



# Virginia Department of Corrections

## Human Resources

### Operating Procedure 135.1

#### *Standards of Conduct*

##### **Authority:**

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## REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

## COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Correctional Officer Procedural Guarantee Act** - A Virginia law that provides that eligible Corrections Officers of all ranks who may be or have been transferred, suspended without pay, demoted, or dismissed for unacceptable behaviors with a process for a review of the disciplinary action. (COV §9.1-508 et seq.)

**Corrective Action** - Any intervening informal or formal counseling action taken by management to address employment problems, such as unacceptable performance, behavior, or conduct

**Counseling** - An informal (verbal) or formal (written) intervention that consists of a dialogue between an employee and their supervisor to address and reinforce expectations of an employee's work performance, behavior, and/or conduct. Formal counseling discussions must be documented in a written memorandum. Counseling that is related to work performance may be included in an *Interim Employee Evaluation* or a *Notice of Improvement Needed/Substandard Performance*.

**Criminal Charge** - An arrest or indictment by law enforcement authorities against an employee for the commission of a criminal offense.

**Criminal Offense** - Criminal offenses include felonies and misdemeanors as defined in the statutes of the United States, the Commonwealth of Virginia, other sovereign states, and other city and county governments. Criminal offenses shall not include traffic or other charges that are specifically differentiated and exempted from statutory criminal offenses. However, DUI or other formal charges that impact an employee's ability to drive a vehicle or could result in incarceration if convicted shall be considered criminal charges.

**Crime of Domestic Violence** - An offense that is a misdemeanor or felony under federal or state law; and has as an element, the use or attempted use of physical force or the threatened use of a deadly weapon committed by a current or former spouse, parent or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim.

**Disciplinary Action** - A formal action taken to address unacceptable performance, behavior, or misconduct; disciplinary actions include the issuance of *Written Notices*, which may be accompanied by additional actions, such as transfer to an equivalent position in a different work area; reduced responsibilities within the current role and a disciplinary salary action; transfer with reduced responsibilities and a disciplinary salary action; demotion; and termination.

**Disciplinary Demotion** - A management-initiated assignment of an employee to the same or a different position in the same or lower Pay Band with fewer job responsibilities that must result in a minimum of a 5% reduction in base salary; in no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action.

**Disciplinary Review** - A process that involves reviewing the facts and circumstances surrounding misconduct or unacceptable performance in order to determine if disciplinary action is warranted

**Disciplinary Salary Action** - Employees may be retained in their current positions and have their duties reduced, be demoted, or transferred to positions in the same or lower pay band with less job responsibilities in lieu of termination; the employee's salary in each case must be reduced by at least 5%. In no case may an employee's salary exceed the maximum of the pay band following a disciplinary salary action. DOC has the authority to transfer employees to equivalent positions as part of the disciplinary process without a reduction in salary.

**Disciplinary Suspension** - A disciplinary action that places an employee in a temporary status away from the workplace without pay and duties; for purposes of suspensions without pay, a workday is comprised of 8 hours for non-exempt employees. For exempt employees, a workday is comprised of the assigned hours scheduled to work on a normal day.

**Eligible Corrections Officer** - Duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff of all ranks (Corrections Officer through Lieutenant Colonel) are eligible under the *Correctional Officer Procedural Guarantee Act* (COV §9.1-508 et seq.) for review of a disciplinary action that may result in transfer, disciplinary suspension without pay, demotion, or termination.

**Employee Assistance Program (EAP)** - A confidential assessment, referral, and short-term problem-solving



service available to eligible employees and family members; enrollment in the EAP is automatic as part of the health plan coverage.

**Good Cause** - Adequate or substantial grounds or reason to take a certain action

**Inmate/Probationer/Parolee** - People who are incarcerated, serving a state responsible sentence in a local or regional jail, or under community supervision with the Virginia Department of Corrections or other release authority.

**Interim Evaluation** - A performance evaluation completed during the performance cycle to document and assess an employee's progress toward achieving the performance plan using an *Interim Employee Evaluation*. *Interim Performance Evaluations* are not considered "official" documents and are retained in the supervisor's confidential file for use in constructing the annual performance evaluation. Counseling, particularly when related to work performance, may be part of an interim evaluation.

**Negligence** - Failure by action, behavior, or response willful or not, to maintain the expected care required from a reasonable, prudent person under the circumstances.

**Notice of Intent** - Prior to any pre-disciplinary or disciplinary actions, employees must be given written notification of an offense, an explanation of the agency's evidence in support of the charge, the disciplinary actions that may be taken, and a reasonable opportunity to respond.

**Office of Law Enforcement Services (OLES)** - those DOC sworn law enforcement employees conducting criminal and administrative investigations.

**Organizational Unit** - A DOC unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual headquarters unit (i.e. Human Resources, Offender Management, Internal Audit)

**Pre-Disciplinary Leave** - Leave with pay to be used when disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent because their continued presence (i) may be harmful to the employee, other employees, inmate/probationer/parolees; (ii) makes it impossible for the DOC to conduct business; (iii) may hamper an internal investigation into their alleged misconduct; (iv) may hamper an investigation being conducted by law enforcement; or (v) may constitute negligence in regard to the agency's duties to the public or other employees.

**Performance Improvement Plan (PIP)** - A document completed by the immediate supervisor during the performance cycle to document substandard performance and the need to improve performance. This document may be issued with a formal Written Notice. The improvement period should be no less than 30 days or more than 90 days. See Operating Procedure 145.2, *Employee Performance Management*.

**Progressive Discipline** A system of increasingly significant measures that are utilized to provide feedback to employees so that they can correct conduct or performance problems.

**Reasonable Opportunity to Respond** - A time period allowed for an employee to respond to the charges after receiving notification of impending pre-disciplinary or disciplinary action. Typically, one full business day is sufficient for non-security staff, and three calendar days for Corrections Officers and Security Supervisors. However, a reasonable opportunity to respond should not be based solely on the quantity of time provided, but also on the nature of the offense, the time over which alleged events occurred, and the volume of evidence that may be presented. Based on this assessment, more time may be granted to refute the allegations.

**Resignation in Lieu of Termination** - In certain situations, employees subject to termination may be afforded the opportunity to resign from their position in lieu of termination.

**Retaliation** - Any adverse, overt, or covert action taken by an employer against an employee, or former employee, who has participated in a protected activity, i.e., exercised their rights under anti-discrimination laws, reported or participated in an investigation into violation of the sexual abuse/harassment policies, filed a grievance, or assisted someone in exercising their rights, where there is established a causal connection between the protected activity and the adverse action. Types of retaliation include, but are not limited to employment actions such as termination, refusal to hire, denial of promotion, threats, harassment, intimidation, unjustified negative evaluations, unjustified

negative references, increased surveillance, etc.

**Sexual Misconduct** - Any behavior or act of a sexual nature directed toward an inmate/probationer/parolee or an employee by an employee, volunteer, contractor, visitor, or agency representative; this includes but is not limited to acts or attempts to commit such acts of sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity, and unreasonable invasion of privacy.

**Standards of Conduct** - Values, standards, expectations, and rules of work performance and behavior that guide the decisions, procedures, and operations of the DOC in a way that contributes a safe and positive work environment; comply with all applicable laws and regulations; promote the welfare of the Commonwealth, its employees, inmates/probationers/parolees, and other stakeholders; and respect the rights of all constituents affected by DOC operations

**Suspension** - An employee's absence from work, without pay, that an agency imposes as part of a disciplinary action or for pending criminal charges.

**Termination** - An involuntary, disciplinary removal action that separates an employee from the DOC

**Unacceptable Conduct/Misconduct** - Wrongful, improper, or unlawful conduct or unacceptable employee behavior inconsistent with standards of the Commonwealth or DOC for which specific corrective or disciplinary action is warranted

**Workday** - For purposes of suspensions without pay, workday is defined as 8 hours for non-exempt employees. For exempt employees, a workday consists of the hours scheduled to work on a normal day.

**Workweek** - A fixed period of seven consecutive 24-hour periods established by the employer for each employee; it may begin on any day of the week and at any hour of the day and it need not coincide with the calendar week. Full-time employees normally work a five-day, 40-hour schedule during a workweek.

**Written Notice** - Official notice to an employee of formal disciplinary action that briefly describes the nature of the offense and supporting evidence, any disciplinary action(s) taken in addition to issuing the *Written Notice*, and circumstances that support the disciplinary action taken, including mitigating and aggravating factors

## PURPOSE

The purpose of this operating procedure is to help employees become fully contributing members of the Department of Corrections (DOC) through application of the Commonwealth's Standards of Conduct and disciplinary process to fairly, consistently, and objectively address unacceptable behavior, conduct, and related employment problems when the conduct impacts an employee's ability to do their job, or influences overall effectiveness of the DOC.

## PROCEDURE

- I. Applicability - Expectations
  - A. This operating procedure addressing Standards of Conduct and disciplinary process applies to Virginia Correctional Enterprises (VCE) employees and DOC positions covered by the COV §2.2-2900 *et seq. Virginia Personnel Act*,
  - B. All employees should be made aware of this operating procedure in initial orientation and should have access to it through the Virtual Library and/or locations where operating procedure hard copies are maintained in the unit.
  - C. All employees must comply with all applicable governmental laws, rules and regulations, Commonwealth policies, DOC operating procedures, and the behaviors and performance expectations outlined herein.
  - D. The forms, processes, and/or guidance associated with the standards of conduct outlined in this procedure should not be used for wage employees, probationary employees, and employees expressly excluded from the COV §2.2-2900 *et seq. Virginia Personnel Act*, (except VCE); however, supervisors may wish to refer to the standards of conduct offenses as guidelines for evaluating these employees' behavior.
  - E. The standards of conduct outlined in this operating procedure are designed to protect the well-being and rights of all employees, to assure safe, efficient government operations, assure compliance with public law, maintain high standards of work performance and professional conduct, and exemplify the mission and values of the DOC.
  - F. The purpose of the Standards of Conduct is to: (2-CO-1C-04)
    1. Establish behaviors and performance expectations to advance the mission, goals, vision, and values of the DOC.
    2. Establish a fair and objective process for promptly correcting unacceptable conduct or work performance.
    3. Ensure disciplinary actions are founded on the principles of due process.
    4. Distinguish between less serious and more serious actions of misconduct and provide a range of corrective and disciplinary actions that can be applied based on the nature and history of the misconduct or unacceptable performance.
    5. Help employees become fully contributing members of the DOC.
    6. Enable the DOC to fairly and effectively discipline and/or terminate employees whose conduct and/or performance does not improve or where the misconduct and/or unacceptable performance is of such a serious nature that a first offense warrants termination.
  - G. Personal Conduct - DOC staff members are employed to fulfill certain duties and fulfill expectations that support the mission and values of the DOC and are expected to conduct themselves in a manner deserving of public trust. The following list is not all-inclusive but is intended to illustrate the minimum expectations for acceptable workplace conduct and performance. Employees who contribute to the success of the DOC mission:
    1. Report to work as scheduled, seek approval from supervisors in advance for any changes to the



- established work schedule; including the use of leave and late or early arrivals and departures, and report hours of work and leave accurately.
2. Devote full effort to job responsibilities during work hours; meet or exceed established job performance expectations.
  3. Obtain approval from supervisor prior to working overtime, if non-exempt from the Fair Labor Standards Act (FLSA).
  4. Utilize leave and related employee benefits in the manner for which they were intended.
  5. Obtain approval from supervisor prior to accepting, initiating, or continuing outside employment.
  6. Perform assigned duties and responsibilities with the highest degree of public trust.
  7. Maintain the qualifications, certification, licensure, and/or training requirements identified for their positions and take advantage of available resources and learning opportunities and request additional instruction when needed.
  8. Work cooperatively to achieve work unit and agency goals and objectives.
  9. Create and maintain a Healing Environment within the DOC by treating coworkers, supervisors, managers, subordinates, inmates/probationers/parolees, and other stakeholders with respect, courtesy, dignity, and professionalism; be open to communication and collaboration with colleagues in a manner that generates trust and teamwork.
  10. Demonstrate respect for the agency and behave in a civil and professional manner toward agency coworkers, supervisors, managers, subordinates, and customers, etc.
  11. Avoid conflicts of interest, including having business, financial or personal (non-monetary) interests, relationships, or activities that could conflict with the DOC and our mission, undermine one's ability to perform their job duties, or make objective decisions related to work.
  12. Support efforts that ensure a safe and healthy work environment.
  13. Resolve work-related issues and disputes in a professional and constructive manner and through established business processes.
  14. Conduct themselves at all times in a manner that supports the mission of the DOC and the performance of their duties.
  15. Use state equipment, time, and resources judiciously and as authorized.
  16. Make work-related decisions and take actions that are in the best interest of the DOC.
  17. Comply with the letter and spirit of all state and DOC policies and procedures, the Conflict-of-Interest Act, and Commonwealth and Federal laws and regulations.
  18. Report to management any circumstances or concerns that may affect satisfactory work performance or undermine the public safety mission of the DOC, including any inappropriate (fraudulent, illegal, unethical) activities of other employees.

## II. General Supervisory Principles

- A. Supervisors should assist employees in understanding their work assignments, the *Standards of Conduct*, and the goals, objectives, and performance expectations of their job duties.
- B. Supervisors are encouraged to maintain an open-door policy, allow employees time to improve unsatisfactory performance, correct minor behavioral issues, and provide effective coaching and frequent feedback, both positive and constructive.
- C. Supervisors should be aware of inadequate or unsatisfactory work performance or behavior of employees and attempt to correct the performance or behavior immediately.
- D. Supervisors are responsible for coaching, resolving issues, and providing assistance including training for



employees with their unit, as well as serving as a link between subordinates and upper management.

- E. Corrective and disciplinary actions, whether informal or formal, should be applied consistently while considering the specific circumstances such as the nature, consequences or potential consequences of the employee's conduct or performance, surrounding circumstances, and any mitigating or aggravating factors.
- F. Before the need for, or in addition to disciplinary or corrective action, supervisors may refer employees to the Employee Assistance Program (EAP) or other professional assistance program (for employees who do not participate in the state's healthcare plan) as appropriate if an employee's behavior and/or performance may be caused or impacted by problems affecting personal and work life. Referral to the EAP will not be considered a substitute for any corrective or disciplinary action imposed for the commission of an offense, see Operating Procedure 150.5, *Employee Assistance Program*.
- G. Demonstrate interpersonal communications, leadership strategies, and personal conduct that fosters a respectful workplace culture and models the expectations established for employees.
- H. Provide consistent and objective feedback, coaching and instructional guidance to employees regarding their performance, conduct, or compliance with policies and procedures prior to initiating corrective or formal actions.
- I. Document verbal counseling and retain corrective written counseling in confidential supervisory files.
- J. Ensure the confidentiality of employee performance and disciplinary actions and related documentation.
- K. Establish on-boarding and periodic communications with subordinates to inform them of policies, protocols, and expectations specific to job duties.
- L. Seek guidance from Human Resources prior to administering disciplinary actions or removing employees from the workplace. This includes the responsibility to communicate any and all crimes of domestic violence, criminal charges, and convictions to Human Resources.
- M. Under the guidance of Human Resources, participate collaboratively in pre-disciplinary investigations or disciplinary reviews to include identifying or disclosing relevant documentation and witnesses or parties to the incident(s) of concern.
- N. Participate in periodic training/education on Operating Procedure 135.1, *Standards of Conduct*, and best practices.

### III. Types of Corrective and Disciplinary Actions (4-APPFS-3E-16)

- A. The DOC supports the use of progressive discipline applied fairly and consistently to address employee behavior, conduct, or performance incompatible with the *Standards of Conduct*, performance expectations, and DOC procedures and training. It is most successful when provided in a way that helps an employee become a fully contributing member of the organization. Progressive discipline also enables agencies to objectively, and with reliable documentation, terminate an employee who is unable or unwilling to improve their workplace conduct and/or job performance. There may be extenuating circumstances when an employee's conduct requires disciplinary action administered without employing progressive discipline. (2-CI-6D-5)
- B. Management must apply corrective or disciplinary actions consistently and in an objective manner, while taking into consideration the specific circumstances of each individual case. Prior to taking such action, management must consider the following:
  - 1. Whether the corrective or disciplinary action is consistent with state and agency standards of conduct.
  - 2. The nature, severity, and consequences of the offense. Whether the offense constitutes a violation of a policy, procedure, rule, or law.
  - 3. Previous counseling, whether verbal or written, that addressed the same or similar misconduct or



- performance.
4. Previous disciplinary actions that addressed the same or similar misconduct or performance.
  5. Whether the offense relates to the employee's job duties and the employee's ability to perform satisfactorily.
  6. How issues with similarly situated employees have been addressed.
  7. Mitigating and aggravating factors that would compel a change(s) in the disciplinary action to promote the interests of fairness, equity, and objectivity.
  8. Whether the corrective or disciplinary action is appropriate for a specific offense.
- C. Depending on the severity of the situation, corrective or disciplinary action may be accomplished through informal or formal means.
- D. Informal corrective action may take the form of counseling, either verbal or written.
1. Counseling refers to a verbal or written communication which conveys that an employee's conduct or performance was improper and must be corrected. Counseling consists of communication between an employee and their supervisor to address and reinforce the expectations of an employee's work performance, behavior, and/or conduct that if not corrected, could lead to disciplinary action.
  2. Counseling is provided by an employee's supervisor or manager in the employee's reporting structure and is typically the first level of corrective action. Counseling is not a required precursor to the issuance of Written Notices.
  3. Counseling is appropriate for conduct and/or performance issues resulting in minimal impact to business operations or that involve minor infractions of policies or laws.
  4. A counseling session should:
    - a. Be conducted promptly
    - b. Be held in private
    - c. Include a discussion between the supervisor and employee to clarify the source of concern and course of action for improving performance or behavior
    - d. Review or establish short-term objectives and long-term goals for the employee's behavior
    - e. Clarify, to the employee, the supervisor's expectations
    - f. Direct corrective actions to the employees' behavior and not personality
  5. Verbal Counseling
    - a. Verbal counseling should be private, confidential discussions between employees and their supervisors regarding the desired course of action to improve the employees' performance and/or conduct, and what may occur if the performance or conduct is not corrected.
    - b. The supervisor should explain that a summary of the conversation will be noted, placed in the supervisory file, and a copy provided to the employee.
  6. Written Counseling
    - a. A written memorandum should be issued to emphasize the significance of relatively minor acts of misconduct.
    - b. Written counseling may be issued to emphasize unacceptable performance when facts and discussions with the employee demonstrate that verbal counseling has not corrected the problem.
    - c. Written counseling must be documented by a letter, memorandum, or electronic communication. It should not be documented via the Written Notice form.
  7. Employees are not permitted to have legal representation in counseling sessions.
  8. Documentation regarding counseling should be retained in the supervisor's files. Documentation regarding counseling should not be kept in the employee's official personnel file maintained by the

Agency's Human Resources office, except as necessary to support subsequent formal disciplinary action or an unsuccessful performance rating as part of the annual performance review. A copy must be provided to the employee.

E. Supervisors may address unacceptable performance issues by following Operating Procedure 145.2, *Employee Performance Management*, utilizing performance management tools and resources, instead of the Standards of Conduct.

1. When performance is addressed under OP 145.2, supervisors will document performance issues and concerns using a performance improvement plan (PIP).
2. Contingent upon the severity of the performance consequences or the employee's failure to improve their performance while participating in the PIP, management has the authority to fairly and effectively discipline or terminate employees whose conduct or performance does not improve while participating in a PIP, or where the misconduct or unacceptable performance is of such a nature that it requires formal disciplinary action.

F. Formal disciplinary action is accomplished by the issuance of a *Written Notice*.

G. *Written Notices*

1. When counseling has failed to correct misconduct or performance problems, or when an employee commits a more serious offense, management should address the matter by issuing a *Written Notice*.
2. Management should issue *Written Notices* as promptly as feasible upon becoming aware of misconduct or unacceptable performance; refer to the Due Process section of this policy. To assist management in the assessment of the appropriate action, offenses are organized into three groups (Group I, Group II, and Group III) according to the severity of the misconduct or behavior. Examples of offenses, by group, are presented in Attachment 2, *Examples of Offenses Grouped by Level*. The offenses listed in Attachment 2 are not all-inclusive but are intended as examples of conduct for which specific corrective or disciplinary actions may be warranted.
3. Disciplinary action refers to a formal disciplinary measure based on a violation of established Standards of Conduct that includes discussion of the offense, an explanation of the evidence, due process, and issuance of a *Written Notice*.
4. A *Written Notice* may be accompanied by additional actions including a performance improvement plan, transfer to an equivalent position in a different work area; reduced responsibilities within the current role and a disciplinary salary action; transfer with reduced responsibilities and a disciplinary salary action; demotion; and termination; see Operating Procedure 145.2, *Employee Performance Management*.
5. All *Written Notices* will include a reference to the employee's right to initiate a grievance and an advisory statement that an active *Written Notice* may affect the employee's overall annual performance evaluation rating.
6. Eligible Corrections Officers of all ranks who receive a *Written Notice* with transfer, disciplinary suspension without pay, demotion, or termination will be given written notification of their right to initiate a grievance or request a hearing under the *Correctional Officer Procedural Guarantee Act*, COV §9.1-508 et seq.
  - a. All duly sworn, non-probationary, VALORS eligible, uniformed DOC security staff of all ranks (Corrections Officer through Lieutenant Colonel) are eligible to request a hearing under the *Act*.
  - b. A copy of Operating Procedure 145.4, *Employee Grievances*, including instructions on how to proceed to a hearing under the *Act*, will be provided to Corrections Officers upon their request.

#### IV. Disciplinary Investigations

A. Management is responsible for conducting a fact-finding review, and/or administrative investigations into alleged misconduct, criminal charges, or alleged violations of the Standards of Conduct.



**B. Investigations should assemble the following information:**

1. Summary of reason for investigation; how issue came to attention of supervisor/manager
2. Type of incident
3. Time, date, and place of the incident
4. Individuals involved in the incident
5. Witnesses of the incident (both management and employee) and their reports (any additional statements; signed and dated)
6. Applicable offense or rule violation - How?
7. Employee's explanation of the incident (written statement; signed and dated)
8. Extenuating circumstances (e.g., unclear orders or instructions)
9. What provoked the incident?
10. Unit's past action in similar cases (precedent)
11. Past record of the employee

C. Employees are expected to cooperate fully during the course of an investigation and respond with truthful and complete answers to all proper questions of official interest and provide the agency representative with any and all information or evidence that may pertain to the specific matter under investigation. Failure to do so could result in disciplinary action up to and including termination.

D. The Office of Law Enforcement Services (OLES) will direct any investigation that focuses on criminal matters; see Operating Procedure 030.4, *Special Investigations Unit*.

E. Interviews of non-criminal allegations should be conducted with the target of the investigation while the employee is in an active work status, unless approved by the Human Resources Director or designee.

F. Investigations focusing on non-criminal matters that could lead to a Corrections Officer being issued a *Written Notice* with transfer, disciplinary suspension without pay, demotion, or termination will be conducted in accordance with the *Correctional Officer Procedural Guarantee Act* (COV §9.1-508 et seq.).

1. Any questioning will take place at a reasonable time and place, preferably when the Corrections Officer under investigation is on duty.
2. Prior to any questioning, eligible Corrections Officers under investigation will be presented the *Correctional Officer Procedural Guarantee Investigation Notice 135\_F8* or *Internal Audit Unit Notice of Investigation 030\_F23* to inform the Officer of the following:
  - a. The name and job title of the investigator
  - b. The name and job title of any other individual to be present during the questioning
  - c. The nature of the investigation

**V. Pre-Disciplinary Leave with Pay**

Used when an employee is under investigation and/or disciplinary action is being considered and the employee's removal from the workplace is necessary or prudent. There are two categories of Pre-Disciplinary Leave with Pay:

**A. Immediate Removal from the Workplace for Disciplinary Reviews or Administrative Investigations**

1. Management may immediately remove an employee from the workplace without providing advance notification when the employee's continued presence:
  - a. May be harmful to the employee, other employees, and/or an inmate/probationer/parolee.
  - b. Hinders the agency's ability to conduct business operations.



- c. May hamper or interfere with an internal investigation into the employee's alleged misconduct and/or may hamper an external investigation being conducted by law enforcement for alleged criminal charges and/or civil matters that are relevant to the employee's performance of assigned job duties; and/or
    - d. May constitute negligence in regard to the agency's duties to the public and/or other employees.
  2. An employee should be immediately advised of the reason for their removal from the workplace.
    - a. As soon as possible after an employee's removal from the work area for reasons stated above, management must provide the employee with written notification of the intended corrective action and a summary or description of the evidence of the offense for which the corrective action is being contemplated, and when applicable, that an administrative investigation of the employee's conduct is underway.
    - b. Written notification of pre-disciplinary leave with pay pending disciplinary review or agency pre-disciplinary investigation will be by memorandum, not communicated via the *Written Notice* form.
    - c. Employees must be provided a reasonable opportunity to respond before taking any formal corrective action.
    - d. Contingent with the circumstances and with approval from Human Resources Director or designee, agency management may temporarily reassign an employee to a vacant position in the same pay band, temporarily remove and reassign job duties at the same pay level or permit the employee to telework as appropriate. Provide the employee specific instructions in writing prohibiting potential interference with the ongoing investigation to include refraining from discussing the matter with other employees. Such discussions will be limited to Human Resources or the employee's supervisor or managers within their reporting structure.
  3. Employees may be placed on Pre-Disciplinary Leave for up to 15 workdays (maximum of 120 hours for non-exempt employees), during which time a disciplinary review or administrative investigation should be conducted. If the disciplinary review or administrative investigation is not completed within fifteen workdays the DOC must:
    - a. Impose disciplinary action in accordance with this operating procedure
    - b. Permit the employee to return to work pending the outcome of review or investigation
    - c. Extend Pre-Disciplinary Leave with Pay for a specified period of time as determined by the Director. This authority has been delegated to the Human Resources Director or designee. If approved, the Human Resource Officer should advise the employee of the extended pre-disciplinary leave in writing.
  4. Written notification of Pre-Disciplinary Leave with Pay pending a disciplinary review or agency administrative investigation should be by memorandum, not by the *Written Notice*.
- B. Removal from the Workplace for Alleged Criminal Conduct**
1. Management may also immediately remove an employee from the workplace without providing advance notification when they are under investigation for alleged criminal conduct that is impactful to the employee's performance of job duties or to critical DOC mission activities. Depending on the nature of the criminal conduct or charges, reassignment may occur if the agency can identify a placement that does not jeopardize the investigation or create liability for the Commonwealth. Management should consider the employee's ability to perform their assigned responsibilities and if the employee's continued presence:
    - a. May constitute negligence in regard to DOC duties to the public and/or other employees
    - b. May be harmful to the employee, other employees, and/or an inmate/probationer/parolee
    - c. Makes it impossible for the agency to conduct business
    - d. May hamper the investigation by law enforcement
  2. Decisions on removal of employees from the workplace or temporary reassignment must be consistent

with other similar situations or criminal charges.

3. Following removal from the workplace, the agency must conduct an administrative investigation and notify the employee of the agency's intent to administer formal disciplinary actions up to and including termination, based upon the facts or evidence of conduct that prompted the criminal investigation or process. The agency's administrative investigation must be completed within 90 calendar days, except where extenuating circumstances exist.
4. Any employee who is formally charged with a criminal offense that impacts their ability to perform their job or represents a risk to the agency and to the agency's mission will be immediately placed on Pre-Disciplinary Leave with Pay for a period not to exceed 90 calendar days, or temporarily reassigned to a position or post that is not impacted by the criminal charges. For temporary reassignments, the employee must meet the minimum qualifications for the reassigned position.
5. If, at the conclusion of the ninety-day period of Pre-Disciplinary Leave with pay, there has been no resolution of the criminal charge(s), the employee will be placed on suspension without pay pending resolution of the charge. The DOC has the option to allow an employee to charge accrued annual, compensatory leave, and overtime leave to this period of suspension, provided the employee has sufficient leave balances.
6. If the criminal investigation is concluded without a formal indictment, the charge is resolved without the employee being convicted, or the court orders a deferred decision with conditions for the employee to meet, the DOC will return the employee to active status provided the employee meets the terms and conditions established by the court in the deferred adjudication. Leave applied to the period of suspension without pay, lost pay, and health benefits or refunds for the State portion of any health insurance premiums paid by the employee to continue coverage during the suspension must be restored provided the leave was not carried over into the new Leave Year on January 10. This includes reinstatement of missed annual leave accruals.

## VI. Criminal Charges and Convictions

- A. Appropriate disciplinary action for employees who are facing criminal charges or convictions (both felonies and misdemeanors) must be applied with consistency while considering the specific circumstances including but not limited to the following:
  1. The nature of the charges.
  2. The employee's ability to effectively perform the functions of the position.
  3. Level of responsibility.
  4. The effect on workplace safety.
  5. The impact the conviction has on the DOC and its employees, the public.
  6. The perception of the DOC and other mitigating factors including prior discipline, length of service, and performance.
- B. In accordance with Operating Procedure 040.1, *Litigation*, employees charged with or convicted of a criminal offense or a moving traffic violation, including court-ordered and administrative driving restrictions must inform their Organizational Unit Head immediately if received during normal working hours, or the next workday if received during non-working hours. Notification must be documented on a *Criminal Offense/Moving Traffic Violation Notification* 040\_F1.
- C. Charges or situations that involve crimes against persons are subject to a disciplinary charge that could include termination.
- D. A conviction is not necessary to proceed with a disciplinary action. Regardless of the status of any criminal investigation or proceedings, the DOC may, at any time, institute disciplinary charges against an employee under the Standards of Conduct, up to and including termination, based on the facts or evidence of the conduct that prompted the criminal investigation, or the impact on the DOC, its employees, the public,



and its perception of the DOC. If sufficient evidence exists, the DOC may proceed with administrative disciplinary action based on the same conduct, without waiting for the resolution of criminal charges.

- E. Attachment 1, *Guidance on Criminal Convictions* provides additional guidance for disciplinary actions related to driving under the influence and other criminal charges.

## VII. Due Process (4-APPFS-3E-16)

### A. Advance Written Notification of Discipline

1. The DOC must provide a clear and descriptive explanation of the offense in a manner that ensures that the employee understands the facts presented and will be able to present mitigating factors or denial of the charge. To ensure proper due process employees must be given the *Administration of Employee Discipline: Due Process Notification* 135\_F9 prior to the issuance of any formal disciplinary actions (i.e., *Written Notices*), which will include:
  - a. Written notification of the offense(s)/charge(s).
  - b. An explanation of the DOC's evidence in support of the charge(s).
  - c. The disciplinary actions that may be taken.
  - d. Eligible Corrections Officers will also be given written notification of their right to initiate a grievance under the grievance procedure established by the Department of Human Resource Management (DHRM) or request a hearing under the *Correctional Officer Procedural Guarantee Act*, COV §9.1-508 through 9.1-512. A copy of the grievance procedure, as well as instructions on how to proceed to a hearing under the *Act*, will be provided upon their request.

### B. Reasonable Opportunity to Respond

1. Employees must be given the option to provide an informed response to the charge(s), after receiving notification of potential disciplinary actions.
2. Typically, one full business day is sufficient time. However, a “reasonable opportunity to respond” should not be based solely on the quantity of time provided but also on the nature of the offense, the time over which alleged events occurred, and the volume of evidence that may be presented. Based on this assessment more time may be granted.
3. The employee’s response may be written or provided to management during a virtual, telephonic, or face to face meeting.
4. In accordance with the *Correctional Officer Procedural Guarantee Act*, when a charge may result in a *Written Notice* with transfer, disciplinary suspension without pay, demotion, or termination, Corrections Officers will be given:
  - a. At least three calendar days, to respond to the charges both orally and in writing.
  - b. The option to be assisted by counsel or a representative at the Officer’s own expense.
  - c. The Corrections Officer’s selected counsel or representative may attend the due process proceeding when the Corrections Officer makes a response to the charges and interact with the Corrections Officer in a non-disruptive manner but may not speak on behalf of the Officer. Examples of appropriate interaction include conferring quietly or exchanging notes.
5. Other parties, such as witnesses, are not permitted in due process proceedings unless permitted by the Organizational Unit Head or designee.

- C. The pre-disciplinary notice and reasonable opportunity to respond to the charge(s) do not need to be elaborate, resolve the merits of the discipline, or provide the employee with an opportunity to correct their behavior. It only serves as an initial check to determine whether there are reasonable grounds to believe the charges against the employee are true and support the proposed disciplinary action.

**VIII. Removals Due to Circumstances That Prevent an Employee from Performing the Job**

- A. An employee may be removed if they are unable to meet the working conditions of employment due to circumstances such as, but not limited to:
1. Loss, suspension, or restrictions of driver's license that is required for performance of the job.
  2. Incarceration for any period that is disruptive to agency business operations.
  3. Failure to obtain or retain license, certification, or other credentialing, etc. required for the job.
  4. Inability to perform the essential functions of the job after reasonable accommodation (if required) has been discussed, applied, and alternative accommodations will result in undue hardship.
  5. Failure to successfully pass an agency's background investigation.
  6. Conviction of any crime that legally disqualifies or significantly impacts the employee's ability to perform assigned job duties.
  7. Conviction of a misdemeanor or felony crime of domestic violence for employees whose jobs require carrying a firearm or authorization to carry a firearm.
  8. Failure to timely present appropriate documentation of identity and eligibility to work in the U.S. as required by federal law to include expiration of prior visa.

NOTE: A "misdemeanor crime of domestic violence" means an offense that: is a misdemeanor under federal or state law; and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim; see COV § 18.2-57.2, Assault and battery against a family or household member; penalty and Title 18, U.S. Code, Section 922(g)(9), *Unlawful Acts*.

- B. Such removal, if not a resignation, must be keyed as "Remove" with a description of the circumstance written on the transmittal document.
- C. Prior to such removal, the appointing authority and Human Resource Officer will gather full documentation supporting such action and must notify the employee in writing, of the reasons for such removal, giving the employee a reasonable opportunity to respond to the charges.
1. All removals under this section should be reviewed with the organizational unit's Human Resource Officer.
  2. Final notification of removal must be via memorandum or letter, not by *Written Notice*.
  3. Employees may challenge removals through the Employee Grievance Procedure and may direct questions regarding this process to the Department of Human Resource Management, Office of Employment Dispute Resolution.
- D. Based on agency needs and mitigating circumstances (if any), demotion, transfer and reduction of the employee's duties, or transfer to an equivalent position may be considered as an alternative to termination. Determination of the rate of pay for these employment actions must be reviewed and approved in accordance with Operating Procedure 102.4, *Compensation*.
- E. Copies of such notification and documentation supporting such action will be sent to the DOC Human Resources Director.

**IX. Ineligibility for Rehire**

- A. Employees who are terminated or who resign while disciplinary action is pending or while an investigation is being conducted should be notified in writing at the point of separation that they will be ineligible for rehire.



- B. For an employee that resigned while disciplinary action was pending or that resigned while under investigation, the personnel record (both the folder and the Personnel Management Information System), will reflect the nature of the resignation and that the employee is ineligible for rehire.

#### X. General Expectations

- A. All employees have the responsibility to use their best professional judgement to conduct themselves in a respectful and ethical manner consistent with applicable policy, procedure, and law.
- B. Employees should direct questions concerning appropriate behavior to their supervisors, Organizational Unit Heads, or Human Resource Officers.
- C. Employees have a duty to promptly report to their supervisors, other management officials, or Human Resource Officer any inappropriate conduct or behavior they are subject to, become aware of, or observe. If an employee's supervisor is the person engaging in the inappropriate behavior or conduct, the employee should report them to any member of management above the supervisor in the chain of command, or directly to Human Resources.
- D. The list of offenses and unacceptable behaviors in this operating procedure is illustrative, not all-inclusive. An action or event occurring either during or outside of work hours that, in the judgment of the Director, undermines the effectiveness of the employee or of the DOC may be considered a violation of the *Standards of Conduct* and may result in disciplinary action consistent with this operating procedure based on the severity of the offense.
- E. Unacceptable behavior will be divided into three groups, according to the severity of the behavior, with *Group I* being the least severe and *Group III* being the most severe; see *Group Offenses* Sections of this operating procedure and Attachment 2, *Examples of Offenses Grouped by Level*.
- F. When issuing an employee a *Written Notice*, management should proceed with due process and issue such *Notice* as soon as practicable.
- G. Termination or demotion is permitted only for a good cause and, if requested, subsequent to a formal hearing on specific charges. (4-ACRS-7E-10; 4-APPFS-3E-17), see Operating Procedure 145.4, *Employee Grievances* for formal hearing processes.
- H. Staff who are terminated, or who choose to resign in lieu of termination, for violation of the DOC sexual abuse or sexual harassment policies must be informed of the DOC's responsibility for reporting the employment action to any relevant licensing bodies and to law enforcement agencies, unless the activity was clearly not criminal. (§115.76[d], §115.276[d])

#### XI. Mitigating or Aggravating Circumstances

- A. When in the judgment of the Human Resources professionals, DOC management, or the Organizational Unit Head or designee, mitigating circumstances exist; specified corrective action may be reduced or increased beyond the normal level.
  - 1. Mitigating circumstances include those conditions related to an offense that would support a reduction of disciplinary or corrective action in the interest of fairness and objectivity.
  - 2. Mitigating circumstances may also include consideration of an employee's long service with a history of otherwise satisfactory work performance.
  - 3. Mitigating circumstances may support, as an alternative to removal, an employee's transfer to an equivalent position in a different work area with no change in salary; disciplinary suspension without pay, demotion, or transfer to a position with reduced responsibilities and a disciplinary salary action. Disciplinary suspension without pay in lieu of removal must not exceed 30 workdays for a *Group III* offense or for an accumulation of *Group I* or *Group II* offenses, which would normally result in removal.



- B. Under certain circumstances, an offense typically associated with one offense category may be elevated to a higher-level offense due to aggravating circumstances.
  - 1. Aggravating circumstances include factors related to an offense, such as seriousness of the misconduct or previous record of the same type of offense, which indicate a higher or more severe level of disciplinary action is appropriate.
  - 2. The DOC may consider any unique impact that a particular offense has or could have on the DOC, and the fact that the potential consequences of the performance or misconduct substantially exceeded agency norms.

## XII. First Group Offenses (Group I)

- A. First group offenses include types of behavior less severe in nature, have relatively minor impact on business operations, but require correction in the interest of maintaining a productive and well-managed work force.
- B. *Group I* offenses include, but are not limited to:
  - 1. Unsatisfactory attendance or excessive tardiness.
  - 2. Unprofessional or disrespectful conduct; considered a Group I offense depending on the nature of the violation.
  - 3. Abuse of state time, including for example unauthorized time away from the work area, use of state time for personal business, and abuse of sick leave.
  - 4. Use of obscene or abusive language; is considered a Group I depending on the severity, harshness, and impact of the language.
  - 5. Inadequate or unsatisfactory job performance.
  - 6. Disruptive behavior or disruption in the workplace; may be considered a Group I, II or III offense depending on the nature circumstances of the violation.
  - 7. Conviction of a moving traffic violation while using a state-owned or other public-use vehicle.
  - 8. Violation of DHRM Policy 1.05 *Alcohol and Other Drugs* or Operating Procedure 135.4, *Alcohol and Drug Testing*; considered a *Group I* offense depending on the nature of the violation. Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
  - 9. Violation of DHRM Policy 2.35 *Civility in the Workplace* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*; considered a *Group I* offense depending upon the nature of the violation.
  - 10. Violation of DHRM Policy 2.05 *Equal Employment Opportunity* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*; considered a *Group I* offense depending upon the nature of the violation.
  - 11. Violation of Operating Procedure 040.1, *Litigation*; considered a Group I offense depending upon the nature of the violation.
- C. Procedures for Issuing a *Group I* Notice
  - 1. *Group I Written Notices* will be cumulative in nature.
    - a. There should be no disciplinary suspension without pay for the first offense.
    - b. Upon the accumulation of three "active" *Group I* offenses, the employee should normally receive a disciplinary suspension without pay, but such suspension will not exceed ten workdays (maximum of 80 hours for non-exempt employees).
    - c. A fourth active *Written Notice* should normally result in termination unless there are mitigating circumstances. Mitigating circumstances may support, as an alternative to termination, an



employee's transfer to an equivalent position in a different work area with no change in salary; disciplinary suspension without pay up to 30 workdays; demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.

2. Absent mitigating circumstances, a repeat of the same, active *Group I* offense should result in the issuance of a *Group II* offense notice.
3. A *Written Notice* for a *Group I* offense will remain "active" for two years from the date of issuance; see the *Active Life* Section of this operating procedure. The active period is finite and may not be extended due to an employee's absence.

### XIII. Second Group Offenses (Group II)

- A. These include acts and behaviors that are of a more serious or repetitive nature. This level is appropriate for offenses that seriously impact business operations and/or constitute a neglect of duty involving major consequences, insubordinate behaviors, and abuse of State resources, etc. An accumulation of two *Group II* offenses normally should warrant termination.
- B. *Group II* offenses include, but are not limited to:
  1. Failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with applicable established written policy or procedure.
  2. Violating safety rules where there is not a threat of bodily harm.
  3. Leaving the work site during working hours without permission.
  4. Failure to report to work as scheduled without proper notice to the supervisor.
  5. Unauthorized use or misuse of state property or records.
  6. Disruptive behavior or disruption in the workplace, may be considered a Group I, II or III offense depending on the nature circumstances of the violation.
  7. Failure to remove or cover emblems, images, or other items visible to other persons on vehicles, clothing, or other items owned or controlled by an employee, which would reasonably undermine the public safety mission of the Department, impede the performance of the employee's duties, diminish harmony among coworkers, or negatively affect the public perception of the Department, while the employee is on property owned or leased by the Commonwealth of Virginia or representing the Department.
  8. Refusal to work overtime hours as required.
  9. Violation of Operating Procedure 030.4, *Special Investigations Unit*, is considered a Group II offense, depending upon the nature of the violation and conduct being investigated.
  10. Violation of DHRM Policy 1.05 *Alcohol and Other Drugs* or Operating Procedure 135.4, *Alcohol and Drug Testing*, is considered a *Group II* offense, depending upon the nature of the violation. Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
  11. Violation of DHRM Policy 2.35 *Civility in the Workplace* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, is considered a *Group II* offense depending upon the nature of the violation.
  12. Violation of DHRM Policy 2.05 *Equal Employment Opportunity* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, is considered a *Group II* offense depending upon the nature of the violation.
  13. Violation of DOC Operating Procedure 040.1, *Litigation*, is considered a Group II offense depending upon the nature of the violation.
  14. Conviction of a first Driving Under the Influence, DUI, off the job and in a private vehicle may be

considered a *Group III* if the facts are egregious.

15. Unauthorized recording, videoing, or interception of voice and/or video communications. Employees, while on duty or while on DOC owned or leased property, are prohibited from recording any conversations. Employees while on or off duty, are prohibited from recording any conversation of a work-related nature with another employee, by whatever means, without the knowledge and consent of the other person or persons, unless approved by the Director. Exceptions to this provision are noted in Operating Procedure 030.4, *Special Investigations Unit*.

C. Procedures for Issuing a *Group II* Notice

1. When issuing an employee, a *Written Notice* for a *Group II* offense, management should issue such notice as soon as practical. Discipline will normally take the form of the notice and up to 10 workdays maximum disciplinary suspension without pay (maximum of 80 hours for non-exempt employees) for the first *Group II* offense.
2. Absent mitigating circumstances, the accumulation of two active *Group II* offenses should normally result in termination. A single *Group II* offense coupled with three "active" *Group I* offenses should normally result in termination.
  - a. If the employee is not terminated due to mitigating circumstances, the employee must be notified that any subsequent *Written Notice* issued during the "active" life period, regardless of level, may result in termination.
  - b. Mitigating circumstances may support, as an alternative to removal, an employee's transfer to an equivalent position in a different work area with no change in salary; disciplinary suspension without pay up to 30 workdays; demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.
3. *Written Notices* for *Group II* offenses will remain "active" for three years from the date of issuance; see the *Active Life* Section of this operating procedure. The active period is finite and may not be extended due to an employee's absence.

XIV. Third Group Offenses (Group III)

- A. These offenses include acts and behavior of such a serious nature that a first occurrence normally should warrant termination. This level is appropriate for offenses that, include but are not limited to, endangering others in the workplace, constituting illegal or unethical conduct, indicating significant neglect of duty; resulting in disruption of the workplace; or other serious violations of policies, procedures, or laws.
- B. *Group III* offenses include, but are not limited to:
  1. Absence of three or more consecutive days without proper authorization or a satisfactory reason.
  2. Falsifying any records either by creating a false record, altering a record to make it false, or omitting key information, willfully or by acts of negligence including but not limited to all electronic and paperwork and administrative related documents generated in the regular and ordinary course of business, such as count sheets, vouchers, reports statements, insurance claims, time records, leave records, or other official state documents.
  3. Willfully, or by acts of negligence, damaging or defacing state records, state property or property of other persons, including but not limited to employees, supervisors, inmates/probationers/parolees, visitors, volunteers, contractors, and/or students.
  4. Theft or unauthorized removal of state records, state property or property of other persons, including but not limited to employees, supervisors, inmates/probationers/parolees, visitors, volunteers, contractors, and/or students.
  5. Gambling sanctioned or unsanctioned, on state property during working hours.
  6. Acts of physical violence or fighting.

7. Violating safety rules where there is a threat of physical harm.
8. Sleeping during working hours.
9. Participating or conspiring in any kind of work slowdown, sit-down, or similar concerted interference with state operations.
10. Violation of DHRM Policy 1.05 *Alcohol and Other Drugs* or Operating Procedure 135.4, *Alcohol and Drug Testing*. Use of alcohol while on the job; any/all use, possession, distribution, sale, etc. of illegal drugs; or unlawful use of controlled substances will result in termination.
11. Unauthorized possession or use of firearms, dangerous weapons, or explosives.
12. Threatening or coercing persons associated with any state agency, including but not limited to employees, supervisors, volunteers, inmates/probationers/parolees, visitors, and/or students.
13. Criminal convictions for conduct occurring on or off the job which are related to job performance or are of such a nature that to continue the employee in their assigned position could constitute negligence.
14. Leaving a security post without permission during working hours.
15. Negligence on the job that results (or could have resulted) in the death, or serious injury of persons, including, but not limited to, employees, supervisors, volunteers, inmates/probationers/parolees, visitors, and/or students, or the escaping/absconding of inmates/probationers/parolees.
16. Refusal to obey instructions that could result in a weakening of security.
17. Disruptive behavior or disruption in the workplace, may be considered a *Group I, II or III* offense depending on the nature circumstances of the violation.
18. Physical abuse, inappropriate, unauthorized, or excessive use of force, or other abuse, either verbal or mental, which constitutes recognized maltreatment of inmates/probationers/parolees.
19. Violation of Operating Procedure 030.4, *Special Investigations Unit*, considered a *Group III* offense, depending upon the nature of the violation and conduct being investigated.
20. Violation of DHRM Policy 2.35 *Civility [in the Workplace](#)* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, considered a *Group III* offense, depending upon the nature of the violation.
21. Violation of DHRM Policy 2.05 *Equal Employment Opportunity* or Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*, considered a *Group III* offense, depending upon the nature of the violation.
22. Failure of an employee whose job requires possession of or carrying a firearm or authorization to possess or carry a firearm to report conviction for a felony or misdemeanor crime of domestic violence or other court or legal action that prohibits the employee from possession of or carrying a firearm.
23. Violation of Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Inmates*
24. Sexual misconduct with inmates/probationers/parolees. Any behavior of a sexual nature between employees and inmates/probationers/parolees under the DOC supervision is prohibited; see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Inmates and Probationers/Parolees*. Sexual misconduct includes but is not limited to conversations or correspondence that suggests a sexual relationship between an inmate/probationer/parolee by an employee, volunteer, contractor, visitor, or agency representative. A violation of Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, relating to consensual personal relationships/sexual harassment in the workplace may also constitute sexual misconduct.
25. Violation of any criminal drug law, including sentencing under the first-time inmate's/probationer's/parolee's law.

26. Failure to report a criminal conviction to the employee's supervisor within one workday of the conviction.
27. Violation of Operating Procedure 040.1 *Litigation* considered a *Group III* offense depending upon the nature of the violation.
28. Criminal charges or criminal convictions; see the *Criminal Charges and Convictions* section of this Operating Procedure.
29. Conviction of a DUI in a state vehicle or while on the job traveling as a representative of the DOC in a private vehicle
30. Conviction of a second DUI off the job and in a private vehicle, length of time between convictions and circumstances should be considered.
31. Charges or situations that involved crimes against a person
32. Fraternization or non-professional relationships with inmates/probationers/parolees who are within 180 days of the date following their discharge from DOC custody or termination from supervision; whichever occurs last. Exceptions to this section must be reviewed and approved by the Deputy Director for Institutions or the Deputy Director for Community Corrections or as designated to the Senior Deputy Director or respective Regional Administrator on a case-by-case basis, see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Inmates and Probationers/Parolees*.
33. An illegal drug violation of Operating Procedure 135.4, *Alcohol and Drug Testing* will result in a Group III offense and termination.
34. Introducing or attempting to introduce contraband into a facility or to an inmate/probationer/parolee, or possession of contraband in the facility.
35. Material omissions regarding convictions or charges of sexual abuse or sexual harassment in an institutional setting, sexual activity by force or coercion (or if the victim could not or did not consent), civil or administrative adjudication for sexual activity by force will be grounds for termination. (§115.17[g], §115.217[g])
36. Gang membership or association with a gang.
37. Violation of Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, relating to Consensual Personal Relationships/Sexual Harassment in the Workplace, including but not limited to failing to report an intimate or romantic relationship, relationship of a sexual nature, or attempts to initiate the same with a subordinate.
38. Examples of offenses are presented in Attachment 2, *Examples of Offenses Grouped by Level*.

#### C. Procedures for Issuing a *Group III* Notice

1. Before issuing a *Written Notice* that will result in the termination of an employee, a draft of the *Written Notice* must be sent to the Human Resources' Employee Relations Unit at DOC Headquarters for review and comment.
2. When issuing an employee, a *Written Notice* for a *Group III* offense, management should issue such notice as soon as practical. Discipline should normally take the form of the *Written Notice* and termination.
3. Mitigating circumstances for a *Group III* offense may support, as an alternative to termination, an employee's transfer to an equivalent position in a different work area with no change in salary; disciplinary suspension without pay of up to 30 workdays (240 hours for non-exempt employees); demotion; or transfer to a position with reduced responsibilities and a disciplinary salary action.
4. If the employee is not terminated due to mitigating circumstances, the employee is to be notified that any subsequent *Written Notice* issued during the "active" life period, regardless of level, may result in removal.



5. *Written Notices* for *Group III* offenses will remain "active" for four years from the date of issuance; see the *Active Life* section of this operating procedure). The active period is finite and may not be extended due to an employee's absence.

#### XV. Use of Grievance Procedure

- A. Non-probationary, classified employees may use the *State Grievance Procedure* to challenge a disciplinary action under the *Standards of Conduct*; see Operating Procedure 145.4, *Employee Grievances*.
- B. Eligible Corrections Officers are also entitled to procedure guarantees in accordance with the COV §9.1-508 et seq. *Correctional Officers Procedural Guarantee Act* when issued a *Written Notice* with transfer, disciplinary suspension without pay, demotion, or termination. Eligible Corrections Officers must elect one of the procedures by which they desire to address their complaint. An Officer cannot initiate, either simultaneously or consecutively, both the *Correctional Officers Procedural Guarantee Act* hearing process and the *State Grievance Procedure* for the same complaint.
- C. A hearing officer may uphold, reduce, or rescind corrective or disciplinary actions taken by an agency so long as the officer's decision is consistent with written policy. Refer to the Grievance Procedure Manual for a full understanding of Hearing Officer's Authority; see Operating Procedure 145.4, *Employee Grievances*.
- D. Employees may contact their Human Resource Officer, Human Resources' Employee Relations Unit at DOC Headquarters, or the DHRM Office of Equal Employment and Dispute Resolution regarding questions about the grievance procedure.

#### XVI. Active Life of Notices

- A. *Group I Written Notices* will have a two-year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and will not be extended because of absence.
- B. *Group II Written Notices* will have a three-year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and will not be extended because of absence.
- C. *Group III Written Notices* will have a four-year "active" period from the date the *Notice* was issued to the employee. These active periods are finite and will not be extended because of absence.
- D. *Written Notices* will not be removed from the employee's personnel file, except as noted below.
  1. A *Written Notice* can be removed if the DOC reduces or vacates its action or, through the grievance procedure, it is determined the *Notice* issued was not justified.
  2. In such cases, the agency Human Resources Officer will be responsible for placing the removed *Notice* in a grievance or separate confidential file.
  3. Under no circumstances should it be destroyed or remain in the employee's personnel file, nor should it be taken into consideration in any future personnel actions.
- E. *Written Notices* that are no longer active as stated in the *Active Life* Section of this operating procedure will not be taken into consideration in the accumulation of *Notices* or the degree of discipline for a new offense. An inactive notice may be considered in determining the appropriate disciplinary action if the conduct or behavior is repeated.

#### XVII. Delegation of Authority

Power to transfer, suspend, demote, and remove employees is vested in the DOC Director as appointing authority for the DOC and is hereby delegated as follows:

- A. Deputy Directors - Any division employee may be transferred, suspended, demoted, or removed with the written approval of the Deputy Director in charge of the division or unit.



- B. Regional Administrators - Except as otherwise directed by the Director, or Deputy Directors, any employee may be transferred, suspended, demoted, or removed within the Region with the written approval of the Regional Administrator.
- C. Organizational Unit Head - Except as otherwise directed by the Director, Deputy Directors, or Regional Administrator, any employee of an institution or other organizational unit may be transferred, suspended, demoted, or removed within the unit with the written approval of the Organizational Unit Head. Organizational Unit Heads may delegate, in writing, the authority to issue *Written Notices* and disciplinary suspensions up to five days to other management and supervisory staff.
- D. Human Resource Officers - Human Resource Officers will be responsible for the review of all corrective actions involving disciplinary suspension without pay or removal within their agency/facility to determine if mitigating circumstances exist which would otherwise justify modified corrective action and, in appropriate cases, referral to the Employee Assistance Program as available. Thereafter, Human Resource Officers will be responsible for making appropriate recommendations to the appointing authority.
- E. Management - Managerial and supervisory personnel are responsible to assure that corrective and disciplinary actions are timely and consistently applied.

#### XVIII. Disciplinary Suspensions

- A. All disciplinary suspensions are without pay. All disciplinary suspensions represent a Leave without Pay or pay docking transaction. Employees on suspension without pay normally will not be allowed on DOC premises, nor will they be allowed to work except to fulfill previously scheduled court obligations or to file and process a grievance or Equal Employment Opportunity complaint.
- B. Disciplinary suspensions without pay resulting from a *Written Notice*, or an accumulation of *Written Notices*, and the maximum periods of suspension for each level of *Written Notice* are described in the *Procedures for Issuing a Group Notices* Sections of this operating procedure and in Attachment 2, *Examples of Offenses Grouped by Level*.
- C. Suspension without pay of employees exempt from the Fair Labor Standards Act (FLSA)
  - 1. Exempt employee's salaries may not be reduced as the result of a suspension except as described in this section.
    - a. Exempt employees should be reimbursed promptly for any disciplinary salary reductions that are non-compliant.
    - b. Although probationary employees are not covered by this policy, the FLSA rules for suspension are applicable.
  - 2. Disciplinary suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full workday or workweek. Safety rules of major significance are defined as provisions intended to prevent serious danger to the workplace or to other employees.
  - 3. If an exempt employee is suspended without pay for misconduct, the suspension must be not less than a full workday. Suspensions of more than one workday must be in multiples of full workdays, e.g., a three-day (24 hour) suspension for an employee assigned to 8-hour workdays, or a three-day (30 hour) suspension for an employee assigned to 10-hour workdays. If it becomes necessary to remove an exempt employee from the workplace for a partial workday due to the employee's misconduct, the employee must be paid for that partial day's absence.
  - 4. If an exempt employee is suspended without pay for disciplinary reasons related to the employee's unsatisfactory attendance or performance issues (non-conduct related) the suspension must be not less than a full workweek. Suspensions of more than one workweek will be in multiples of full workweeks, e.g., a three-week (120-hour) suspension. An employee may not be permitted to serve a suspension related to attendance or performance other than in whole workweek segments. Less serious violations in these areas should be addressed by other means of discipline, reserving suspension without pay for

the most serious or repeated violations.

5. If an exempt employee is suspended pending the outcome of a criminal charge/investigation, the employee must be paid for any partial workweek suspensions. Full workweeks of suspension are unpaid.

D. The FLSA rules for suspension without pay apply to both probationary and non-probationary employees.

#### XIX. Access to DOC Premises and Work

- A. While on Pre-Disciplinary Leave with Pay or Suspension Without Pay, supervisors of employees who are suspended without pay or on pre-disciplinary leave with pay should collect the employee's I.D., badge, keys, weapon, and access card, if applicable, before the employee leaves the premises.
- B. Employees who are suspended without pay or on pre-disciplinary leave with pay normally will not be allowed on DOC premises, except to participate in due process proceedings or to file and process a grievance. During these circumstances, the employee should be escorted by a staff member designated by the Organizational Unit Head and will not be allowed to work except to fulfill previously scheduled Court obligations.

#### XX. Status of Benefits and Pay

- A. For an employee on Pre-Disciplinary Leave with Pay or Suspension Without Pay the following should be reviewed and considered.
- B. Compensation - Agencies should update payroll and/or the human resources information system records as promptly as feasible upon suspending employees without pay, and upon subsequent demotions or transfers with disciplinary salary action, discharges, or reinstatements.
- C. Performance increases and annual leave accrual rate
  1. Employee's eligibility for performance increases may be affected by the time on suspension without pay in accordance with DHRM Policy 1.40, *Performance Planning and Evaluation*.
  2. Projected date of increase in annual leave accrual rate - Suspensions without pay exceeding 14 calendar days will affect an employee's length of service for purposes of annual leave accrual.
- D. Annual and traditional sick leave accrual - An employee on suspension without pay will not accrue annual or traditional sick leave, except that:
  1. If a suspension extends into a second pay period, accrual of annual and sick leave will resume in the second pay period unless the period of suspension exceeds 15 calendar days; and
  2. If a suspension extends into a third pay period, accrual of annual and sick leave will resume in the third pay period unless the period of suspension exceeds 31 calendar days, and so on.
- E. Virginia Sickness and Disability Program (VSDP) Benefits
  1. Employees who are suspended for disciplinary reasons may not access their VSDP benefits.
  2. Employees who are terminated for disciplinary reasons are not eligible to receive VSDP benefits.
- F. Health Insurance
  1. The health insurance coverage of an employee who has been suspended without pay continues until the end of the month in which the suspension began, except that there will be no break in coverage if the employee is reinstated or placed in a paid leave status in time to work half of the workdays in the following month.
  2. If the length of the period of suspension without pay results in a break in health insurance coverage, the suspended employee may retain their group insurance coverage for 12 months by paying the monthly insurance premiums (both the employee's and state's contribution) in advance. This 12-month extension runs concurrently with the 18 months granted under the extended coverage provisions of the



health benefits plan.

### 3. Reinstatement

- a. If an agency reinstates a suspended employee with back pay for any period of the suspension, unless directed otherwise in the Hearing Officer's decision, the agency will make appropriate refund(s) to the employee for the state portion of any health insurance premiums that they paid to continue coverage during the suspension.
- b. If an agency reinstates a suspended employee without back pay, unless otherwise directed in the Hearing Officer's decision, there will be no reimbursement for any portion of health insurance premiums that they paid to continue coverage.
- c. If an agency reinstates a terminated employee with back pay, unless otherwise directed in the Hearing Officer's decision, health benefits must be made effective retroactive to the date of termination.

NOTE: Suspended without pay and terminated employees may have purchased individual health insurance coverage or acquired coverage through a spouse's health benefits plan. The DOC should inquire about such coverage when discussing back pay and benefits with these employees. If the Hearing Officer does not grant back benefits because the employee was enrolled in other coverage during the period of suspension or termination, the employee must provide proof of the other coverage.

- G. Life insurance - Life insurance coverage may continue for up to 24 months, with the agency making the full contribution.

## XXI. Status of Employee's Benefits Due to Separation

- A. An employee's benefits (accrued leave and health insurance) are regulated by DHRM Policy 1.70, *Termination/Separation from State Service*.
- B. An employee's retirement benefits are regulated by VRS Policy
  1. Details are available at <http://www.varetire.org/members/index.asp>
- C. Current or Former Employee Felony Convictions
  1. In accordance with COV §51.1-124.13, *Loss of benefits; certain felony convictions*, when a current or former employee is convicted of a felony for misconduct associated with the performance of DOC job duties, a forfeiture of all VRS-related benefits will occur.
    - a. Prior to making such a determination, the Employee Benefits Manager must provide the employee with a written notification and provide a reasonable opportunity for the employee to be heard during the review process. The employee's response may be written or heard orally via a virtual or in person meeting.
    - b. Upon consideration of the employee's response and the facts specific to the employee's misconduct and the felony conviction, the Employee Benefits Manager will notify the employee in writing of a determination which will also include the employee's option to appeal.
    - c. Within five calendar days of the receipt of the determination, the employee may submit a written appeal of the agency's determination to the Employee Benefits Manager.
    - d. Within five working days of receiving an employee's appeal of the determination, the Employee Benefits Manager will transmit a copy of the record to the Clerk of the Circuit Court in the jurisdiction where the employer is located.
    - e. If a timely appeal is not filed by the employee, the DOC's determination becomes final ten calendar days after the agency's determination.
    - f. Within thirty days of the receipt of the record, the court will hear the appeal and evidence that is necessary to resolve any controversy as to the correctness of the record and at its discretion, may hear other relevant evidence. The circuit court hearing will be at no cost to the Agency or the



employee per COV §51.1-124.13., *Loss of benefits; certain felony convictions.*

- g. The court may affirm, reverse, or modify the Agency's determination. The decision of the court will be rendered within fifteen days from the date of the hearing's conclusion. The court's decision is considered final and is not subject to appeal.
2. Upon a final determination that the felony conviction arose from misconduct occurring on or after July 1, 2011, in the employee's job, the Employee Benefits Manager must submit a completed VRS-180 (*Employer Request for Forfeiture of Member Benefits*) to the Virginia Retirement System (VRS). The VRS-180 provides detailed descriptions of the forfeiture and appeals processes as well as which VRS benefits are affected by the request. Employees may contact the VRS to determine their eligibility for a full or partial refund of employee contributions and interest based on vesting requirements for refunds as established by VRS policies.
3. OLES will monitor the outcome of trials where there is potential for felony conviction of a current or former DOC employee in relation to their DOC job responsibilities. Upon discovery of a felony conviction meeting these criteria, the OLES Chief of Investigations will notify the Human Resources Director to initiate the benefits forfeiture process.
4. Unit Heads are also responsible for notifying the OLES Chief of Investigations and Human Resources Director when a current or former DOC employee is convicted of a felony in relation to their DOC job responsibilities.

## XXII. Reinstatement from Removal by a Hearing Officer's Decision

- A. Unless otherwise stated in the Hearing Officer's Decision, the DOC is obligated to reinstate employees with full benefits.
- B. Where a Hearing Officer directs reinstatement of an employee, the Hearing Officer has the authority to award full, partial, or no back pay for the period of separation as determined to be appropriate based on the circumstances of the case.
- C. Unemployment Compensation Benefits - A Hearing Officer's award of back pay will be offset by any interim earnings that the employee received during the period of separation, including unemployment compensation received from the Virginia Employment Commission.

## REFERENCES

COV §2.2-2900 *et seq.*, *Virginia Personnel Act*

COV §9.1-508 *et seq.*, *Correctional Officer Procedural Guarantee Act*

COV §18.2-57.2, *Assault and battery against a family or household member; penalty*

COV §51.1-124.13, *Loss of benefits; certain felony convictions*

DHRM Policy 1.05, *Alcohol and Other Drugs*

DHRM Policy 1.40, *Performance Planning and Evaluation*

DHRM Policy 1.60, *Standards of Conduct*

DHRM Policy 1.70, *Termination/Separation from State Service*

DHRM Policy 2.05, *Equal Employment Opportunity*

DHRM Policy 2.35, *Civility in the Workplace*

DHRM Policy Guide - *Impact of Suspension on Pay and Benefits*

DHRM Policy Guide - *Managing Corrective and Disciplinary Records*

Operating Procedure 030.4, *Special Investigations Unit*

Operating Procedure 040.1, *Litigation*

Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Inmates and*



*Probationers/Parolees*

Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*

Operating Procedure 135.4, *Alcohol and Drug Testing*

Operating Procedure 145.2, *Employee Performance Management*

Operating Procedure 145.3, *Equal Employment Opportunity, Anti-Harassment, and Workplace Civility*

Operating Procedure 145.4, *Employee Grievances*

Operating Procedure 150.5, *Employee Assistance Program*

Title 18, U.S. Code, Section 922(g)(9), Unlawful Acts

## **ATTACHMENTS**

Attachment 1, *Guidance on Criminal Convictions*

Attachment 2, *Examples of Offenses Grouped by Level*

## **FORM CITATIONS**

*Internal Audit Unit Notice of Investigation* 030\_F23

*Criminal Offense/Moving Traffic Violation Notification* 040\_F1

*Written Notice* 135\_F1

*Correctional Officer Procedural Guarantee Investigation Notice* 135\_F8

*Administration of Employee Discipline: Due Process Notification* 135\_F9

*Interim Employee Evaluation* 145\_F3

*Performance Improvement Plan* 145\_F11 (To Be Developed)