

NEVADA DEPARTMENT OF CORRECTIONS
OFFENDER DISCIPLINARY MANUAL

Administrative Regulation (AR) 707.1



W. A. "Bill" Gittere, Acting Director

Effective: 01/04/2023

Supersedes: Manual dated 02/22/2017



NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION

SUMMARY OF CHANGES
AR 707.1 – OFFENDER DISCIPLINARY MANUAL
Effective January 4, 2023

Description	Page Number
Addition of Enhancement Penalties as approved by the Board of Prison Commissioners April 28, 2022	40
Other minor changes have been made in verbiage and formatting for improved clarity and consistency.	

W. A. Gittere

W. A. "Bill" Gittere, Acting Director

1.04.2023

Date

This summary of changes is for training record purposes only. You should also consult the Administrative Regulation and/or Manual for proper instructions.

I, _____, acknowledge receipt of this Summary of Changes and understand it is my responsibility to implement into the course of my duties.

Signature

Date

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1. PURPOSE

- A. This Nevada Department of Corrections (“NDOC”) Offender Disciplinary Manual (IDM) serves as the guide to implement the policy set forth in Administrative Regulation (AR) 707 Offender Disciplinary Process, and AR 707.2 (Chart of Disciplinary Sanctions) and establish procedures for the NDOC’s administrative disciplinary process that will:
1. Assist in maintaining security, control and staff, offender and public safety.
 2. Define and give notice of unacceptable offender behavior.
 3. Provide guidelines discipline of mentally ill and mentally impaired offenders.
 4. Specify the range of sanctions that may be imposed for a violation.
 5. Establish guidelines for the conduct of the disciplinary process.
 6. Maintain a record of disciplinary action and activities.
 7. Provide guidelines for offender’s wishing to appeal their disciplinary actions.
- B. The provisions of this IDM shall be applied to all disciplinary offenses listed within AR 707, and shall be effective for all Incident Reports (IR)/Offense in Custody (OIC) initiated on or after February 13, 2017. The provisions of this IDM are not retroactive and do not apply to any IR/OIC initiated prior to the effective date.
- C. This IDM does not create any right, liberty, or property interest, or establish the basis for any cause of action against the State of Nevada, its political subdivisions, agencies, boards, commissions, departments, officers or employees.
- D. If at any stage during the hearing process, whether at the Preliminary Hearing, or at the Hearing Officer stage, or at a Full Disciplinary Committee, it is known or suspected that the offender’s mental health or medical condition was a substantial cause of the misconduct and/or that the offender is assigned to the Mental Health program or has been already diagnosed as Seriously Mentally Ill (SMI), the offender shall be referred for a psychological evaluation prior to the disciplinary hearing.
- (1) The psychological evaluation shall state whether the misconduct was a result of the offender’s mental health or whether the mental illness contributed to the misconduct, and it shall be included in the written documentation, that shall be considered by the Hearing Officer or Committee when considering the sanctions to be imposed pursuant to Offender Disciplinary Sanctions in 707.2.
 - (2) If during the psychological evaluation, the staff conducting the evaluation suspects that the misconduct may have been as a result of a medical condition, such as, but not limited to; Dementia, Alzheimer’s, Post-Traumatic Stress Disorder (PTSD), or other condition such as a traumatic brain injury (TBI), the staff person shall refer the offender to Medical for their review and recommendation.
 - (3) If it is determined that the offender’s misconduct was a result of his/her mental health status or that the offender is assigned to the Mental Health program, the offender shall be given reasonable and appropriate accommodations in preparation for the hearing and the

offender may be provided with assistance during the hearing.

(4) If an offender is diagnosed as SMI, or has a medical condition, as determined by a mental health or medical professional, that may have affected the offender's behavior which resulted in the Notice of Charges, the Hearing Officer, or Disciplinary Committee may mitigate the sanction pursuant to Offender Disciplinary Sanctions in 707.2.

(5) However, the offender's misconduct shall be documented and the finding may include a finding of guilt. However, the sanction for an offender who is diagnosed as SMI or has a medical condition that directly affects the offender's conduct shall not include Disciplinary Segregation or Disciplinary Detention.

(6) If an offender's mental health or medical condition is of such a nature that the offender is a threat to self or others or is disruptive to the orderly operation of the facility or institution, the offender may be placed in administrative segregation. The placement in administrative segregation is not to be considered part of the disciplinary action taken. The placement in administrative segregation shall be temporary until more suitable placement is identified or the condition is treated.

(7) If after the sanction has been mitigated and it is determined that the offender was not SMI or that there were no medical conditions that should have affected the behavior and the outcome of the hearing, the information relative to the offender's manipulation shall be documented and the documentation shall be used to process disciplinary action against the offender.

2. DISCIPLINARY PROCESS STRUCTURE

A. The offender disciplinary process is divided into four (4) major areas:

1. Notice of Charges
2. Preliminary Hearing Officer's Inquiry and Disposition
3. Disciplinary Hearing
 - a. Disciplinary Hearing Officer
 - b. Full Disciplinary Hearing Committee
4. Disciplinary Appeals

B. Handling Minor Violations Without a Notice of Charges

1. In the case of minor disciplinary offenses, an NDOC employee may correct an offender's behavior by issuing a warning and/or counseling.
2. An informative or counseling report shall be documented.

a. Such a report shall be provided to the offender's caseworker, for inclusion in the Institutional File ("I-File").

b. A copy shall be provided to the offender.

C. The designated Associate Warden (AW) shall assign impartial NDOC employee(s) to act as a Preliminary Hearing Officer, a Disciplinary Hearing Officer, and members of the Full Disciplinary Hearing Committee.

1. Institutions

a. At Institutions, the Preliminary Hearing Officer shall have the rank of Sergeant, Caseworker I or above.

b. At Institutions, the Disciplinary Hearing Officer shall have the rank of Lieutenant, Caseworker II or above.

c. At Institutions, the Full Disciplinary Hearing Committee shall be comprised of three (3) NDOC employees, one (1) of whom shall serve as the Chairperson.

i. The Chairperson shall have the rank of Lieutenant, Caseworker III or above.

ii. The other two (2) members shall be NDOC employees.

iii. The Full Disciplinary Hearing Committee shall have at least one (1) member from the classification series and at least one (1) member from custody.

2. Facilities

a. At Facilities, the Preliminary Hearing Officer shall have the rank of Senior Correctional Officer or above.

b. At Facilities, the Disciplinary Hearing Officer shall have the rank of Sergeant, Caseworker I or above.

c. At Facilities, the Full Disciplinary Hearing Committee shall be comprised of two (2) or three (3) NDOC employees, one of whom shall serve as the Chairperson.

i. The Chairperson shall have the rank of Sergeant, Caseworker I or above.

ii. The other member(s) shall be NDOC employees.

iii. If staffing permits, the Full Disciplinary Hearing Committee shall have at least one (1) member from the classification series and at least one (1) member from custody.

D. An NDOC employee involved in the disciplinary process shall be considered impartial in that he/she:

1. Did not witness or investigate the subject disciplinary offense.
2. Was not a victim of the subject disciplinary offense.
3. Did not participate in the writing of the Notice of Charges for the subject disciplinary offense.
4. Did not sit as a member of the classification committee, which authorized pre-disciplinary segregation for the subject disciplinary offense.
5. Was not the Preliminary Hearing Officer for the subject disciplinary offense.
6. Was not the Hearing Officer for the subject disciplinary offense.
7. Did not determine the charge and list the charge on the Notice of Charges-DOC 3017.
8. This list is not exclusive.

D. An NDOC employee is not necessarily partial based on such facts as:

1. Having general knowledge of the subject disciplinary offense.
2. Being the subject of grievances and lawsuits brought by the offender.
3. Having a previous unpleasant encounter with the offender.
4. Having knowledge of the subject disciplinary offense by virtue of having heard the violations of others included in the same incident.
5. Acting as Shift Supervisor.
6. This list is not exclusive

3. OFFENDER DISCIPLINARY PROCESS

A. Notice of Charges

1. Upon the reasonable belief of an NDOC employee that a disciplinary offense has been committed, before the end of their shift the employee shall request an IR number from the shift supervisor. Following receipt of the IR number and the OIC number, the employee should promptly, and prior to the end of their shift, complete the Notice of Charges – DOC 3017 using the Nevada Offender Tracking Information System (NOTIS).

- a. If a non-NDOC employee, volunteer or contractor believes that they have

observed or has information regarding the commission of a disciplinary offense, a written report shall be submitted to the designated AW who shall assign an NDOC charging employee.

b. If a disciplinary offense is charged as a result of an investigation, the investigator shall generate an IR and OIC after the investigation is complete.

2. The Notice of Charges, as well as any supporting reports, shall be a factual and professional description of the disciplinary offense.
 - a. Only one charge shall be assigned to the offender on the Notice of Charges Form - DOC 3017.
 - b. Only the most serious code violation that can be supported by “some evidence” shall be charged on the Notice of Charges Form - DOC 3017.
 - c. No additional charges shall be added.
 - d. There will be no “stacking of charges.”
 - e. The Preliminary Hearing Officer has the authority to “amend” a charge, but cannot add any additional charges.
 - f. The report shall be thorough and complete and contain specific details of the disciplinary offense, including the following:
 - (1) The name and ID number of the offender committing the alleged disciplinary offense.
 - (2) The date, time and location of the disciplinary offense, if known.
 - (3) Evidence, if collected, and location of the evidence.
 - (4) The specific facts surrounding the disciplinary offense, in chronological order.
 - (5) Any immediate action taken.
 - (6) The names of witnesses to the disciplinary offense, if any.
 - (7) The exact disposition of any evidence involved.
 - (8) The title and name of the reporting employee.
 - (9) Opinions and recommendations shall not be included.

3. After the charging employee completes the Notice of Charges -DOC 3017, and any related supporting evidence or information, the Shift Supervisor shall be responsible for reviewing the Notice of Charges and any supporting reports, identifying/assigning the disciplinary offense charged, and submitting the Notice of Charges using NOTIS.

a. The Shift Supervisor shall review the Notice of Charges and supporting reports for content and ensure that all of the information necessary is included. Spelling and grammar shall also be considered.

b. If the Notice of Charges and/or any supporting reports require additional information, explanation and/or editing, the Shift Supervisor shall advise the charging employee (or author of the supporting report) that editing is necessary and ensure that the necessary changes are made.

4. In the event of a serious incident, the Shift Supervisor shall collect all reports regarding the disciplinary offense and either refer the incident for investigation or have a Notice of Charges initiated. The investigation shall begin within 24-hours of the time the disciplinary offense is reported.

5. If additional evidence is discovered after the service of the DOC 3017, but prior to the Disciplinary Hearing and a modified charge is warranted, the disciplinary process shall be halted and due process for the modified charge shall be followed.

6. The Preliminary Hearing Officer shall change the charge, and the offender shall be re-issued an amended Notice of Charges- DOC 3017.

B. Preliminary Hearing Officer's Inquiry and Disposition

1. Review of Notice of Charges - DOC 3017.

a. As soon as practical after receipt, an impartial Preliminary Hearing Officer shall review the description of the incident and the disciplinary offense that is charged.

b. The Preliminary Hearing Officer may:

(1) Proceed with the service of the Notice of Charges; or

(2) Refer the matter back to the Shift Supervisor for further clarification/ investigation; or

(3) Amend the charge, if appropriate, prior to service of the Notice of Charges. Any amendment must be documented in NOTIS.

2. Service of Notice of Charges

a. An offender accused of a disciplinary offense shall receive a Disciplinary Notice

of Charges - DOC 3017 containing a written statement of the disciplinary offense charged.

b. The designated Preliminary Hearing Officer shall serve the Notice of Charges - DOC 3017 within 15-calendar days of the date of discovery of the violation , or within 15-calendar days of the completion of investigative work concerning the incident, or in the case of an escape, within 15-calendar days after the escapee's return to NDOC custody.

c. If a charge is amended, the offender shall receive a copy of the new Notice of Charges with the modified charge, within 15-calendar days of the date of discovery of the circumstances that resulted in the modified charge.

(1) This period may be extended for exceptional circumstances.

(2) An explanation for any delay shall be included with the Notice of Charges, at the time of service. The explanation may be included as an attachment to the Notice of Charges or may be written on the Preliminary Hearing Officer's summary.

d. Measures shall be taken to ensure that reasonable and appropriate accommodations are made in an effort to meet the individual needs of offenders who have a hearing or speaking impairment, do not speak English, and/or experience other language barriers.

(1) When a literacy or language problem prevents an offender from understanding the charge, a staff member or translator shall assist the offender in understanding the charge.

(2) Any accommodations made must be documented and made part of the record such as those accommodations made due to a mental health or medical condition or other impairment

e. When the Notice of Charges is presented to the accused offender, the Preliminary Hearing Officer shall:

(1) Read the charge to the offender.

(2) If the disciplinary offense could result in a criminal prosecution referral, the offender shall be advised of the right to remain silent.

(A) This warning shall be made a part of the record of the disciplinary hearing.

(B) If the offender remains silent and makes no plea, such shall be considered a plea of not guilty.

(C) Silence may not be used to draw an adverse inference against the offender. Silence alone shall not be used to support a finding that an offender committed a violation.

(3) Provide the offender with a copy of the Notice of Charges – DOC 3017 and any applicable attachments, and obtain the offender’s signature as proof of receipt. The offender’s refusal to sign the Notice of Charges – DOC 3017 must be noted and witnessed by both the Preliminary Hearing Officer and a second NDOC employee.

(4) Update NOTIS with the date of service of the Notice of Charges – DOC 3017.

3. After service of the Notice of Charges – DOC 3017 has been completed, and after having discussed the matter with the accused offender, the Preliminary Hearing Officer may:

- a. Refer the charge back to the Shift Supervisor for further clarification/investigation.
- b. Dismiss the charge.
- c. Reduce a General Disciplinary Offense, Major Disciplinary Offense, or Work Release Violation Disciplinary Offense to a lesser related disciplinary offense.

(1) A Class “A” Disciplinary Offense shall not be reduced at the Preliminary Hearing level.

d. Amend the Charge

(1) When a charge is modified, the hearing process shall stop and the disciplinary shall be re-issued. The offender shall receive a copy of the new Notice of Charges with the modified charge within 15-calendar days of the date of discovery of the circumstances that resulted in the modified charge. The hearing shall be held within 30 days of the date that the offender received this new Notice of Charges with the modified charge.

(2) When the charge is modified, a hard copy of the original (initial) Notice of Charges shall be maintained with other disciplinary documentation in the I-File for historical purposes.

e. Before proceeding with the charge as written, the Preliminary Hearing Officer shall ensure that the offender has had at least 24-hours prior to the formal hearing to prepare for the hearing.

4. The Preliminary Hearing Officer shall ask the offender to submit a plea to each charge. If the offender remains silent, such silence shall be considered a plea of “not guilty.”

a. Prior to accepting a “guilty” plea, the Preliminary Hearing Officer shall advise the offender that a plea of “guilty” waives any appeal and/or any subsequent challenges to the disciplinary process.

5. The Preliminary Hearing Officer shall enter the offender’s plea to the charge into NOTIS.

6. The Preliminary Hearing Officer shall also inquire as to whether the offender would like witness(es) and enter the offender’s requested witness(es) into NOTIS. If the offender does not identify any witnesses, then this should be documented.

a. Offenders who enter a plea of “guilty” are not entitled to call witness(es) on their behalf.

7. The Preliminary Hearing Officer shall also ask the offender if he/she wants to make a statement; any such statement shall be entered into NOTIS.

a. If the offender declines to make a statement, it shall be noted in NOTIS.

8. Disposition/Referral by Preliminary Hearing Officer

a. “Not Guilty” Plea to a Minor Disciplinary Offense or General Disciplinary Offense

(1) If an offender enters a plea of “not guilty” to either a **Minor Disciplinary Offense or a General Disciplinary Offense**, the Preliminary Hearing Officer shall refer the matter to a Disciplinary Hearing Officer.

b. “Guilty” Plea to a Minor Disciplinary Offense or General Disciplinary Offense(s)

(1) If an offender enters a plea of “guilty” to a **Minor Disciplinary Offense**, no hearing is required and the Preliminary Hearing Officer may proceed directly with the imposition of sanctions, pursuant to 707.2, Chart of Disciplinary Sanctions.

(2) If an offender enters a plea of “guilty” to a **General Disciplinary Offense**, no hearing is required and the Preliminary Hearing Officer may either proceed directly with the imposition of sanctions or refer the matter to a Disciplinary Hearing Officer.

(3) If imposing sanctions at the Preliminary Hearing, the Preliminary Hearing Officer must determine the sanction(s) that are appropriate pursuant to 707.2 Chart of Disciplinary Sanctions, and are the minimum required to deter further offenses by the offender.

(A) Sanction(s) imposed must be in accordance with the Chart of Disciplinary Sanctions 707.2 and as set forth within this Offender Disciplinary Manual.

(4) Sanctions that may be imposed by the Preliminary Hearing Officer

(A) The Preliminary Hearing Officer may impose any sanction(s) authorized for a Minor Disciplinary Offense (Class E).

(B) The Preliminary Hearing Officer may not impose sanctions authorized for a General Disciplinary Offense (Class D) or a Major Disciplinary Offense (Class A, B or C).

(C) The Preliminary Hearing Officer may not impose suspended sanctions from prior disciplinary hearings.

(5) Following the acceptance of a guilty plea for which sanctions are imposed at the Preliminary Hearing, the Preliminary Hearing Officer must also determine whether restitution is appropriate.

c. Major Disciplinary Offense or Work Release Violation Disciplinary Offense

(1) Whether the offender enters a plea of “guilty” or “not guilty” a **Major Disciplinary Offense** or a **Work Release Disciplinary Offense** shall be referred to the Full Disciplinary Hearing Committee.

9. The Preliminary Hearing Officer shall complete all appropriate entries in NOTIS and print out two (2) copies of the Summary of Hearing Officer’s Inquiry -DOC 3018.

a. The Preliminary Hearing Officer shall provide the offender with a copy of the Summary of Hearing Officer – DOC 3018, and obtain the offender’s signature as proof of receipt on the second copy. The offender’s refusal to sign the Summary of Hearing Officer – DOC 3018 shall be noted and witnessed by both the Preliminary Hearing Officer and a second NDOC employee.

b. At the time of service of the Summary of Hearing Officer – DOC 3018, the Preliminary Hearing Officer shall explain the information on the form and request that the offender confirm that the offender statement, if any was given, is accurate and that all of the requested witnesses have been identified.

10. Following the conclusion of the Preliminary Hearing, the Preliminary Hearing Officer shall forward the original signed copies of both the Notice of Charges – DOC 3017, including any attachments, and the Summary of Hearing Officer’s Inquiry and Disposition, DOC 3018 to the disciplinary coordinator/designee.

C. Disciplinary Hearings

1. Disciplinary Hearings involving the charge of a Minor Disciplinary Offense or a General Disciplinary Offense shall be conducted by the Disciplinary Hearing Officer.

a. Disciplinary Hearings for a Minor Disciplinary Offense or a General Disciplinary Offense may be recorded at the discretion of the Disciplinary Hearing Officer.

(1) However, all plea bargaining and sanction bargaining must be recorded and the Plea/Sanction Bargain Form – DOC 3010 completed.

(2) If a recording is made, the Disciplinary Hearing Officer shall upload it to NOTIS Web.

2. When a Major Disciplinary Offense or Work Release Disciplinary Offense is charged, the disciplinary hearing shall be conducted by the Full Disciplinary Hearing Committee.

a. A Disciplinary Hearing for a Major Disciplinary Offense or Work Release Disciplinary Offense shall be voice recorded, including a guilty plea, plea bargaining and sanction bargaining. **NO EXCEPTIONS.**

(1) The offender may not waive the recording.

(2) Recordings shall be uploaded to NOTIS Web.

(3) The recorder shall be checked prior to the hearing to ensure it is properly functioning.

3. Disciplinary Hearings, whether conducted by the Disciplinary Hearing Officer or the Full Disciplinary Hearing Committee, must be no sooner than 24-hours after service of the Notice of Charges – DOC 3017 to afford the offender the opportunity to prepare a defense. Absent exceptional circumstances, the Disciplinary Hearing shall take place within 30-calendar days after the Notice of Charges – DOC 3017 is served.

a. If there is a delay in the disciplinary process a complete explanation for delay shall be announced at the Disciplinary Hearing, and shall be made part of the record.

4. An offender who has been served with a Notice of Charges – DOC 3017 shall be able, if he/she so indicates, to consult with a law librarian assistant prior to the Disciplinary Hearing. *Participation by librarian assistant shall be voluntary.*

5. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may consider the charge as written or may reduce the charge to a more appropriate lesser charge. This reduction may occur prior to the Disciplinary Hearing, during the Disciplinary Hearing, or during deliberations.

6. If the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee determines that the offender has been charged incorrectly, the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee may amend the charge.

a. If the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee elects to amend the charge then:

(1) The Disciplinary Hearing shall be rescheduled; and

(2) The offender shall be informed in writing of the amended charge; and

(3) The Disciplinary Hearing must be rescheduled for a period no sooner than 24-hours after service of the modified charge; and

(4) Absent exceptional circumstances, the Disciplinary Hearing shall take place within thirty-days after the Notice of Charges – DOC 3017 was originally served.

7. Evidence

a. Any finding of guilt must be based on some evidence, regardless of the amount and the evidence used shall be documented.

b. The formal rules of evidence do not apply in Disciplinary Hearings. Hearsay evidence may be accepted.

c. The reliability and relevancy of the evidence is within the discretionary determination of the Disciplinary Hearing Officer or members of the Full Disciplinary Hearing Committee.

d. Evidence is relevant if it assists the Disciplinary Hearing Officer or members of the Full Disciplinary Hearing Committee in determining a fact necessary to determine guilt or innocence.

e. Evidence is reliable if it is trustworthy.

(1) In determining the reliability of evidence, the Disciplinary Hearing Officer and members of the Full Disciplinary Hearing Committee shall consider the integrity of the person offering the information, the quality of the person's memory, the person's perceptive abilities, and the ability of the person to communicate the information.

(2) Reliable evidence need not be corroborated by any other source.

f. The Disciplinary Hearing Officer and members of the Full Disciplinary Hearing Committee shall weigh the evidence.

8. Offenders have no right to legal counsel in NDOC disciplinary proceedings, and counsel shall not be permitted at Disciplinary Hearings.

9. Procedures during the Disciplinary Hearing

a. The charged offender shall be present at the Disciplinary Hearing except when: he/she refuses to attend or waives his/her appearance before the Disciplinary Hearing Officer or Full Disciplinary Hearing Committee; or the offender's behavior is disruptive; or confidential information is being presented.

(1) If an offender is not present at the Disciplinary Hearing, the reason for the offender's absence shall be documented and shall be made part of the record.

b. In addition to the Notice of Charges – DOC 3017, the offender shall receive copies of any evidentiary documents, which the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee considers, except in cases where non-disclosure has been approved pursuant to the Confidential Informant Information section of this Offender Disciplinary Manual, and/or when the evidentiary documents constitute documents that offenders are not permitted to have in their possession (e.g. medical records, etc.) or contain information that the offender is not permitted to have access to pursuant to Administrative Regulation 568 Offender Review of Departmental Records.

(1) In the event that the evidentiary documents constitute documents that offenders are not permitted to have in their possession, but would be permitted to review, the offender must be given the opportunity to review the documents at the Disciplinary Hearing. The record should reflect that the offender was given the opportunity to review the documents and whether the offender reviewed the documents or declined to do so.

(2) In the event that the evidentiary documents contain information that the offender is not permitted to have access to pursuant to AR 568 Offender Review of Departmental Records, to the extent possible, the confidential information at issue should be redacted by the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee and a redacted copy of the document should be given to the offender. To the extent that redaction is not possible or an acceptable remedy, the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee must make a record of the fact that the document cannot be redacted and establishing the basis for the inability to redact the document to the extent possible without disclosing confidential information.

c. If it is determined that the accused offender's psychological or emotional state is so impaired as to make the offender incapable of understanding or supporting their own defense, a law librarian assistant or NDOC staff member shall be permitted to represent the accused offender at the Disciplinary Hearing.

d. Measures shall be taken to ensure that reasonable and appropriate accommodations are made in an effort to meet the individual needs of offenders who have a hearing or speaking impairment, do not speak English, and/or experience other language barriers.

(1) Such reasonable accommodations may include, but are not limited to, written communications and use of an NDOC employee or another offender of the charged offender's choosing (subject to approval by the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee) as an interpreter.

(2) Any accommodations made shall be documented and made part of the record.

e. If the charged disciplinary offense(s) could result in a criminal prosecution referral, the offender shall be advised of the right to remain silent.

(1) This warning shall be made part of the record of the Disciplinary Hearing.

(2) Silence may not be used to draw an adverse inference against the offender. Silence alone shall not be used to support a finding that an offender committed a disciplinary offense.

f. If the offender is charged with a Major Disciplinary Offense and/or a Work Release Violation Disciplinary Offense, the offender shall be advised of the range of Statutory Good Time credits that could be subject to forfeiture for their particular disciplinary offense.

(1) This warning shall be given prior to entry of a plea.

g. If permitted by AR 707, the disciplinary offense may be plea bargained at the Disciplinary Hearing – Please/Sanction Bargain – DOC 3010.

(1) A Major Disciplinary Offense or a Work Release Violation Disciplinary Offense may be plea bargained to a related a General Disciplinary Offense or a Minor Disciplinary Offense.

(2) A General Disciplinary Offense may be plea bargained to a related Minor Disciplinary Offense.

(3) If an offender enters into a plea agreement, they expressly waive their right to a hearing and appeal.

(4) The terms of any plea agreement must be made part of the record, and the offender must verbally acknowledge acceptance of such terms on the record.

(5) Disciplinary charges of G27, MJ10 and MJ19 may not be plea bargained.

h. If permitted by AR 707, an offender may plead guilty to a charged disciplinary offense under the condition that they receive a special sanction from the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

(1) If an offender makes such an agreement, they expressly waive their right to a hearing or appeal.

(2) The terms of any sanction bargaining agreement must be made part of the record, and the offender must verbally acknowledge acceptance of such terms on the record.

(3) Restitution is not a sanction and cannot be negotiated.

(4) Forfeiture of Statutory Good Time credit cannot be sanction bargained.

(5) Sanction(s) imposed must be in accordance with the Disciplinary Sanctions Guidelines set forth within this Offender Disciplinary Manual.

(6) Disciplinary charges of G27, MJ10 and MJ19 may not be sanction bargained.

i. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall ask the offender to submit a plea to the charged disciplinary offense and shall enter the offender's plea into NOTIS. If the offender remains silent and makes no plea, such shall be considered a plea of "not guilty."

(1) Prior to accepting a "guilty" plea the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall warn the offender that a plea of "guilty" waives any appeal and/or any subsequent challenges to the disciplinary process.

j. If the offender pleads "guilty," no further evidence, statements or witnesses shall be considered.

k. If the offender pleads "not guilty," the offender shall have the opportunity to make a statement and present evidence to the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

(1) The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall enter the Offender Statement, Evidence Relied Upon, and Institutional Presentation into NOTIS.

(2) If the offender declines to make a statement and/or present any evidence that should be noted in NOTIS.

(3) If the offender wishes to submit a written statement, he/she may provide a written statement to the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee who shall attach the offender's written statement to the copy of the Summary of Disciplinary Hearing – DOC 3019. Copies of written statements shall not be made for or given to offenders.

1. If the offender pleads "not guilty," the offender shall be given a qualified opportunity to call witnesses on their behalf.

(1) The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall inquire as to whether the offender would like witness(es) and enter Witness Details and Witness Decision Justification into NOTIS. If the offender does not identify any witnesses, it should be noted.

10. Witnesses at Disciplinary Hearings

a. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may deny any witness if it is felt that the testimony would be irrelevant, redundant, hazardous to the security of the institution/facility, or would in any way endanger the safety of any individual, including the witness. Such denial shall be documented, and an explanation shall be included within the record.

b. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may also stipulate as to the proffered testimony of any proposed witness of the offender.

c. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may take the testimony of any witness (employee or offender) over the telephone if said telephone has the capability for all present at the hearing to hear the questions and answers.

d. The testimony of the charging employee must be permitted at all Disciplinary Hearings involving Major Disciplinary Offense(s) and/or Work Release Violation Disciplinary Offense(s) if the offender requests the charging employee as a witness. The charging employee may also testify over the telephone.

(1) If the charging employee is not available at the time set for the Disciplinary Hearing, the Disciplinary Hearing must be continued to allow the charging employee to be called as a witness.

e. The offender or their law librarian assistant/staff representative, if applicable, not both, shall have the opportunity to question witnesses.

f. Questions of all witnesses are to be directed through the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

g. Offenders have no right to cross-examine witnesses, or to confront witnesses against them.

h. Questioning of any witness, whether adverse or not, may be limited or curtailed, at the discretion of the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee, if:

- (1) The questioning is redundant.
- (2) The questioning is irrelevant.
- (3) The questioning is abusive.
- (4) The questioning would produce information that may present a danger to the safety and/or security of the institution/facility, the offender, employees or other offenders.

11. Reaching a Decision

a. Guilt or innocence shall be determined solely on the evidence presented at the hearing or reviewed prior to the hearing by the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

i. If any evidence is reviewed prior to the Disciplinary Hearing, a description of the evidence shall be noted for the record in the presence of the offender.

ii. Specific content may not be disclosed to the offender if it is confidential or poses a threat to safety or security.

b. Any finding of guilt shall be based on some evidence, regardless of the amount. The record must reflect the evidence relied upon.

c. When an offender is charged with a MJ19, the Special Procedures for MJ19 section of this Disciplinary Manual shall be complied with.

d. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may excuse the offender and reach a decision in private.

(1) The decision of the Full Disciplinary Hearing Committee shall be based upon the majority vote of the members.

(2) If the offender is excused, the Full Disciplinary Hearing Committee may deliberate off of the record and the recording may be stopped during any such discussions. However, once a decision is made and each of the members has rendered their vote, the Full Disciplinary Hearing Committee must recall the offender, re-commence the recording and announce their decision on the record. The Full Disciplinary Hearing Committee need not announce the vote of the individual members and/or the results of the vote (i.e. 2-1 Not Guilty, 3-0 Guilty, etc.).

e. If the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee finds the offender guilty, or the offender pleads guilty, the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may give the offender, or law librarian assistant/staff representative if applicable, not both, an opportunity to make a statement in mitigation.

(1) Such a statement is strictly within the discretion of the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

(2) If the offender is guilty of a Major Disciplinary Offense and/or a Work Release Violation Disciplinary Offense, the offender shall be permitted to make a separate statement concerning the forfeiture of Statutory Good Time credits.

f. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may consider mitigating and/or aggravating evidence or circumstances from whatever source, including the offender and/or Department files.

g. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall determine the sanction(s) that are appropriate, and are the minimum required to deter further offenses by the offender, following any finding of guilt.

(1) Sanction(s) imposed shall be in accordance with the Disciplinary Sanctions Guidelines set forth within this Offender Disciplinary Manual, AR 707, and AR 707.2.

h. The Disciplinary Hearing Officer/Full Disciplinary Hearing Committee must consider whether restitution is appropriate following any finding of guilt.

(1) If it is determined that restitution is appropriate, the offender shall be advised of the same at the Disciplinary Hearing.

(2) If the amount of potential restitution is known to the Disciplinary Hearing Officer/ Full Disciplinary Hearing Committee at the time of the Disciplinary Hearing, the offender shall be allowed to review related expenses. However, the offender shall not be provided with any information other than individual costs where the restitution issue involves medical charges for the offender's victim.

(3) The fact that the amount of restitution may be unknown at the time of the Disciplinary Hearing does not prevent restitution from being recommended. The amounts owed for restitution may be determined at a later date.

(4) Refer to the Restitution section of this Offender Disciplinary Manual for the procedures associated with assessing restitution.

12. After rendering a decision regarding guilt and deciding the appropriate sanction(s) and restitution, if any, the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee shall complete all appropriate entries in NOTIS and print out two (2) copies of the Summary of Disciplinary Hearing – DOC 3019.

a. The Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee shall provide the offender with a copy of the Summary of Disciplinary Hearing – DOC 3019, and obtain the offender's signature as proof of receipt on the second copy. The offender's refusal to sign the Summary of Disciplinary Hearing – DOC 3019 shall be noted and witnessed by both the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee and a second NDOC employee.

b. The Summary of Disciplinary Hearing – DOC 3019 shall include a written statement of the findings, including the evidence relied upon and the sanctions imposed.

13. Following the conclusion of the Disciplinary Hearing, the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee shall forward the original signed copies of the Notice of Charges - DOC 3017, Summary of Hearing Officer's Inquiry and Disposition - DOC 3018 and Summary of Disciplinary Hearing - DOC 3019, including any attachments (i.e. documentary evidence relied upon, offender written statement, etc), to the disciplinary coordinator/designee.

a. The original documentation shall be maintained in the offender's Institutional-File

D. Disciplinary Appeals

1. Following a finding of guilt an offender shall be advised that they may appeal this decision to the Warden via the grievance process outlined within AR 740 Offender Grievance Procedure within 10-calendar days of the finding of guilt. Submit one appeal to the Warden using the offender grievance processes outlined in AR 740 with 10-calendar days of the finding of guilt.

a. The appeal of a disciplinary conviction Disciplinary Appeal shall be submitted in writing, utilizing the Offender Grievance/Appeal Form, and shall concisely state the factual basis upon which the finding is appealed as well as the desired remedy. Notably, the offender must also attach copies of the Notice of Charges – DOC 3017, Summary of Hearing Officer's Inquiry and Disposition – DOC 3018, Summary of Disciplinary Hearing – DOC 3019, and all supporting documents to the Grievance/Appeal Form.

b. When initially filing a Disciplinary Appeal, Offenders must submit both an Informal Level Grievance and First Level Grievance and attachments.

c. An offender may only submit one Disciplinary Appeal per OIC number.

d. If an offender does not agree with the Warden's response to the Disciplinary Appeal (First Level Grievance), he/she may appeal to the Second Level via the grievance process outlined within AR 740.

2. Limitations on Disciplinary Appeals

- a. A plea of guilty may not be appealed.
- b. A plea or sanction, which is negotiated, may not be appealed.
- c. A sanction, which has not otherwise been suspended, shall not be suspended for the purpose of awaiting the results of an appeal.

3. Warden's Response

a. When reviewing an Disciplinary Appeal, the Warden may enlist the assistance of an impartial staff member. The review may include fact-finding related to the violation disciplinary offense and/or inquiry related to the disciplinary process.

b. In deciding an Disciplinary Appeal the Warden or designee shall consider three (3) factors:

i. Whether there was substantial compliance with the requirements of the Offender Disciplinary Manual;

ii. Whether the finding of guilt by the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee decision was based on some evidence (regardless of the amount); and

iii. Whether, under the circumstances, the sanction was imposed in accordance with the Chart of Disciplinary Sanctions – Attachment A.

c. After reaching a decision concerning the Disciplinary Appeal, the Warden may 1) affirm or reverse the decision outright; 2) return the decision back to the committee Disciplinary Hearing Officer/Full Disciplinary Hearing Committee for further proceedings; or 3) modify, but not increase the charge(s) and/or sanction(s) imposed.

i. The Warden/designee shall enter any reversal or modifications in NOTIS. If appropriate, a special case note may be made in NOTIS detailing the modification(s).

d. The Warden's response to the disciplinary appeal shall conform to the following outline:

- i. Charges and findings.
- ii. Offender's basis for appeal.

- iii. Warden's findings and decision.
- iv. Instructions, if any, to disciplinary staff.

4. DISCIPLINARY SANCTIONS GUIDELINES

- A. The Chart of Disciplinary Sanctions (707.2) shall guide the imposition of sanction(s).
- B. NDOC employees involved in the offender disciplinary process must recognize that the Chart of Disciplinary Sanctions cannot accurately, fairly or consistently address every situation.

1. Preliminary Hearing Officers, Disciplinary Hearing Officers, and members of the Full Disciplinary Hearing Committee must conduct an individual analysis of each incident for each offender.

2. In determining appropriate sanction(s), the following shall be taken into account:

- a. The need to maintain a safe and secure environment.
- b. The need to modify offender's behavior.
- c. The need to set expectations for other offenders.
- d. As stated in this Disciplinary Manual, an offender's mental health or medical condition shall be taken into account in determining the appropriate sanction. If it is suspected or known that the offender is mentally ill the offender, as stated in the Manual, shall be referred to a mental health professional for an evaluation and recommendation. If it is suspected or known that an offender has a medical condition, as stated in this Manual, the offender shall be referred to a medical professional for an evaluation and recommendation.
- e. As stated earlier in this Manual, an offender whose behavior or misconduct is such that the offender is a threat to the safety and security or the orderly operation of the facility or institution, the offender may be placed in administrative segregation until the offender's condition is addressed and the offender's behavior or misconduct is no longer an issue. If placement in administrative segregation status is necessary, it is not to be considered part of the sanction imposed.

3. Sanctions imposed may never exceed the maximum permissible sanction established within the Chart of Disciplinary Sanctions for the class of the highest guilty disciplinary offense. However, sanctions of any lower class disciplinary offense may be imposed.

4. Factors in mitigation and/or aggravation should be considered.

C. Disciplinary sanction(s) imposed may never include restrictions upon:

1. Medication;
2. Religious items;
3. Basic cell furnishings;
4. Basic personal hygiene items (soap, toilet paper, toothpaste, toothbrush);
5. Food (drinks/meals) provided by the Culinary (except as authorized by Administrative Regulation 732 Alternative Diet);
 - a. This does not prohibit limitations on items, including food and drink, which may be purchased through Canteen/Coffee Shop.
6. State issued bedding and clothing;
7. Access to the courts (legal telephone calls, book check-out from law library); or
8. Any item that has been determined to be constitutionally required.

E. Disciplinary sanction(s) imposed may include, but are not limited to, loss of the following privileges:

1. Outside Recreation;
2. Telephone Privileges;
3. Visiting Privileges;
4. Offender Store/Commissary.

F. An offender serving disciplinary segregation sanctions may not be subjected to the loss of minimal outdoor exercise periods as a result of any disciplinary incurred while serving Disciplinary Segregation unless the misconduct that resulted in the charged disciplinary offense relates specifically to an incident on or en-route to or from the exercise yard.

G. An offender may not be subject to the loss of visiting privileges unless the misconduct that resulted in the charged disciplinary offense relates specifically to an incident involving visitors and/or the visiting process.

H. Unless otherwise noted within this Offender Disciplinary Manual, disciplinary sanctions may be imposed either singly or in combination with other sanctions as noted in the Chart of Disciplinary Sanctions.

I. Determining Disciplinary Sanctions

1. Preliminary Hearing Officers, Disciplinary Hearing Officers and members of the Full Disciplinary Hearing Committee shall impose a sanction(s) that are appropriate and are the minimum required to deter further offenses by the offender.
2. In setting the sanction(s), factors in mitigation and aggravation shall be considered.
 - a. Other factors may be considered at the discretion of the Preliminary Hearing Officer, Disciplinary Hearing Officer and/or members of the Full Disciplinary Hearing Committee.
3. The following are examples of factors in mitigation and aggravation:
 - a. Mitigation includes but is not limited to:
 - (1) The offender has a minor disciplinary record or no prior disciplinary record.
 - (2) The offender has not been involved in prior findings of guilt for the same or similar nature.
 - (3) The misconduct was situational and spontaneous as opposed to planned.
 - (4) Medical or Mental Health conditions confirmed by medical or mental health staff.
 - b. Aggravation includes but is not limited to:
 - (1) The offender's disciplinary record reflects prior findings of guilt for same or similar misconduct.
 - (A) If prior charge(s) for similar misconduct were dismissed or the offender was determined to be "not guilty", those prior charge(s) shall not be considered as part of the offender's disciplinary record.
 - (2) The offender's disciplinary record reflects that the type of misconduct is becoming increasingly more serious.
 - (3) The misconduct was planned as opposed to situational or spontaneous.
 - (4) Serious injury to staff or offender(s) occurred as a result of the misconduct.
 - (5) The offender has not responded to suspended disciplinary sanctions.

(6) History of chronic “guilty” disciplinary offenses.

4. If a disciplinary offense is committed and the Disciplinary Hearing Officer/Chairman of the Full Disciplinary Hearing Committee suspects that the offender’s mental condition was a substantial cause of the misconduct, they may request a psychological evaluation and subsequently conduct or suspend disciplinary actions as appropriate.

5. Disciplinary sanctions that have been suspended may be imposed upon a finding of guilty on another General, Major or Work Release Disciplinary Offense within the probationary period.

(1) The entire suspended sanction must be imposed.

6. For disposition of MJ19 refer to the Special Procedures for MJ19 section within this Offender Disciplinary Manual.

5. DISCIPLINARY SEGREGATION, AUSTERE HOUSING AND DISCIPLINARY DETENTION GUIDELINES

A. Disciplinary Segregation may only be imposed through the offender disciplinary process. Refer to Administrative Regulation 733 Disciplinary Segregation for details of Disciplinary Segregation procedures.

B. Disciplinary Detention may only be imposed through the offender disciplinary process. Refer to Administrative Regulation 734 Offender Disciplinary Detention for details of Disciplinary Detention policy and procedures.

C. Whenever there is a shortage of beds in disciplinary segregation, the Warden may grant early releases to those offenders who are closest to being eligible for release and/or poses the lowest security risk until sufficient bed space is created for offenders with new segregation/austere housing terms.

1. If granted, the remainder of the segregation/austere housing remains in suspension until the original end dates of the segregation/austere housing.

2. If the offender violates the early release by subsequent misconduct, they may be required to serve the total unserved portion of the segregation housing.

6. REFERRALS FOR STATUTORY GOOD TIME FORFEITURE

A. The forfeiture of Statutory Good Time credits, as provided for in NRS 209.451, is a sanction which may be imposed for Major Disciplinary Offenses and Work Release Violation Disciplinary Offenses.

B. This sanction may be imposed singly, or in combination with other sanctions.

1. The sanction of Statutory Good Time credit forfeiture may not be suspended.
- C. Credits subject to forfeiture are those that were earned on the sentence the offender is currently serving, up to the date of the disciplinary offense.
- D. Credits earned on prior sentences are not subject to forfeiture.
- E. In instances where the Full Disciplinary Hearing Committee recommends a forfeiture of Statutory Good Time credits, the category/class shall be determined by referring to the Chart of Disciplinary Sanctions.
- F. Recommendations made by the Full Disciplinary Hearing Committee for forfeiture of Statutory Good Time credits must be approved by the Warden.
- G. Referrals for Statutory Good Time forfeiture are made to the Offender Management Division for processing. *See* AR 564 Forfeiture and Restoration of Statutory Good Time Credits.
- H. Forfeiture of Statutory Good Time credit shall not be subject to sanction negotiations.
- I. The following amounts of Statutory Good Time credit may be forfeited as a result of a finding of guilty for a disciplinary offense:

<u>CATEGORY/CLASS OF DISCIPLINARY OFFENSE</u>	<u>AMOUNT OF STATUTORY GOOD TIME LOSS (DAYS)</u>
A	Up to 60 credits
B	Up to 30 credits
C	Up to 15 credits

- J. All Statutory Good Time referrals for Major Disciplinary Offenses and/or Work Release Violation Disciplinary Offenses which resulted from Residential Confinement or transitional housing failure must be referred as a Category/Class A Stat Loss.
- K. The forfeiture of Statutory Good Time credits is subject to final approval by the Director or designee.
- L. An offender may appeal the forfeiture of Statutory Good Time credits through the offender grievance process.
- 7. REFERRALS FOR CRIMINAL PROSECUTION**

- A. The administrative disciplinary process, as described by this Offender Disciplinary Manual, and the system to prosecute a person in state or federal court are not related or interdependent.

B. An offender may be held accountable for a disciplinary offense through the NDOC administrative disciplinary process, and may also receive a criminal prosecution for the same offense at a later date.

C. A referral for criminal prosecution is not a disciplinary sanction.

1. Preliminary Hearing Officers, Disciplinary Hearing Officers and members of the Full Disciplinary Hearing Committee shall make no promises and shall not agree to negotiate any plea or sanction on the basis of a referral for criminal prosecution or absence thereof.

E. A finding of "guilty" for a disciplinary offense is not a prerequisite for a criminal prosecution referral.

F. Although a referral for criminal prosecution is not a sanction for a disciplinary offense, a referral may arise from the disciplinary process, at any time during the process, based on information that a crime may have been committed.

G. Refer to AR 708 Referral for Criminal Prosecution for additional information regarding the procedure for processing criminal referrals.

H. The institution/facility where the violation occurred is responsible to submit the criminal referral regardless where the disciplinary hearing is held.

1. Copies of all documentation shall be sent to the originating institution/facility.

8. REFERRALS FOR PAROLE/PROBATION REVOCATION

A. Parole Revocation

1. An offender pending release to the community on parole, or one who is serving a parole from a previous sentence may be subject to revocation proceedings or a review of a previous board order based on a finding of guilt on a Major Disciplinary Offense or a Work Release Violation Disciplinary Offense.

a. A parole violation is not considered to have occurred until an offender has been found guilty of a Major Disciplinary Offense and/or Work Release Violation Disciplinary Offense.

2. A referral for parole violation is not a disciplinary sanction.

3. Upon the finding of guilt on a Major Disciplinary Offense and/or Work Release Violation Disciplinary Offense the matter shall be reviewed for parole revocation procedures.

- a. The Warden shall determine if such an action is appropriate.
 - 1) If approved, a written report shall be submitted by the Warden to the Offender Management Administrator (OMA).
 - b. The OMA shall approve or disapprove the referral in writing.
 - c. If approved, an AW shall coordinate with the Executive Secretary of the Parole Board for a Review of Previous Order (RPO) or a parole revocation hearing.
4. The Department is authorized to place a stay on parole release plans for offenders who are accused of a Major Disciplinary Offense and/or Work Release Violation Disciplinary Offense.

B. Probation Revocation

1. An offender on probation while serving a sentence may be subject to revocation proceedings based on a finding of guilt on a Major Disciplinary Offense and/or a Work Related Violation Disciplinary Offense.
 - a. A probation revocation is not considered to have occurred until an offender has been found guilty of a Major Disciplinary Offense and/or Work Related Violation Disciplinary Offense.
2. A referral for probation revocation is not a disciplinary sanction.
3. Upon a finding of guilty on a Major Disciplinary Offense and/or Work Related Violation Disciplinary Offense, the matter shall be reviewed for probation revocation procedures
 - a. The Warden shall determine if such action is appropriate.
 - 1) If approved, a written report shall be submitted by the Warden to the OMA.
 - b. The OMA shall approve or disapprove the referral in writing.
 - c. If approved, an Associate Warden shall coordinate with the Offender Management Division (OMD), the Department of Parole and Probation, and Pre-Release Supervisor to initiate Probation Revocation Proceedings.

9. RESTITUTION

- A. Restitution required by law shall be assessed upon a finding of guilt.
- B. When restitution is determined to be appropriate, it should be identified within the OIC Penalty section of NOTIS.
- C. Whether or not the amount of restitution is known at the time, total restitution may be ongoing due to changing medical treatment or other costs related to the incident.
 - 1. On all medical charges, restitution amount noted shall state "TO BE DETERMINED" (TBD).
- D. Once the amount of restitution can be determined, a special classification hearing may be scheduled to address the assessment.
- E. Due process on a restitution issue may be achieved by giving the offender notice and details of the deduction, with an opportunity to be appealed through the offender grievance process.
 - 1. If a grievance is filed, restitution shall not be "suspended" pending the outcome of the grievance. If upheld, any funds removed shall be returned to the offender's account.

10. USE OF CONFIDENTIAL INFORMANT INFORMATION

- A. An offender may be found guilty of a disciplinary offense on the basis of information from a source whose identity is not disclosed to the offender at the Disciplinary Hearing.
 - 1. Confidential information may be presented verbally or in writing, subject to the conditions set forth in this section.
- B. Two-Prong Test for Determining Reliability and Necessity
 - 1. The record shall contain some factual information from which the Disciplinary Hearing Officer/members of the Full Disciplinary Hearing Committee can reasonably conclude that the confidential information is reliable.
 - a. The reliability of the informant's information can be established by any of the following:
 - 1) The oath of the investigating officer appearing before the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee as to the truth of their report that contains confidential information; or
 - 2) Corroborating testimony, or

- 3) A statement on the record by the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee that they had firsthand knowledge of the sources of information and considered them reliable based on the informant's past record; or
- 4) An on-camera review of the documentation from which credibility was assessed.

2. The record of the Disciplinary Hearing shall contain a NDOC employee's affirmative statement that safety considerations prevent the disclosure of the informant's name to the accused.

C. Disclosure of Source's Identity to Disciplinary Hearing Officer/Full Disciplinary Hearing Committee

1. In order to conduct the Two-Prong Test for Determining Reliability and Necessity, the identity of the confidential source shall be made known to the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee, out of the presence of the accused offender.

2. The Warden may, however, withhold the identity from the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

3. If the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee is not to be informed of the identity of the source, the record of the Disciplinary Hearing shall contain an affirmative statement from the Warden or an AW that the test was satisfied.

a. The statement shall minimally reflect that the Warden or AW considered the source of the information, judged the source to be reliable, and allowed that the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee may use the information.

b. The statement shall also reflect that safety considerations prevent the disclosure of the informant's identity to the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee.

D. Disclosure of Details of Testimony to Accused

1. After hearing the testimony of, or reading the statements of a confidential informant, the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee shall, to the extent possible, disclose the details to the accused offender.

2. The details of the informant's testimony may be withheld from the accused offender if disclosure would place the informant at risk by indirectly revealing their identity.

E. Record Keeping Requirements

1. In each instance where the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee relies upon confidential information to reach a finding of guilt, a separate confidential file shall be created and maintained at the institution/facility.
 - a. Each such file shall be numbered and shall contain a record of the informant's statement, the identity of the informant, and a copy of the disciplinary documents.
 - b. If the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee was not permitted to know the identity of the informant, the file shall also contain the statement of the official who approved non-disclosure.
 - i. This statement shall establish the reliability of the informant, and the necessity of anonymity.
2. The Warden shall review the complete record of all decisions in which the identity of an anonymous source was withheld from the Disciplinary Hearing Officer/Full Disciplinary Hearing Committee, provided they were not involved in the decision to withhold the identity.
 - a. If the Warden was involved in the original decision, a Deputy Director shall conduct the review.
 - b. Such reviews shall be completed within 15- days of the completion of the Disciplinary Hearing, or the resolution of the appeal, whichever is later.
3. The confidential file remains at the institution or facility where it was created and used; regardless of whether the subject offender later transfers.

11. SPECIAL PROCEDURES FOR MJ19

- A. "Sexual abuse", as utilized within this section, is defined by Administrative Regulation 421 – Custodial Sexual Misconduct, Offender Sexual Offenses, and Prison Rape Elimination Act (PREA).
- B. Offenders' shall be subject to disciplinary sanctions following a finding that the offender engaged in offender-on-offender sexual abuse or following a criminal finding of guilt for offender-on-offender sexual abuse.
- C. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the offender's disciplinary history, and the sanctions imposed for comparable offenses other offenders with similar histories.

D. The disciplinary process shall consider whether an offender's mental disabilities or mental illness contributed to his behavior when determining what type of sanction, if any, should be imposed.

1. If the Disciplinary Hearing Officer/members of the Full Disciplinary Hearing Committee believe that an offender's mental disabilities or mental illness may have contributed to the offender's behavior, the Disciplinary Hearing Officer/ Chairperson of the Full Disciplinary Hearing Committee should consult with mental health prior to issuing sanctions.

E. If the institution/facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the institution/facility shall consider whether to require the offending offender to participate in such interventions as a condition of access to programming or other benefits.

F. An offender may only be disciplined for sexual contact with staff upon a finding that the staff member did not consent to such contact.

1. If it is found that the staff member did not consent to the subject sexual contact, this finding must be clearly stated on the record.

G. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

H. Upon finding an offender guilty of a MJ19 the Disciplinary Hearing Officer/ Chairperson of the Full Disciplinary Hearing Committee shall immediately notify the institution/facility PREA Compliance Manager/designee.

12. MISCELLANEOUS DISCIPLINARY PROCEDURE

A. Disciplinary Documentation

1. All disciplinary actions shall be documented in the Nevada Offender Tracking Information System ("NOTIS") as those actions occur.
2. The NOTIS is designed to provide status reports of needed disciplinary actions.
3. NOTIS is not a substitute for any of the paper forms that are used to carry out the disciplinary process; Notice of Charges – DOC 3017, Summary of Hearing Officer's Inquiry and Disposition – DOC 3018 and Summary of Disciplinary Hearing – DOC 3019.
 - a. NOTIS is a method to record, summarize and analyze these activities.

- b. Institutions and facilities shall not maintain or develop disciplinary management or documentation systems, manual or automated, other than those provided through the NOTIS.
4. All references to the charged disciplinary offense shall be maintained in NOTIS and the I-File even if the charge is dismissed or the offender is found “not guilty”.
- a. The NDOC shall not expunge any disciplinary offenses/Notice of Charges.
 - b. However, if the charge is dismissed, an offender is determined to be “not guilty” of a disciplinary offense, or if a guilty finding is subsequently overturned by the Warden and/or following disciplinary appeal, documentation maintained in the I-File shall clearly indicate that the charge was dismissed or that the offender was “not guilty” of the alleged disciplinary offense. NOTIS shall also reflect the charge was dismissed and/or the offender was “not guilty” of the disciplinary offense.
 - c. If the charge is dismissed or an offender is determined to be “not guilty”, the charge shall not be considered as part of the offender’s disciplinary record.

B. Correction of Minor Technical Violations

1. A disciplinary matter need not be dismissed due to minor technical errors or violations. Minor technical errors or violations may be remedied.
- a. For example, if an employee involved in the incident also acted as the Preliminary Hearing Officer, Disciplinary Hearing Officer, or a member of the Full Disciplinary Hearing Committee the matter need not be dismissed. Rather, the matter shall be rescheduled and the disciplinary reheard by another Disciplinary Hearing Officer/Full Disciplinary Hearing Committee (not including the involved employee member).
3. A typographical error, spelling error or other clerical error can be repaired by correcting the problem.
- a. If the error did not, in the judgment of the Disciplinary Hearing Officer/Chairperson of the Full Disciplinary Hearing Committee, impair the offender’s ability to prepare a defense, the error may be corrected at the hearing, and the hearing may continue.
 - b. If, however, the error impaired the offender’s ability to prepare a defense, the Disciplinary Hearing shall be rescheduled.

C. Warden’s Review

1. The Warden, or an impartial designee, shall review the action of the Preliminary Hearing Officer, Disciplinary Hearing Officer, and Full Disciplinary Hearing Committee

regardless of whether an appeal is taken, and may reverse the decision, remand the decision, amend the charge, or modify the sanction imposed, whenever such action is warranted in the record.

- a. Under such review, the charge for which the offender was found “guilty” may only be modified to a lesser charge.
 - b. Under such a review, a sanction imposed by the Preliminary Hearing Officer, Disciplinary Hearing Officer, or Full Disciplinary Hearing Committee may not be increased.
2. Upon request of mental health staff, modification or suspension of sanctions imposed maybe reviewed and changed by the Warden.
 3. The Warden/designee shall enter any reversal or modifications in NOTIS. If appropriate, a special case note may be made in NOTIS detailing the modification(s).

D. Forfeited Property or Contraband

1. Any item that is considered contraband per Administrative Regulation 711, the Offender Property Manual and/or Operational Procedure(s) is subject to confiscation/forfeiture.
2. Any authorized item that is used in an unauthorized manner and/or is used during, or to facilitate a disciplinary offense is subject to confiscation/ forfeiture.
3. A confiscated/forfeited item shall be held as evidence as long as necessary, then as the Warden or Facility Manager directs be disposed of or destroyed.
 - a. Currency, coin, checks, money orders or other negotiable instruments shall be deposited in the Offender Welfare Fund, and used for the purpose, which the appropriate Administrative Regulation authorizes.
 - b. Items of property may be disposed of in an environmentally appropriate manner, or donated to charity, except that an item may not be given as a gift to an employee or the general public.

E. Staff Training

1. NDOC employees who act as Preliminary Hearing Officers, Disciplinary Hearing Officers and/or members of the Full Disciplinary Hearing Committee shall receive training prior to their participation in the offender disciplinary process.
2. New employees shall receive training and receive a copy on this procedure during their Pre-Service Training.
3. Current Employees shall receive a copy, via e-mail, of the Offender Disciplinary

Manual when revised, and/or shall be notified that the revised copy is available for review on the NDOC website.

F. Offender Transfer with Pending Disciplinary

1. If an offender is transferred prior to the completion of the disciplinary process, refer to the procedures set forth within AR 552 (Intra-Departmental Transfers).

FORMS

NDOC – 3017 – Notice of Charges

NDOC – 3018 – Summary of Hearing Officer's Investigation and Disposition

NDOC – 3019 – Summary of Disciplinary Hearing

NDOC – 3010 – Plea/Sanction Bargaining

DISCIPLINARY SANCTIONS AR 707.2

MENTAL HEALTH AND MEDICAL CONDITIONS:

If an offender is diagnosed as Seriously Mentally Ill (SMI), or has a medical condition, as determined by a mental health or medical professional, that may have affected his/her behavior, the Disciplinary Hearing Officer is required to follow the procedures outlined in AR 707 prior to a finding of guilt or imposing sanctions.

EXCEPTIONS TO CLASS "A" SANCTIONS:

MURDER: Up to One (1)-year in Disciplinary Segregation unless the offender is diagnosed as SMI by mental health professionals. If the offender is SMI then an Interdisciplinary Team, comprised of the Warden, a Psychologist IV, Associate Warden and Disciplinary Hearing Officer will define the appropriate housing and treatment.

ASSAULT AND BATTERY ON STAFF: Up to 180-days in Disciplinary Segregation, unless the offender is diagnosed as SMI by mental health professionals. If the offender is SMI then an Interdisciplinary Team, comprised of the Warden, a Psychologist IV and Disciplinary Hearing Officer will define the appropriate housing and treatment.

CLASS "A" OFFENSE SANCTIONS:

Class "A" Offenses cannot be suspended.

Class "A" Offense Sanctions shall be as follows:

- Up to 60-days Disciplinary Segregation or Austere Housing, but these sanctions will not be consecutive.
- Class Stat up to 60-days
- Loss of Privileges may be imposed consecutive to Disciplinary Segregation but they are not to be served concurrently to Disciplinary Segregation. These sanctions may include:
 - Loss of Outside Recreation for up to 30-days.
 - Loss of Telephone Privileges for up to 90-days.
 - Loss of Offender Store/Commissary for up to 90-days.
 - Loss of Visiting for up to 60-days.
 - Restitution for loss or damage of property.

CLASS "B" OFFENSES SANCTIONS:

Class "B" offenses may be suspended for up to 60-days with the exception of Disciplinary Segregation. If the offender remains disciplinary free for 60-days, the sanction may be removed.

Class "B" Offense Sanctions shall be as follows:

- Up to 30-days Disciplinary Segregation or Austere Housing, but these sanctions will not be consecutive.
- Class B Stat of up to 30-days
- Loss of Privileges may be imposed consecutive to Disciplinary Segregation but they are not to be served concurrently to Disciplinary Segregation or Austere Housing. These sanctions may include:
 - Loss of Outside Recreation for up to 15-days.
 - Loss of Telephone Privileges for up to 60-days.
 - Loss of Offender Store/Commissary for up to 60-days.
 - Loss of Visiting for up to 30-days.
 - Restitution for loss or damage of property.
 - First time offenses may result in a less Class sanction (ex: Any Class "C" Sanction).

CLASS "C" OFFENSES SANCTIONS:

Class "C" offenses may be suspended for up to 60-days with the exception of Disciplinary Segregation. If the offender remains disciplinary free for 60-days, the sanction may be removed.

Class "C" Offense Sanctions shall be as follows:

- Up to 10-days Disciplinary Segregation or Austere Housing, but these sanctions cannot be consecutive.
- Class C Stat of up to 15-days
- Loss of Privileges may be imposed consecutive to Disciplinary Segregation but they are not to be served concurrently to Disciplinary Segregation or Austere Housing. These sanctions may include:
 - Loss of Outside Recreation for up to 10-days.
 - Loss of Telephone Privileges for up to 30-days.
 - Loss of Offender Store/Commissary for up to 30-days.
 - Loss of Visiting for up to 15-days.
 - Restitution for loss or damage of property.
 - Up to 15-days Extra Work Detail such as Porter/Janitor or Yard Clean-up.
 - First time offenses may result in a less Class sanction. (ex: Any Class "D" Sanction).

CLASS "D" OFFENSES SANCTIONS:

Class "D" Offenses may be suspended for up to 60-days with the exception of Austere Housing. If the offender remains disciplinary free for 60-days, the sanctions may be removed.

Class "D" Offense Sanctions shall be as follows:

- Up to 10-days Austere Housing.
- Loss of Privileges may be imposed consecutive to Austere Housing but they are not to be served concurrently to Austere Housing. These sanctions may include:
 - Loss of Outside Recreation for up to 7-days.
 - Loss of Telephone Privileges for up to 15-days.
 - Loss of Offender Store/Commissary for up to 15-days.
 - Loss of Authorized Property for up to 15-days.
 - Loss of Visiting for up to 15-days.
 - Restitution for loss or damage of property.
 - Up to 15-days Extra Work Detail such as Porter/Janitor or Yard Clean-up.
 - First time offenses may result in a less Class sanction (ex: Any Class "E" Sanction).

CLASS "E" OFFENSES SANCTIONS:

Class "E" Sanctions may be as follows:

- Up to 5 days Austere Housing.
- Loss of Privileges may be imposed consecutive to Austere Housing but they are not to be served concurrently to Austere Housing. These privilege sanctions may include:
 - Loss of Outside Recreation for up to 5-days.
 - Loss of Telephone Privileges for up to 10-days.
 - Loss of Authorized Property for up to 10-days.
 - Loss of Offender Store/Commissary for up to 10-days.
 - Loss of Visiting for up to 7-days.
 - Restitution for loss or damage of property.
 - Up to 15-days Extra Work Detail such as Porter/Janitor or Yard Clean-up.
- Verbal Reprimand and or Counseling regarding misconduct may be substituted for any of the above listed sanctions.

ENHANCEMENT PENALTIES:

Enhancement penalties may be applied to disciplinary segregation as follows:

- EC1: Violation against elderly/infirm
- EC2: Violation with use of weapon
- EC3: Violation promotes gang activity
- EC4: Violation motivated by hate
 - Each enhancement authorizes lengthening the period of disciplinary segregation up to the amount authorized for the index charge.

- For example, if a sanctioned period of 60 days of disciplinary segregation is authorized for the index charge of MJ3 and the offender was also found guilty of an enhancement, the authorized sanction period of disciplinary segregation may be lengthened to up to 120 days. If the offender was also found guilty of a second related enhancement, the authorized sanction period may be lengthened by up to another 60 days, or up to 180 days total and so on. Time cuts for good behavior will still be applied to any enhanced period of disciplinary sanction.

- Similar to the rules that apply to the index charge of MJ10, EC3 must be authorized by a Warden or Associate Warden.
- Provided that they are reasonably related to the index charge, multiple enhancements may be applied.
- Enhancements are only applicable to periods of disciplinary segregation and will not be applied to any other type of sanction.
- In addition to the index charge, evidence relied upon must also include support for each enhancement penalty applied.

NOTE: Enhancements may not be applied to violations that occur prior to the 01/04/2023 revision of this manual.