight weeks postpartum, those with an IEP*, and inmates with an SMI will serve DC assignments in the Diversionary Treatment Unit (DTU) in accordance with **Section 4** of this procedures manual. Such inmates shall not be housed in the RHU. **Youthful inmates shall serve DC assignments under DTU conditions within their designated housing units to maintain sight and sound separation from adult inmates as required by 28 C.F.R. §115.14(a).**

**C. Special Housing Unit Transfers**

When an inmate is being recommended for transfer to a Special Housing Unit, the PRC shall review the recommendation with the inmate and inform him/her of the reason(s) for the transfer recommendation. The inmate shall be given the opportunity to respond to the rationale given and object to his/her placement in a Special Housing Unit, if he/she so desires. The recommendation shall be documented on the **DC-141, Part 4, Facility Manager’s Review (Attachment 6-A)**, with a copy to the inmate. The inmate may appeal the recommendation for Special Housing Unit transfer to the Facility Manager and to the Chief Hearing Examiner’s Office at Central Office, as outlined in **Section 5** of this procedures manual.

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<sup>5</sup> 5-ACI-4B-30, 5-ACI-4B-32, 5-ACI-4B-33

## **Section 7 – Community Corrections**

### **A. General Procedures**

1. The violation and sanctioning process related to paroled offenders housed in community corrections shall be conducted in accordance with the Universal Set of Rules procedures. The offender will be provided with, and sign for, these rules during orientation.
2. The violation and sanctioning process related to **State Drug Treatment Program (SDTP)** offenders housed in community corrections shall be conducted as follows:
  - a. Infractions that do not necessitate a **DC-141, Part 1, Misconduct Report**, requiring informal, but progressive and standard, sanctioning, shall be addressed in accordance with the Universal Set of Rules (USOR) procedures. In such cases, sanctioning staff in Community Corrections shall act as the designee for the Department's Chief of Treatment.
  - b. Infractions that result in issuance of a **DC-141** shall be referred to the Department's Chief of Treatment/designee in the **Division** of Treatment Services (**DTS**) for sanctioning in accordance with the **SDTP** Sanctioning Matrix.
3. If a **SDTP** offender is returned to a facility due to the seriousness or repetitiveness of a violation or because of relapse, the Center Director shall document the violation(s) on a **DC-141, Part 1**, using facility misconduct charges, and provide a copy to the facility.
  - a. A Hearing Examiner will conduct the hearing at the facility.
  - b. Misconduct reports will be processed and hearings conducted as outlined in **Section 3** of this procedures manual.

### **B. Appeals**

1. If a **SDTP** offender has been returned to a facility, appeals may be filed in accordance with **Section 5** of this procedures manual.
2. An inmate remaining at a Community Corrections Center (CCC) may appeal misconduct hearing results to the Director, Bureau of Community Corrections, **1101 South Front Street, Suite 5600, Harrisburg, PA 17104**.



## **Section 8 – Assessment of Financial Losses and Costs**

### **A. When the Cost is Known at the Time of the Misconduct Hearing**

1. The Department shall develop a list setting forth the actual financial loss or costs, of replacing standard items furnished to or used by an inmate. The list may include, but not necessarily be limited to, items such as bedding, food trays, and articles of clothing. The list may be updated as deemed necessary by the Department. Any such update may add or delete items from the list and may increase or decrease the financial loss or cost of items reflected on the **Cost of Replacing Commonly Damaged Items Listing (Attachment 8-A)**. A copy of this list, and any revisions to the list, shall be made available to each inmate.
2. The Misconduct Report shall include a statement describing the items and the actual amount of the reimbursement **as defined within the Cost of Replacing Commonly Damaged Items Listing**, that may be ordered as part of the sanction. A copy of the Misconduct Report shall be provided to the facility Business Manager upon service of the Misconduct Report. The facility may temporarily delay processing some or all expenditures from the inmate's account if the facility believes that the inmate is attempting to circumvent the potential assessment.
3. When a Hearing Examiner orders that an inmate reimburse the Department or another person for a financial loss or cost, **and that cost is defined within the Cost of Replacing Commonly Damaged Items Listing**, the Hearing Examiner may order the reimbursement as part of the misconduct hearing decision without conducting a further proceeding. If a financial loss or cost is to be assessed as part of the misconduct hearing decision, the inmate witnesses permitted to testify during the misconduct hearing may include otherwise permissible witnesses whose testimony is relevant to the determination of the financial loss or cost.
4. Notice of a misconduct hearing decision ordering an inmate to reimburse the Department or another person shall be given to the facility Business Manager. Upon receipt of a decision imposing an assessment against an inmate, the Business Office can take up to 50% of the inmate's current account balance and 50% in subsequent months until the debt is satisfied. However, funds shall not be deducted from the inmate's account until such time as an appeal resulting from the misconduct decision is finally resolved or the time for the filing of an appeal has passed without an appeal being filed. If an appeal is filed, the facility Business Manager/designee may delay or temporarily suspend processing expenditures from the inmate's account pending disposition of the appeal.

### **B. When the Cost is Not Known at the Time of the Misconduct Hearing**

1. When, as the result of a misconduct hearing, a Hearing Examiner orders that an inmate pay for a financial loss or cost resulting from a violation or written rules governing inmate behavior, notice of such order shall be given to the facility Business Manager. The facility may temporarily delay processing some or all expenditures from the inmate's account if the facility believes the inmate is attempting to circumvent the potential assessment.

2. The Business Manager, in consultation with appropriate Department staff or others, shall determine the amount of the financial loss or cost resulting from the violation of written rules governing inmate behavior, including the amount of investigative or administrative costs. **All sources of records used to establish costs must complete a Certification of Records form. The Business Manager/designee shall contact the Chief Hearing Examiner's office to obtain this form prior to requesting the records of invoices that establish the costs.**
3. **The Business Manager/designee shall deliver a Notice of Assessment for Misconduct (Attachment 8-B) to the inmate. At the time this notice is delivered to the inmate, the Business Manager/designee shall inform the inmate that the inmate elects to attend the Assessment Hearing, the hearing will pertain specifically to the costs, and how the costs were arrived at. The Assessment Hearing will not be a rehearing of the underlying misconduct action.**
4. In accordance with Department policy DC-ADM 820, "Co-Payment for Medical Services" if the assessment is based upon costs incurred to provide medical treatment to an inmate whose injury was caused by another inmate's assaultive conduct, the assaultive inmate shall be required to pay a fee equivalent to two-thirds of the total cost of medical services provided to the injured inmate.
5. An inmate who wishes to challenge the amount of the financial loss or cost set forth in the **Notice of Assessment for Misconduct** shall request a hearing within five working days after receipt of the **Notice of Assessment for Misconduct**. A hearing request is made by signing the **Notice of Assessment for Misconduct** in the space indicated and submitting it to the **Business Manager** in the same manner as designated for a request slip.
6. If an inmate timely requests a hearing, it shall be scheduled with prior written notice to the inmate and the Business Manager of the date, time, and place and shall occur before a court reporter or stenographer and a Hearing Examiner, who may conduct the hearing via video conferencing. **If the Business Manager determines the assessment of costs will not be sought, then written notice shall be provided from the Business Manager to the inmate that the proposed costs will not be assessed. The temporary hold on expenditures from the inmate's account will be lifted.**

### C. Cost Assessment Hearing

1. The Assessment Hearing is an opportunity to present testimony and evidence regarding the amount of the financial loss or cost. The Assessment Hearing is **NOT** an opportunity to contest the inmate's guilt or innocence for the underlying misconduct charge.
2. A Hearing Examiner shall conduct the Assessment Hearing.
3. The criteria set forth above for acceptance of witness and version forms, recognition of the convening authority, and sworn/affirmed testimony, shall apply to Assessment Hearings as well as misconduct hearings.

**D. Inmate Assistance**

The inmate may be permitted assistance at the Assessment Hearing in accordance with **Section 3** of this procedures manual.

**E. Order of Testimony/Burden of Proof**

1. The Department shall bear the burden of establishing some evidence to prove the amount of the assessment. The Department shall proceed first. The Department may present a written statement in lieu of live testimony. The witness subject to the penalties for un-sworn falsification shall make any such written statement to authorities under **18 Pa.C.S. §4904**.
2. The Hearing Examiner may require the presence of any staff member or other person on the grounds of the facility at which the hearing is being conducted.
3. The inmate may request witnesses at the Assessment Hearing in accordance with **Section 3** of this procedures manual.
4. All live testimony shall be made under oath.
5. An inmate who fails to appear for his/her Assessment Hearing shall be deemed to have waived the request for a hearing unless such failure to appear is for reasons beyond the inmate's control. If the inmate waives the request for a hearing, the assessment shall be upheld.

**F. Disposition**

1. The Hearing Examiner shall determine the amount of financial loss or cost, if any, resulting from the violation of written rules governing inmate behavior.
2. The Hearing Examiner shall prepare a written summary of the Assessment Hearing, including the amount of the assessment, if any, the facts relied upon in reaching the decision, and the reasons for the decision. A copy shall be forwarded to the facility's Business Manager and to the inmate.
3. Upon receipt of a decision imposing an assessment against an inmate, the facility Business Manager may deny the inmate permission to spend funds in his/her account in an amount equal to the lesser of the amount of the assessment or 50% of the funds in the inmate's account on the day the decision is received. Funds shall not be deducted from the inmate's account until such time as an appeal resulting from the misconduct decision is finally resolved or the time for the filing of an appeal has passed without an appeal being filed. If an appeal is filed, the facility may delay or temporarily suspend processing expenditures from the inmate's account pending disposition of the appeal.

## **G. Appeals**

1. When the Cost is Known at the Time of the Misconduct Hearing
  - a. Every appeal from an Assessment Hearing where the cost is known at the time of the Misconduct Hearing shall be handled in accordance with **Section 5** of this procedures manual, except that there are only two valid bases for Assessment Hearing appeals:
    - (1) the hearing procedures were inconsistent with the policy; and
    - (2) the findings of fact were insufficient to support the decision.
  - b. Every appeal shall be in writing. Only one appeal may be submitted for any assessment.
  - c. Pending disposition of an appeal, the facility Business Manager may deny the inmate permission to spend funds in his/her account in an amount equal to the lesser of the amount of the assessment or 50% of the funds in the inmate's account on the day the original decision was received.
  - d. The inmate shall be provided with a written response to an appeal that is filed properly.
2. When the Cost is Not Known at the Time of the Initial Misconduct Hearing and Subsequent Assessment Hearing Conducted in the Presence of a Court Reporter or Stenographer
  - a. Every appeal from an Assessment Hearing Conducted in the Presence of a Court Reporter or Stenographer shall be handled solely in accordance with this section.
  - b. Upon receipt of the Hearing Examiner's written summary of the Assessment Hearing, including the amount of the assessment, if any, the facts relied upon in reaching the decision, and the reasons for the decision, the inmate shall have 30 calendar days to file an appeal. Untimely appeals shall be deemed to be a withdrawal of any objections to the Hearing Examiner's written report and shall result in an order that summarily affirms it.
  - c. Every appeal shall be in writing. Only one appeal may be submitted for any assessment. The two valid bases for an appeal are:
    - (1) the procedures employed were contrary to law, Department directives, or regulations; and/or
    - (2) the findings of fact were insufficient to support the decision.

d. The appeal shall be addressed to:

The Chief Hearing Examiner's Office  
Office of Chief Counsel  
1920 Technology Parkway  
Mechanicsburg, PA 17050

**NOTE:** Improperly addressed appeals may cause a delay in the response of the appeal.

3. An inmate who is appealing from an Assessment Hearing shall provide the Chief Hearing Examiner's Office with a written document that specifies each and every objection or Exception to the Hearing Examiner's written report. Additionally, the written appeal by the inmate shall provide any and all legal support for the Appellant's position.
4. The Chief Hearing Examiner's Office shall review any appeals that are timely and properly filed and shall prepare a memorandum opinion and order for review and signature by the Secretary, who may:
  - a. reject the appeal as untimely or submitted improperly;
  - b. uphold the decision being appealed;
  - c. amend the amount of the assessment or vacate part or all of it; or
  - d. remand the proceeding for further action.
5. Upon review and signature by the Secretary, the inmate and Business Manager shall be provided with a copy of the memorandum opinion and order.
6. Pending disposition of an appeal to the Secretary or to the courts, the facility Business Manager may deny the inmate permission to spend funds in his/her account in an amount equal to the lesser of the amount of the assessment or 50% of the funds in the inmate's account on the day the decision is received. Funds related to the assessment being appealed shall not be deducted from the inmate's account until such time as appeals resulting from the misconduct decision are finally resolved or the time for the filing of an appeal has passed without an appeal being filed. If an appeal is filed, the facility may delay or temporarily suspend processing expenditures from the inmate's account pending disposition of the appeal.

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**Glossary of Terms**

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**Administrative Custody** – A status of confinement for non-disciplinary reasons, which provides closer supervision, control, and protection than is provided in general population.

**Calendar Days** – Any number of consecutive days, including weekends and holidays.

**Center Director** – the person responsible for all areas of operation of a Community Corrections Center.

**Chief Hearing Examiner** – An employee of the Department’s Office of Chief Counsel who conducts final reviews of inmate misconduct appeals.

**Community Corrections Hearing Committee** – Persons designated by the Center Director to conduct misconduct hearings at a CCC.

1. The committee shall be impartial and shall consist of at least one, but no more than three staff members.
2. The committee shall perform the functions performed by Hearing Examiners as outlined in this policy.

**Department** – The Pennsylvania Department of Corrections.

**Director of the Bureau of Community Corrections (BCC)** – The person responsible for the overall direction of the Bureau of Community Corrections.

**Disciplinary Custody** – The maximum restrictive status of confinement to which an inmate guilty of a Class I misconduct may be committed. An inmate may be placed in disciplinary custody status for a period no longer than 90 days per misconduct charge.

**Diversionsary Treatment Unit (DTU)** – A grouping of cells in an RHU setting where upon reception, inmates are immediately scheduled and offered programming equivalent to the SRTU, e.g., a minimum of 20 hours out-of-cell programming per week, 10 structured **hours** and 10 unstructured **hours**.

**Gas Chromatography/Mass Spectrometry (GC/MS)** – An alterative method for confirming positive drug screens.

**Hearing Examiner** – An employee of the Department’s Office of Chief Counsel who conducts inmate Misconduct Hearings, Assessment Hearings, Agency Adjudication Hearings, and serves as an impartial party in the inmate disciplinary process.<sup>1</sup>

**Immuno Assay** – The primary method for screening urine samples for the presence of drugs.

**Mental Health Status** – An inmate who has a mental health stability score of “C” or “D” or, in the opinion of mental health staff, may be suffering from a serious mental illness.

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<sup>1</sup> 5-ACI-3C-15

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**Mental Health Unit (MHU)** – A housing area or group of cells approved by the Pennsylvania Department of Human Services, Office of Mental Health **and specifically designated for inmates to receive mental health services.**

**Misconduct** – Any violation of alleged violation of Department rules, regulations, or policies as outlined in **Section 1** of this manual.

**Pre-Hearing Confinement** – A temporary administrative confinement in the inmate’s general population cell or RHU pending the outcome of a misconduct hearing.

**Program Review Committee (PRC)** – A committee consisting of three staff members that conduct Administrative Custody Hearings, periodic reviews, make decisions regarding continued confinement in the Restricted Housing Unit (RHU) and/or **specialized L5 programs**, and hear all first level appeals of misconducts. The committee **shall include one member from one of the** following classifications: Deputy Superintendent (who shall serve as the chairperson), Corrections Classification Program Manager (CCPM), **or Major. The remaining two staff members assigned to the committee shall consist of staff members from any of the following classifications:** Unit Manager, School Principal, Drug and Alcohol Treatment Specialist (DATS) Supervisor, Inmate Records Supervisor, **or** a Commissioned Officer. The Facility Manager may designate other staff as committee members, however, if such designations are made, they shall be in writing and the Facility Manager shall maintain a list of all designees. Whenever a PRC is convened, at least one member of the committee shall be a staff member who is not directly involved in the administration of the RHU in which the inmate is currently housed.

**Restricted Housing Unit (RHU)** – An area or group of cells for an inmate assigned to administrative or disciplinary custody status.

**Self-Injurious Behavior (SIB)** – SIB may include, but is not limited to, the following:

1. Superficial Self-Injury – a socially unaccepted behavior that is generally a response to a psychological crisis **resulting** in tissue damage and **occurring without** subjective suicidal intent, **including** non-life-threatening scratching and cutting;
2. Stereotypic Self-Injury – intense repetitive behaviors to include:
  - a. biting self;
  - b. head banging;
  - c. punching self; and/or
  - d. jumping.
3. Major Self-Injury – the most extreme form of SIB which may result in serious injury or death to include:

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- a. setting fire to self;
- b. amputation of limb or other tissue;
- c. ingestion of a toxic substance or a foreign body; and/or
- d. hanging.

**Serious Mental Illness** – A substantial disorder of thought or mood, which significantly impairs judgment, behavior, capacity or recognize reality, or cope with the ordinary demands of life.

**Unit Management Team** – The individuals assigned to operate a housing unit with the responsibility for security, risk management, and program delivery. The Unit Management Team may act as the Hearing Examiner and decide Class 2 misconducts in those facilities where the Secretary has specifically approved ***of the Unit Management Team being utilized*** in this manner.

**Videoconference** – A conference carried via television.

**Working Days** – The normal work days of the Department, Monday through Friday, excluding holidays.