

pt 30

generally granted with exercise prices equal to the market value at the date of grant. Vesting periods for options granted to employees generally range from one to four years. Options granted to non-employee directors vest at the date of grant. The term of such options is ten years from the date of grant.

In connection with the 1999 Merger, all options outstanding at December 31, 1998 to purchase Old CCA common stock and all options outstanding at January 1, 1999 to purchase Old Prison Realty common stock, were converted into options to purchase shares of the Company's common stock, after giving effect to the exchange ratio and carryover of the vesting and other relevant terms. Options granted under Old CCA's stock option plans are exercisable after the later of two years from the date of employment or one year after the date of grant until ten years after the date of grant. Options granted under Old Prison Realty's stock option plans were granted with terms similar to the terms of the Company's plans.

During the fourth quarter of 2000, pursuant to anti-dilution provisions under the Company's equity incentive plans, an automatic adjustment of approximately 0.6 million stock options (as adjusted for the reverse stock split in May 2001) was issued to existing optionees as a result of the dilutive effect of the issuance of the Series B Preferred Stock, as further discussed in Note 14 and above. In accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," the Company also adjusted the exercise prices of existing and newly issued options such that the automatic adjustment resulted in no accounting consequence to the Company's financial statements. All references in this Note 19 to the number and prices of options still outstanding have been retroactively restated to reflect the increased number of options resulting from the automatic adjustment. The number and prices of options have also been retroactively restated to reflect the one-for-ten reverse stock split in May 2001.

Stock option transactions relating to the Company's incentive and nonqualified stock option plans are summarized below (in thousands, except exercise prices):

	Number of options	Weighted average exercise price per option
Outstanding at December 31, 1998	434	\$ 103.88
Old Prison Realty options	307	\$ 91.29
Granted	100	\$ 79.38
Exercised	(36)	\$ 11.23
Cancelled	(197)	\$ 96.43
Outstanding at December 31, 1999	608	\$ 101.49
Granted	552	\$ 16.52
Cancelled	(181)	\$ 96.00
Outstanding at December 31, 2000	979	\$ 54.54
Granted	1,613	\$ 8.84
Cancelled	(160)	\$ 37.05
Outstanding at December 31, 2001	2,432	\$ 25.30

The weighted average fair value of options granted during 2001, 2000 and 1999 was \$7.05, \$8.10, and \$15.40 per option, respectively, based on the estimated fair value using the Black-Scholes option-pricing model.

Stock options outstanding at December 31, 2001, are summarized below:

Exercise Price	Options outstanding at December 31, 2001 (in thousands)	Options exercisable at December 31, 2001	Weighted average remaining contractual life in years	Weighted average exercise price
\$ 8.75 – 9.96	1,771	335	9.19	\$ 9.47
\$ 11.20 – 19.91	178	52	8.23	\$ 13.68
\$ 23.00 – 79.41	173	48	7.67	\$ 60.70
\$ 83.07 – 117.78	173	173	5.45	\$ 92.17
\$ 121.76 – 159.31	137	137	5.49	\$ 145.46
	<u>2,432</u>	<u>745</u>	<u>8.54</u>	<u>\$ 57.21</u>

At the Company's 2000 annual meeting of stockholders held in December 2000, the Company obtained the approval of an amendment to the Company's 1997 Employee Share Incentive Plan to increase the number of shares of common stock available for issuance thereunder from 130,000 to 1.5 million and the adoption of the Company's 2000 Equity Incentive Plan, pursuant to which the Company will reserve 2.5 million in shares of the Company's common stock for issuance thereunder. These changes were made in order to provide the Company with adequate means to retain and attract quality directors, officers and key employees through the granting of equity incentives. The number of shares available for issuance under each of the plans has been adjusted to reflect the one-for-ten reverse stock split discussed above.

The Company has adopted the disclosure-only provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and accounts for stock-based compensation using the intrinsic value method as prescribed in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees." As a result, no compensation cost has been recognized for the Company's stock option plans under the criteria established by SFAS 123. Had compensation cost for the stock option plans been determined based on the fair value of the options at the grant date for awards in 2001, 2000 and 1999 consistent with the provisions of SFAS 123, the Company's net income (loss) available to common stockholders and per share amounts would have been reduced to the pro forma amounts indicated below for the years ended December 31 (amounts in thousands except per share data):

	2001	2000	1999
Net income (loss) available to common stockholders – as reported	\$ 5,670	\$ (744,308)	\$ (81,254)
Net income (loss) available to common stockholders – pro forma	\$ 1,434	\$ (745,598)	\$ (84,252)
Basic earnings (loss) per share – as reported	\$ 0.23	\$ (56.68)	\$ (7.06)
Basic earnings (loss) per share – pro forma	\$ 0.06	\$ (56.78)	\$ (7.32)
Diluted earnings (loss) per share – as reported	\$ 0.20	\$ (56.68)	\$ (7.06)
Diluted earnings (loss) per share – pro forma	\$ 0.05	\$ (56.78)	\$ (7.32)

The effect of applying SFAS 123 for disclosing compensation costs under such pronouncement may not be representative of the effects on reported net income (loss) available to common stockholders for future years.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

	2001	2000	1999
Expected dividend yield	0.0%	0.0%	9.0%
Expected stock price volatility	89.4%	112.5%	49.1%
Risk-free interest rate	4.8%	5.3%	5.4%
Expected life of options	7 years	7 years	10 years

Retirement Plans

On December 28, 1998, Operating Company adopted a 401(k) plan (the "Plan"). In connection with the Operating Company Merger, the Company assumed all benefits and obligations of the Plan. All employees of the Company are eligible to participate upon reaching age 18 and completing one year of qualified service. Employees may elect to defer from 1% to 15% of their compensation. The provisions of the Plan provide for employer matching discretionary contributions currently equal to 100% of the employee's contributions up to 4% of the employee's compensation. Additionally, the Company also makes a basic contribution on behalf of each eligible employee, equal to 2% of the employee's compensation for the first year of eligibility, and 1% of the employee's compensation for each year of eligibility following. The Company's contributions become 40% vested after four years of service and 100% vested after five years of service. The Company's board of directors has discretion in establishing the amount of the Company's matching and basic contributions, which amounted to \$5.9 million and \$0.8 million during the year ended December 31, 2001 and 2000, respectively.

During 2001, the Company elected to amend the Plan, effective January 1, 2002. The Company's vesting schedule was changed so that, effective January 1, 2002, employer contributions and investment earnings or losses thereon become vested 20% after two years of service, 40% after three years of service, 80% after four years of service, and 100% after five or more years of service. The maximum employee compensation deferral was also increased to 20% of the employee's compensation.

20. RELATED PARTY TRANSACTIONS

The Company paid \$0.1 million in 2000 to a former member of Operating Company's board of directors for consulting services related to various contractual relationships.

The Company and Operating Company paid \$0.6 million to a company that is majority-owned by an individual that was a member of the Old CCA board of directors for services rendered during 2000.

The Company paid \$26.5 million in each of 2000 and 1999, to a construction company that is owned by a former member of the Company's board of directors, for services rendered in the construction of facilities.

In 2000, the Company and Operating Company paid \$0.2 million to a former member of the Company's board of directors for ongoing consulting services. The Company did not make payments to this individual during 2001 or 1999 other than board of director fees in 1999.

21. COMMITMENTS AND CONTINGENCIES

Litigation

During the first quarter of 2001, the Company obtained final court approval of the settlements of the following outstanding consolidated federal and state class action and derivative stockholder lawsuits brought against the Company and certain of its former directors and executive officers: (i) *In re: Prison Realty Securities Litigation*; (ii) *In re: Old CCA Securities Litigation*; (iii) *John Neiger, on behalf of himself and all others similarly situated v. Doctor Crants, Robert Crants and Prison Realty Trust, Inc.*; (iv) *Dasburg, S.A., on behalf of itself and all others similarly situated v. Corrections Corporation of America, Doctor R. Crants, Thomas W. Beasley, Charles A. Blanchette, and David L. Myers*; (v) *Wanstrath v. Crants, et al.*; and (vi) *Bernstein v. Prison Realty Trust, Inc.* The final terms of the settlement agreements provide for the "global" settlement of all such outstanding stockholder litigation against the Company brought as the result of, among other things, agreements entered into by the Company and Operating Company in May 1999 to increase payments made by the Company to Operating Company under the terms of certain agreements, as well as transactions relating to the proposed corporate restructurings led by the Fortress/Blackstone investment group and Pacific Life Insurance Company. Pursuant to the terms of the settlements, the Company agreed to issue or pay to the plaintiffs (and their respective legal counsel) in the actions: (i) an aggregate of 4.7 million shares of the Company's common stock (as adjusted for the reverse stock split in May 2001); (ii) a subordinated promissory note in the aggregate principal amount of \$29.0 million; and (iii) approximately \$47.5 million in cash payable solely from the proceeds of certain insurance policies.

Pursuant to the terms of the settlement agreements, the promissory note would be due January 2, 2009, and accrue interest at a rate of 8.0% per year. Pursuant to the terms of the settlements, the note and accrued interest may be extinguished if the Company's common stock price meets or exceeds a "termination price" equal to \$16.30 per share for any fifteen consecutive trading days following the note's issuance and prior to the maturity date of the note. Additionally, to the extent the Company's common stock price does not meet the termination price, the note will be reduced by the amount that the shares of common stock issued to the plaintiffs appreciate in value in excess of \$4.90 per share, based on the average trading price of the stock following the date of the note's issuance and prior to the maturity of the note. The Company accrued the estimated obligation of approximately \$75.4 million associated with the stockholder litigation during the third quarter of 2000.

During March and April 2001, the Company issued approximately 1.6 million shares of common stock, as adjusted for the reverse stock split, under the settlement to the plaintiffs' counsel in the actions. Additionally, during the fourth quarter of 2001, the Company issued approximately 2.8 million shares of common stock, as adjusted for the reverse stock split, along with a \$26.1 million promissory note, in conjunction with the final settlement of the federal court portion of the stockholder litigation settlement. Under the terms of the promissory note, the note was extinguished in full in January 2002 as the result of the average closing price of the Company's common stock meeting or exceeding a price of \$16.30 per share for fifteen consecutive trading days following the issuance of the note. The state court portion of the stockholder litigation settlement has not yet been completed; however, the settlement is expected to result in the issuance of approximately 310,000 additional shares of common stock and a \$2.9 million subordinated promissory note, which may also be extinguished if the average closing price of the common stock meets or exceeds \$16.30 per share for fifteen consecutive trading days following the issuance of such note and prior to its maturity in 2009.

On June 9, 2000, a complaint captioned *Prison Acquisition Company, L.L.C. v. Prison Realty Trust, Inc., Correction Corporation of America, Prison Management Services, Inc. and Juvenile and Jail Facility Management Services, Inc.* was filed in federal court in the United States District Court for the Southern District of New York to recover fees allegedly owed the plaintiff as a result of the termination of a securities purchase agreement related to the Company's proposed corporate restructuring led by the Fortress/Blackstone investment group. The complaint alleged that the defendants failed to pay amounts allegedly due under the securities purchase agreement and asked for compensatory damages of approximately \$24.0 million consisting of various fees, expenses and other relief. During August 2001, the Company and plaintiffs entered into a definitive agreement to settle this litigation. Under terms of the agreement, the Company made a cash payment of \$15.0 million to the plaintiffs in full settlement of all claims. During 2000, the Company recorded an accrual reflecting the estimated liability of this matter.

On September 14, 1998, a complaint captioned *Thomas Horn, Ferman Heaton, Ricky Estes, and Charles Combs, individually and on behalf of the U.S. Corrections Corporation Employee Stock Ownership Plan and its participants v. Robert B. McQueen, Milton Thompson, the U.S. Corrections Corporation Employee Stock Ownership Plan, U.S. Corrections Corporation, and Corrections Corporation of America* was filed in the U.S. District Court for the Western District of Kentucky alleging numerous violations of the Employee Retirement Income Security Act, including but not limited to a failure to manage the assets of the U.S. Corrections Corporation Employee Stock Ownership Plan (the "ESOP") in the sole interest of the participants, purchasing assets without undertaking adequate investigation of the investment, overpayment for employer securities, failure to resolve conflicts of interest, lending money between the ESOP and employer, allowing the ESOP to borrow money other than for the acquisition of employer securities, failure to make adequate, independent and reasoned investigation into the prudence and advisability of certain transactions, and otherwise. The plaintiffs were seeking damages in excess of \$30.0 million plus prejudgment interest and attorneys' fees. The Company has entered into a definitive agreement with the plaintiffs to settle their claims against the Company, which was preliminarily approved by the court during the first quarter of 2002. During 2000, the Company recorded an accrual reflecting the estimated liability of this matter.

Commencing in late 1997 and through 1998, Old CCA became subject to approximately sixteen separate suits in federal district court in the state of South Carolina claiming the abuse and mistreatment of certain juveniles housed in the Columbia Training Center, a South Carolina juvenile detention facility formerly operated by Old CCA. These suits claim unspecified compensatory and punitive damages, as well as certain statutory costs. One of these suits, captioned *William Pacetti v. Corrections Corporation of America*, went to trial in late November 2000, and in December 2000 the jury returned a verdict awarding the plaintiff in the action \$125,000 in compensatory damages, \$3.0 million in punitive damages, and attorneys' fees. However, during the second quarter of 2001, the Company reached an agreement in principle with all plaintiffs to settle their asserted and unasserted claims against the Company, and the Company subsequently executed a definitive settlement agreement which was approved by the court, with the full settlement funded by insurance.

In February 2000, a complaint was filed in federal court in the United States District Court for the Western District of Texas against the Company's inmate transportation subsidiary, TransCor America, LLC ("TransCor"). The lawsuit, captioned *Cheryl Schoenfeld v. TransCor America, Inc., et al.*, alleges that two former employees of TransCor sexually assaulted plaintiff Schoenfeld during her transportation to a facility in Texas in late 1999. An additional individual, Annette Jones, has also joined the suit as a plaintiff, alleging that she was also mistreated by the two former employees during the same trip. No trial date has been set. Both former employees were subject to pending

criminal charges in Houston, Harris County, Texas; one has pleaded guilty to a criminal civil rights violation, and the other was convicted of sexual assault. TransCor is defending this action vigorously. The Company expects that a portion of any of TransCor's liabilities resulting from this litigation will be covered by liability insurance; however, the insurance carrier and TransCor are in litigation over various coverage issues relating to this lawsuit. TransCor has recorded an accrual reflecting management's best estimate of the ultimate outcome of this matter based on consultation with legal counsel. In the event any resulting liability is not covered by insurance proceeds and is in excess of the amount accrued by TransCor, such liability could have a material adverse effect upon the business, results of operations and financial position of TransCor and, potentially, the Company and its other subsidiaries.

In addition to the above legal matters, the nature of the Company's business results in claims and litigation alleging that the Company is liable for damages arising from the conduct of its employees or others. In the opinion of management, other than the outstanding litigation discussed above, there are no pending legal proceedings that would have a material effect on the consolidated financial position, results of operations or cash flows of the Company for which the Company has not established adequate reserves.

Insurance Contingencies

Each of the Company's management contracts and the statutes of certain states require the maintenance of insurance. The Company maintains various insurance policies including employee health, workers' compensation, automobile liability and general liability insurance. These policies are fixed premium policies with various deductible amounts that are self-funded by the Company. Reserves are provided for estimated incurred claims within the deductible amounts.

Income Tax Contingencies

In connection with the 1999 Merger, the Company assumed the tax obligations of Old CCA. The IRS has completed field audits of Old CCA's federal tax returns for the taxable years ended December 31, 1998 and 1997, and is currently auditing the Company's federal tax returns for the taxable year ended December 31, 2000. The Company has received the IRS agent's report related to 1998 and 1997, which includes a determination by the IRS to increase taxable income by approximately \$120.0 million. If ultimately upheld, these adjustments would result in a cash tax liability to the Company of approximately \$46.8 million, not including penalties and interest. The Company is currently appealing the IRS's preliminary findings with the Appeals Office of the IRS. While the Company intends to vigorously defend its position, the Company is currently unable to predict the ultimate outcome of these IRS audits. It is possible that such audits will result in claims against the Company in excess of reserves currently recorded.

In connection with the IRS's audit of the Company's 2000 federal tax return, the agent conducting the audit has indicated that the IRS may disallow a loss claimed by the Company as the result of the Company's forgiveness in September 2000 of certain indebtedness with Operating Company. The IRS, however, has not made any assessment of tax liability against the Company to date. In the event the IRS does make such an assessment and prevails, the Company would be required to pay the IRS in excess of \$56.0 million in cash plus penalties and interest. This adjustment would also substantially eliminate the Company's net operating loss carryforward. The Company believes, based on consultation with its tax advisors, that it will be able to successfully defend its position. Accordingly, the Company has not established a reserve for this matter. No assurance can be given that the IRS will not make such an assessment and prevail in any such claim against the Company.

In addition, although the IRS has concluded its audit of the Company's federal tax return for the taxable year ended December 31, 1999, the statute of limitations for such taxable year still has not expired. Thus, the Company's election of REIT status for 1999 remains subject to review by the IRS generally until the expiration of three years from the date of filing of the Company's 1999 federal tax return. While the Company believes that it met the qualifications as a REIT for 1999, qualification as a REIT involves the application of highly technical and complex provisions of the Code for which there is only limited judicial and administrative interpretations. Should the IRS subsequently disallow the Company's election to be taxed as a REIT for the 1999 taxable year, the Company would be subject to income taxes and interest on the Company's 1999 taxable income and possibly could be subject to penalties, which would have an adverse impact on the Company's financial position, results of operations and cash flows. To the extent that any IRS audit adjustments, including any adjustments resulting from the audit of Old CCA's 1997 and 1998 tax returns, increase the accumulated earnings and profits of Old CCA, the Company could be required to make additional distributions of such to the Company's stockholders, either in cash or through the issuance of certain types of the Company's securities, in order to preserve its REIT status for the 1999 taxable year. With respect to an increase in Old CCA's earnings and profits for 1997 and 1998, if the IRS ultimately increases taxable income as described above and requires the Company to distribute the full amount of the increase in Old CCA's earnings and profits (less any taxes, interest and penalties paid by the Company), the Company would be required to distribute approximately \$70.5 million in cash or securities to the Company's stockholders of record at the time of distribution, none of which is currently accrued. Pursuant to the terms of the Company's Senior Bank Credit Facility, however, the Company would not be permitted to satisfy any such obligation with cash.

Guarantees

In connection with the bond issuance of a governmental entity for which the Company currently provides management services at a correctional facility, the Company is obligated, under a debt service deficits agreement, to pay the trustee of the bond's trust indenture (the "Trustee") amounts necessary to pay any debt service deficits consisting of principal and interest requirements (outstanding principal balance of \$64.2 million at December 31, 2001 plus future interest payments). In the event the State of Tennessee, which is currently utilizing the facility, exercises its option to purchase the correctional facility, the Company is also obligated to pay the difference between principal and interest owed on the bonds on the date set for the redemption of the bonds and amounts paid by the State of Tennessee for the facility and all other funds on deposit with the Trustee and available for redemption of the bonds. Ownership of the facility reverts to the State of Tennessee in 2017 at no cost. Therefore, the Company does not currently believe the State of Tennessee will exercise its option to purchase the facility. At December 31, 2001, the outstanding principal balance of the bonds exceeded the purchase price option by \$13.2 million. The Company also maintains a restricted cash account of approximately \$7.0 million as collateral against a guarantee it has provided for a forward purchase agreement related to the above bond issuance.

Employment and Severance Agreements

On July 28, 2000, Doctor R. Crants was terminated as the chief executive officer of the Company and from all positions with the Company and Operating Company. Under certain employment and severance agreements, Mr. Crants will continue to receive his salary and health, life and disability insurance benefits until 2003 and was vested immediately in 14,000 shares of the Company's common stock (as adjusted for the reverse stock split in May 2001) previously granted as part of a deferred stock award. The compensation expense related to these benefits, totaling \$0.7 million in cash and \$1.2 million in non-cash charges representing the unamortized portion of the deferred

stock award, was recognized during the third quarter of 2000. The unamortized portion was based on the trading price of the common stock of Old CCA, as of the date of grant, which occurred in the fourth quarter of 1995.

The Company also currently has employment agreements with several executive officers which provide for the payment of certain severance amounts upon an event of termination or change of control, as further defined in the agreements.

Other Commitments

The Company received an invoice, dated October 25, 2000, from Merrill Lynch & Co. for \$8.1 million for services as the Company's financial advisor in connection with the Restructuring. Prior to their termination in the third quarter of 2000, Merrill Lynch served as a financial advisor to the Company and its board of directors in connection with the Restructuring. Merrill Lynch claimed that the merger between Operating Company and the Company constituted a "restructuring transaction," which Merrill Lynch further contended triggered certain fees under engagement letters allegedly entered into between Merrill Lynch and the Company and Merrill Lynch and Operating Company management, respectively. In July 2001, Merrill Lynch agreed to accept payment of \$3.0 million in three \$1.0 million installment payments over a one year period in full and complete satisfaction of the invoice. As of December 31, 2001, the Company had paid \$2.0 million to Merrill Lynch in connection with the satisfaction of this obligation. The remaining \$1.0 million owed to Merrill Lynch has been accrued in the accompanying balance sheet as of December 31, 2001.

22. SEGMENT REPORTING

As of December 31, 2001, the Company owned and managed 36 correctional and detention facilities, and managed 28 correctional and detention facilities it does not own. During the second quarter of 2001, management began viewing the Company's operating results in two segments: owned and managed correctional and detention facilities and managed-only correctional and detention facilities. The accounting policies of the segments are the same as those described in Note 4. Owned and managed facilities include the operating results of those facilities owned and managed by the Company. Managed-only facilities include the operating results of those facilities owned by a third party and managed by the Company. The Company measures the operating performance of each facility within the above two segments, without differentiation, based on facility contribution. The Company defines facility contribution as a facility's operating income or loss from operations before interest, taxes, depreciation and amortization. Since each of the Company's facilities within the two operating segments exhibit similar economic characteristics, provide similar services to governmental agencies, and operate under a similar set of operating procedures and regulatory guidelines, the facilities within the identified segments have been aggregated and reported as one operating segment.

The revenue and facility contribution for the reportable segments and a reconciliation to the Company's operating income (loss) is as follows for the three years ended December 31, 2001, 2000 and 1999 (dollars in thousands). Intangible assets are not included in each segment's reportable assets and the amortization of intangible assets is not included in the determination of the segment's facility contribution:

	2001	2000	1999
Revenue:			
Owned and managed	\$ 619,652	\$ 149,984	\$ -
Managed-only	337,951	108,409	-
Total management revenue	<u>957,603</u>	<u>258,393</u>	<u>-</u>
Operating expenses:			
Owned and managed	464,392	121,752	-
Managed-only	272,468	90,047	-
Total operating expenses	<u>736,860</u>	<u>211,799</u>	<u>-</u>
Facility contribution:			
Owned and managed	155,260	28,232	-
Managed-only	65,483	18,362	-
Total facility contribution	<u>220,743</u>	<u>46,594</u>	<u>-</u>
Other revenue (expense):			
Rental and other revenue	23,188	51,885	278,833
Other operating expense	(16,661)	(5,516)	-
General and administrative expense	(34,568)	(45,463)	(24,125)
Depreciation and amortization	(54,135)	(59,799)	(44,062)
Licensing fees to Operating Company	-	(501)	-
Administrative service fee to Operating Company	-	(900)	-
Write-off of amounts under lease arrangements	-	(11,920)	(65,677)
Impairment losses	-	(527,919)	(76,433)
Operating income (loss)	<u>\$ 138,567</u>	<u>\$ (553,539)</u>	<u>\$ 68,536</u>

	December 31, 2001	December 31, 2000
Assets:		
Owned and managed	\$ 1,597,697	\$ 1,564,279
Managed-only	86,598	84,397
Corporate and other	286,985	528,316
Total assets	<u>\$ 1,971,280</u>	<u>\$ 2,176,992</u>

23. SELECTED QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

Selected quarterly financial information for each of the quarters in the years ended December 31, 2001 and 2000 is as follows (in thousands, except per share data):

	March 31, 2001	June 30, 2001	September 30, 2001	December 31, 2001
Revenue	\$ 240,382	\$ 245,725	\$ 248,188	\$ 246,496
Operating income	\$ 34,426	\$ 34,934	\$ 35,994	\$ 33,213
Net income (loss)	\$ (5,307)	\$ 514	\$ (564)	\$ 31,051
Net income (loss) available to common stockholders	\$ (10,128)	\$ (4,466)	\$ (5,678)	\$ 25,942
Net income (loss) per common share - basic	\$ (0.43)	\$ (0.18)	\$ (0.23)	\$ 1.05
Net income (loss) per common share - diluted	\$ (0.43)	\$ (0.18)	\$ (0.23)	\$ 0.80

	<u>March 31, 2000</u>	<u>June 30, 2000</u>	<u>September 30, 2000</u>	<u>December 31, 2000</u>
Revenue	\$ 14,036	\$ 14,132	\$ 43,854	\$ 238,256
Operating loss	\$ (5,424)	\$ (35,888)	\$ (26,700)	\$ (485,527)
Net loss	\$ (33,751)	\$ (79,405)	\$ (258,488)	\$ (359,138)
Net loss available to common stockholders	\$ (35,901)	\$ (81,555)	\$ (261,072)	\$ (365,780)
Net loss per common share - basic	\$ (3.03)	\$ (6.89)	\$ (22.04)	\$ (21.55)
Net loss per common share - diluted	\$ (3.03)	\$ (6.89)	\$ (22.04)	\$ (21.55)

Fluctuations in net income (loss), net income (loss) available to common stockholders and per share amounts during 2001, were principally due to changes in the estimated fair value of derivative instruments. Fluctuations in net loss, net loss available to common stockholders and per share amounts during 2000 were principally due to impairment losses and stockholder litigation charges. Refer to Note 4 for a further discussion of the comparability of results of operations between 2001 and 2000, and Note 2 and Note 8 for a further discussion of transactions regarding stockholder litigation charges, impairment losses and other transactions having a significant impact on operations during 2000.

CHAPTER 9: SECURITY AND CONTROL
SUBJECT: USE OF FORCE
SUPERSEDES: NONE
EFFECTIVE DATE: AUGUST 15, 1996
FACILITY: DIAMONDBACK CORRECTIONAL FACILITY
FACILITY SUPERSEDES: DECEMBER 1, 2000
FACILITY EFFECTIVE DATE: APRIL 9, 2002

APPROVED: SIGNATURE ON FILE
DAVID L. MYERS
PRESIDENT

APPROVED: SIGNATURE ON FILE
LINDA G. COOPER
VICE PRESIDENT, LEGAL AFFAIRS

9-1.1 PURPOSE:

To establish procedures for governing the lawful use of force in CCA facilities.

9-1.2 AUTHORITY:

State and federal law, Corporate and Facility Policy and Oklahoma DoC Policy QP-050108.

9-1.3 DEFINITIONS:

Administrator's Designee - The Assistant Facility Administrator or the Chief of Security. The Facility Administrator's authority to act under this policy shall not be delegated beyond these persons except with the advance written approval of the Vice President, Facility Operations.

Deadly Force - Force that is likely to cause death or serious bodily injury.

Force - Restraining power, physical compulsion, strength directed at a person and includes restraining equipment and physical handling.

Imminent Danger - A Reasonable Belief or fear that a threat of Serious Physical Injury or death exists such that the use of Deadly Force is necessary to preserve one's or another's life and may be elastic, that is involving a period of time dependent on the circumstances.

Inmate/Resident - Any person housed in a CCA facility.

Reasonable Belief - The belief that force is necessary which can not be the product of the person's imagination but must be based on facts and circumstances known to the employee at the time that would lead a reasonable employee to form the same belief.

Serious Physical Injury - An injury that poses a substantial risk of death or loss of health or limb.

Sufficient Threat - Situations posing a Reasonable Belief for the use of Deadly Force and which are:

In self-defense, and then if imminent danger exists;

Defense of another, and then only if imminent danger exists;

In defense of property, and then only if imminent danger exists.

Against the driver of occupant of a moving vehicle when there is reasonable belief that the subject poses an imminent danger of death or serious physical injury to the employee or others and the public safety benefits of using such force outweigh the risks to the safety of the employee or others. Deadly force may not be used solely to disable moving vehicles.

Against dogs and other vicious animals in self-defense or defense of others.

To prevent escape from the facility or while an escorted trip or transportation.

9-1.4 POLICY:

Every effort will be made to prevent and defuse situations which might require the use of force. If at all possible, non-forceful means (verbal intervention, negotiation, show of force, etc.) will be attempted before using force as a last resort. Verbal provocation alone will not justify the use of physical force.

The use of any type of force for punishment or reprisal, or which is unnecessary or excessive, is strictly prohibited. The amount and type of force used will be the least possible and then only as a last resort, consistent with the safety of the public, staff and inmates/residents. Only the Warden may authorize four/ five point restraints for security purposes.

Personnel will be authorized to use force only if procedures for its use have been specifically set out herein and approved in advance by the Vice President, Operations and the Vice President, Legal Affairs and the employee has successfully completed training in its use. Requests for purchase of any type use of force equipment will be forwarded to the Vice President, Operations for review as to compliance with this policy prior to an obligation for purchase being made.

9-1.5 PROCEDURES:

When negotiations have been utilized or found to be impractical, use of force is justified to maintain or restore institutional safety, security and control. The method(s) of force employed will be the most practical and humane possible under the circumstances.

The following are the specific types of force allowed and applicable procedures.

A. PHYSICAL HANDLING:

1. THE USE OF AN EMPLOYEE'S OWN HANDS IS JUSTIFIED ONLY IN THE FOLLOWING SITUATIONS:

- a. In self-defense and in defending the general public, staff and inmates/residents such as:
 - i. To prevent or quell a disturbance;
 - ii. To enforce institutional regulations and/or orders in which violation of may threaten the security of the institution;
- b. To prevent or halt damage to property; and
- c. To prevent escape.

2. PROCEDURES:

THE STAFF POSITION(S) AT THE FACILITY WHO AUTHORIZES THE USE OF PHYSICAL HANDLING IS:

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Warden or designee, however, any trained employee may use Physical Handling if needed immediately to resolve the situation and restore order.

Exceptions:

None

VP LEGAL

3. **TRAINING:**

DATE

- a. **Positions trained:**
All security staff.
- b. **Amount of initial training:**
Twelve (12) hours.
- c. **Amount and frequency of follow-up training:**
Four (4) hours annually.

B. **RESTRAINT EQUIPMENT.**1. **RESTRAINTS MAY BE USED AS A PRECAUTIONARY MEASURE:**

- a. In self-defense and in defending the general public, staff and inmates/residents such as:
 - i. To prevent or quell a disturbance;
 - ii. To enforce institutional regulations and/or orders in which violation may threaten the security of the institution;
- b. To prevent or halt damage to property;
- c. To prevent injury to self, staff, other persons or property; or
- d. For medical reasons, by direction of the medical personnel.
- e. As a precautionary measure in the movement of inmates/residents (e.g., the use of handcuffs in moving inmates/residents to and from a cell in detention, escorting an inmate/resident to a special housing unit pending investigation, etc.); and
- f. To prevent escape of an inmate/resident under escort. Use will be based on facility procedures which consider the following:
 - i. Security classification of the inmate/resident;
 - ii. Anticipated contact with the public;
 - iii. Physical and mental health of the inmate/resident;
 - iv. Demonstrated behavior of the inmate/resident;
 - v. Age, size and stature of the escort as compared to the inmate/resident; or
 - vi. Mode of travel.

AT THIS FACILITY, PROCEDURES FOR USE OF RESTRAINTS TO PREVENT ESCAPE WHILE UNDER ESCORT ARE AS FOLLOWS:

Inmates under restraint will be cuffed in front with belly chain and leg irons. If no belly chain is used, the inmate will be cuffed behind the back.

- 2. In no event will an inmate/resident remain in restraints once they have been placed into a secure room or cell, unless the chief security officer on duty has determined that this is necessary to prevent injury to the inmate/resident and that no less intensive method is appropriate.
 - a. The restrained inmate/resident will be checked at least every 15 minutes.

- b. At such time as it is safe to remove the restraints, they will immediately be removed.
- c. Should it be necessary to keep the inmate/resident in restraints for longer than one hour, a medically qualified person will be summoned to examine the inmate/resident and advise on a course of action.

3. PROCEDURES:

- a. AT THIS FACILITY, THE POSITION(S) THAT CAN AUTHORIZE THE USE OF RESTRAINT EQUIPMENT ARE AS FOLLOWS:

Assistant Shift Supervisor or above, however, any trained employee may use Restraints if needed immediately to resolve the situation and restore order.

Exceptions:

None.

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- b. AT THIS FACILITY, THE RESTRAINT EQUIPMENT AUTHORIZED FOR USE IS AS FOLLOWS:

Handcuffs; Belly Chains; Soft (Humane) Restraints; Leg Irons; flex-cuffs; Straight Jacket and Black Box.

VP, LEGAL

4. TRAINING

- a. Positions trained:
All security and other designated personnel
- b. Amount of initial training:
Four (4) hours.
- c. Amount and frequency of follow-up training:
Two (2) hours annually.

C. INFLAMMATORY AGENTS

- 1. Inflammatory agents include such products as Oleoresin Capsicum (Pepper Mace) and Oleoresin Capsicum/CS may be used in the following situations:
 - a. In self-defense and in defending the general public, staff and inmates/residents such as:
 - i. To prevent or quell a disturbance;
 - ii. To enforce institutional regulations and/or orders in which violation of may threaten the security of the institution;
 - b. To prevent or halt damage to property; and
 - c. To prevent escape.
- 2. As with all types of force, the amount of force used in the use of inflammatory agents will be no more than is necessary to control the situation.
- 3. Inflammatory agents will only be used by staff who have successfully completed training in its use and only in accordance with the following procedures:
- 4. PROCEDURES:

- a. AT THIS FACILITY, THE POSITION(S) THAT CAN AUTHORIZE THE USE OF INFLAMMATORY AGENTS IS(ARE) AS FOLLOWS:

Shift Supervisor or Above

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- b. AT THIS FACILITY, THE EQUIPMENT AUTHORIZED IS AS FOLLOWS:

MK-IX 5.5% Pepper Mace Fogger Model #9005 (Large)
 MK-IV 10% Pepper Foam Model #3040 (Small)
 MK-IX 10% Pepper Foam Model #4040 (Large)
 MK-IX Model #B005 OC Pepper Mace
 MK-XII Model #C005 Pepper Mace Magnum

VP, LEGAL

- c. When inflammatory agents are authorized in order to remove an offender.

DATE
canister

- 1. The employee shall weigh and mark the inflammatory agent prior to issuance.

- 2. After utilization of the inflammatory agents, the canister shall be reweighed, labeled and secured by the shift supervisor as evidence for the Major Use of Force review with an accompanying report of the actual amount of inflammatory agents used.

- d. Medical/Mental Health procedures to be observed when using inflammatory agents.

- 1. Prior to the use of inflammatory agents, where circumstances Permit and when reasonably feasible, medical/mental health personnel shall be consulted and medical records shall be reviewed to determine if the use of inflammatory agents would be detrimental to the mental or physical health of the offender involved.

3. TRAINING:

- a. Positions trained:

Assistant Shift Supervisor and above plus SORT members.

- b. Amount of initial training:

Four (4) hours.

- c. Amount and frequency of follow-up training:

Two (2) hours annually.

D. STRAIGHT BATONS.

- 1. STRAIGHT BATONS MAY BE JUSTIFIED ONLY IN THE FOLLOWING SITUATIONS:

- a. In self-defense and in defending the general public, staff and inmates/residents such as:

- i. To prevent or quell a disturbance;
- ii. To enforce institutional regulations and/or orders in which violation of may threaten the security of the institution;

- b. To prevent or halt damage to property; and

c. To prevent escape.

2. PROCEDURES:

a. THE POSITION(S) AT THIS FACILITY THAT AUTHORIZES THE USE OF BATONS AND RIOT STICKS IS(ARE):

Warden and designee

Exceptions:

None.

b. AT THIS FACILITY THE AUTHORIZED BATON AND RIOT STICK EQUIPMENT USED IS(ARE):

Twenty six (26) inch poly batons - manadnock

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VP, LEGAL

DATE

3. TRAINING:

a. Positions trained:

Designated Personnel.

b. Amount of initial training:

Eight (8) hours.

c. Amount and frequency of follow-up training:

Four (4) hours annually.

E. CHEMICAL AGENTS.

1. CHEMICAL AGENTS MAY BE JUSTIFIED ONLY IN THE FOLLOWING SITUATIONS:

a. In self-defense and in defending the general public, staff and inmates/residents such as:

- i. To enforce institutional regulations and/or orders in which violation of may threaten the security of the institution; or
- ii. To prevent or quell a disturbance.

b. To prevent or halt damage to property; and

c. To prevent escape.

2. PROCEDURES:

a. THE POSITION(S) AT THIS FACILITY THAT AUTHORIZES THE USE OF CHEMICAL AGENTS IS(ARE) AS FOLLOWS:

Warden and Assistant Wardens or designee

Exceptions: None.

b. AT THIS FACILITY, THE CHEMICAL AGENTS AUTHORIZED ARE AS FOLLOWS:

- CS; Smoke projectiles; Appropriate Delivery Equipment
- #452 Grenade Launcher – 12 Gage
- #501 Muzzle Blast In/Out CS 37mm
- #565 SKAT Multipurpose CS 37mm
- #570 Short Range CS 37mm

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DATE

#620 OC/CS Aerosol Grenade
MPG 120 Multi-Purpose Grenade CS
#517 Flameless Grenade CS
#515 Triple Chaser Grenade CS
#519 Hand Grenade CS
#555 Speed Heat Projectiles CS
#110 HC Smoke Grenade

- c. When chemical agents are authorized in order to remove an offender:
1. The employee shall weigh and mark the chemical agent canister prior to issuance.
 2. After utilization of the chemical agents, the canister shall be reweighed, labeled and secured by the shift supervisor as evidence for the Major Use of Force review with an accompanying report of the actual amount of chemical agents used.

3. TRAINING:

- a. Positions trained:

Assistant Shift Supervisor and above plus SORT members

- b. Amount of initial training:

Eight (8) hours.

- c. Amount and frequency of follow-up training:

Four (4) hours annually.

ADDITIONAL PROCEDURES AT THIS FACILITY:

When authorized for use, the highest-ranking security officer on site, will personally observe and supervise the action.

F. ELECTRONIC STUN SHIELDS:

1. ELECTRONIC STUN SHIELDS ARE JUSTIFIED ONLY IN THE FOLLOWING SITUATIONS:
- a. In self-defense and in defending the general public, staff and inmates/residents such as;
 - b. To enforce institutional regulations and/or orders;
 - c. To prevent or quell a disturbance; and
 - d. To prevent escape.

2. PROCEDURES:

- a. THE POSITION(S) AT THIS FACILITY THAT CAN AUTHORIZE THE USE OF ELECTRONIC STUN SHIELDS IS (ARE) AS FOLLOWS:

None.

Exceptions:

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DATE

None.

b. AT THIS FACILITY THE ELECTRONIC STUN SHIELD EQUIPMENT AUTHORIZED IS AS FOLLOWS:

None.

3. TRAINING:

a. Positions trained: None.

b. Amount of initial training:

None.

c. Amount and frequency of follow-up training:

None.

G. TASER

1. THE TASER IS JUSTIFIED ONLY IN THE FOLLOWING SITUATIONS:

- a. In self-defense and in defending the general public, staff and inmates/residents;
- b. To enforce institutional rules and/or orders in which violation of may threaten the security of the institution;
- c. To prevent or quell a disturbance;
- d. To prevent or halt damage to property; and
- e. To prevent escape

2. PROCEDURES:

a. AT THIS FACILITY, THE POSITION(S) THAT CAN AUTHORIZE USE OF TASERS IS (ARE) AS FOLLOWS:

None.

Exceptions:

None.

b. AT THIS FACILITY, THE TASER EQUIPMENT AUTHORIZED IS AS FOLLOWS;

None.

APPROVED:

VP, OPERATIONS

VP, LEGAL

DATE

3. TRAINING:

a. Positions trained:

None.

b. Amount of initial training:

None.

c. Amount and frequency of follow-up training:

None.

H. NON-LETHAL WEAPONS

1. NON-LETHAL WEAPONS MAY BE JUSTIFIED ONLY IN SELF-DEFENSE AND IN DEFENDING THE GENERAL PUBLIC, STAFF AND INMATES/RESIDENTS SUCH AS:
 - a. To halt further destruction to property;.
 - b. To safeguard the general public, staff and inmates/residents; and
 - c. To quell a disturbance and return order to the facility.

2. PROCEDURES

- a. THE POSITION(S) AT THIS FACILITY THAT AUTHORIZES THE USE OF NON-LETHAL WEAPONS IS (ARE) AS FOLLOWS:

Warden or designee.

Exceptions:

None.

- b. AT THIS FACILITY, THE NON-LETHAL WEAPONS AUTHORIZED ARE AS FOLLOWS:

37mm Model #203A Gas Gun
37mm Gas Launcher #458

APPROVED:

VP, OPERATIONS

VP, LEGAL

DATE

3. TRAINING:

- a. Positions trained:
SORT desig. Security personnel
- b. Amount of training:
6 hours
- c. Amount and frequency of follow-up training:
4 hours annually

I. FIREARMS AND OTHER DEADLY FORCE.

1. This force may be used only when negotiations and all other types of approved force have been exhausted or found impractical. Approval will be obtained from the Warden/Administrator or their designee prior to arming employees with firearms. The most common form of deadly force will be use of firearms.

The use of firearms is always considered to be the use of deadly force. Other instruments can become deadly force if they are used in a manner likely to lead to death or serious bodily injury of the person against whom it is being used. For example, a baton used forcibly on a person's head, throat or neck could obviously lead to death or serious bodily injury, whereas if used on the legs, it would not.

Weapons or other deadly force may be used only when there exists **Reasonable Belief and Sufficient Threat.**

2. FIREARMS: WHO MAY CARRY/WHEN.

- a. Only those employees who meet all applicable corporate and facility policies and procedures; all applicable state and local laws; and who have been designated in writing by the Warden/Administrator, will be permitted to carry or use firearms in the course of their employment.
- b. No employee will be permitted to carry a facility owned weapon to their home or to have it on their person while off duty.
- c. The Vice President, Operations or Warden/Administrator may at any time, with or without cause, order that an employee's designation to carry arms be suspended, either indefinitely or for a fixed period.
- d. No weapon will be brought into the secure perimeter of the facility, except with the authority of the Warden/Administrator or their designee.
- e. Employees will carry firearms only while assigned to posts that are inaccessible to inmates/residents such as gunwalks, watchtowers, mobile patrols and transportation.

DEADLY FORCE WILL BE USED ONLY IN ACCORDANCE WITH THE FOLLOWING:

3. PROCEDURES:

- a. **NEGOTIATOR** - If negotiator varies depending on situation, specify:
Negotiator is not specified.
- b. **AT THIS FACILITY, THE POSITION THAT AUTHORIZES THE USE OF FIREARMS IS AS FOLLOWS:**
Warden
Exceptions:
None.
- c. **AT THIS FACILITY, THE AUTHORIZED FIREARMS EQUIPMENT IS AS FOLLOWS:**

<u>12 guage shotgun</u>	<u>38 caliber pistol</u>
<u>Training Stock</u>	<u>Armory Stock</u>
38 special +P ammunition	125 grain jacketed hollow point
.38 Full Metal Jackets (FMJ)	12 guage OO Buckshot
12 guage gamebird shot	
12 guage wadcutter	

APPROVED:

VP, OPERATIONS

DATE

4.

VP, LEGAL

DATE

TRAINING:

- a. **Positions trained:**
As selected by the Chief of Security and approved by the Warden.
- b. **Amount of initial training:**
Forty (40) hours.

- c. Amount and frequency of follow-up training:
Eight (8) hours annually.
- d. ADDITIONAL TRAINING PROCEDURES AT THIS FACILITY ARE:
 - i. Verbal Warning: If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.
 - ii. Warning shots: Are not authorized.
 - iii. Assault or Riot: all other means will be used before utilizing fire power. When necessary all lethal fire will be directed to stop the action.
 - iv. Officers will not normally fire if it endangers the lives of innocent bystanders.

J. PROCEDURES BEFORE USE

The types of force specified in this policy will be used only:

1. After obtaining specific written approval from the Vice President, Operations and the Vice President, Legal Affairs.
2. By employees who have successfully completed initial training in the levels of force authorized for use at their facility and who participate in periodic review to maintain current knowledge and;
3. In accordance with facility procedures approved by the Vice President, Operations and the Vice President, Legal Affairs.

K. PROCEDURES AFTER USE.

Immediately following the use of force, either deadly or non-deadly, the following steps will be taken:

1. Medical Care: Will depend on the seriousness of the situation, the degree of care required and the location of the situation.
2. Death or Serious Bodily Injury: The Warden/Administrator will immediately notify the contract officer; proper law enforcement authorities; the Vice President, Operations; the Vice President, Legal Affairs; and the Vice President, Communications.
3. Physical Examinations: The participants (including staff) except those requiring immediate medical attention/transport to the hospital, will receive a physical examination and treatment immediately upon situation stabilization.
4. Chemical Agents: When used, affected inmates/residents will be permitted to wash their face, eyes or other exposed areas as soon as possible after the use of the chemical and will be allowed to change their clothes.

L. REPORTS

As it is anticipated that any use of force may result in litigation, the procedures specified in CCA Policy 5-1, Incident Reports, will be followed. Additionally, any reports required by law enforcement authorities will be completed and a copy will be submitted with the Incident Report.

9-1.6 REVIEW:

This policy will be reviewed as necessary by the Vice President, Operations and the Vice President, Legal Affairs.

9-1.7 APPLICABILITY:

All CCA Facilities.

9-1.8 ATTACHMENTS:

None

9-1.9 REFERENCES:

Miller v. Leathers, 913 F.2d 1085 (4th Cir. 1990, *en banc*); and ACA Standards. The ACA Standards for this facility are:

3-4088; 3-4089; 3-4191; 3-4192; 3-4193; 3-4194, 3-4195, 3-41-6, 3-4197, 3-4198

CHAPTER 14: RESIDENT RIGHTS
SUBJECT: INMATE/RESIDENT GRIEVANCE PROCEDURES
SUPERSEDES: APRIL 1, 1992
EFFECTIVE DATE: JULY 15, 2000
FACILITY: DIAMONDBACK CORRECTIONAL FACILITY
FACILITY SUPERSEDES: NONE
FACILITY EFFECTIVE DATE: JULY 15, 2000

APPROVED: SIGNATURE ON FILE
MIKE QUILAN
PRESIDENT

APPROVED: SIGNATURE ON FILE
LINDA G. COOPER
VICE PRESIDENT, LEGAL AFFAIRS

14-5.1 PURPOSE:

To establish procedures for inmates/residents to formally file complaints about facility conditions, treatment, policies, and procedures. To provide that such complaints are reviewed in a fair and expeditious manner and resolved in the best interest of both the inmate/resident and the facility.

14-5.2 AUTHORITY:

Corporate and Facility Policy and Contract.

14-5.3 DEFINITIONS:

- A. Emergency Grievance - A grievance, the resolution of which, if subject to the normal time limits, would subject the grievant to a substantial risk of personal injury or irreparable harm.
- B. Grievance - A written complaint concerning the substance or application of a written or unwritten policy or practice, any single behavior or action toward an inmate/resident by staff or other inmates, or any condition or incident within the department or institution which personally affects the inmate/resident.
- C. Reasonable Suspicion - A suspicion which is based upon documentable, articulable facts which, together with the employee's knowledge and experience, lead him/her to believe that an unauthorized situation or violation of rules exists.
- D. Reprisal - any action or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure.

14-5.4 POLICY:

It is the policy of CCA to encourage informal resolution of complaints at the lowest possible level since grievances should be, whenever possible, resolved through direct contact with staff responsible for the particular problem area and with two-way communication encouraged between staff and inmates/residents.

However, all inmates/residents shall have access to formal grievance procedures any time the informal process has not provided successful resolution of the complaint.

Inmates/residents shall not be subject to retaliation, reprisal, harassment, or discipline for use or participation in the grievance procedure. Any allegations of this nature will be thoroughly investigated

by the Warden/Administrator and reviewed by the Vice President, Facility Operations and Vice President, Legal Affairs.

14-5.5 PROCEDURES:

A. INFORMAL RESOLUTIONS

Inmates/residents are encouraged to resolve questions, disputes and complaints through informal communication with correctional staff or utilization of inmate information request forms.

AT THIS FACILITY, THESE FORMS ARE ENTITLED:

Inmate letter form 14-1A. Complaints forwarded to the Facility Grievance Officer without prior action by a staff member with authority to resolve will be forwarded to staff.

B. GRIEVABLE MATTERS

The following matters are grievable by inmates/residents:

1. Application of policies, rules, and procedures;
2. Individual staff and inmate/resident actions, including any denial of access of the grievance procedure;
3. Reprisals against inmates/residents for filing an appeal under the Inmate/Resident Grievance Procedures;
4. The loss of property legitimately possessed by an inmate/resident; and
5. Any other matter relating to the conditions of care and supervision within the authority of CCA, except as noted below.

C. NON-GRIEVABLE MATTERS

The following matters are not grievable by inmates/residents through these grievance procedures:

1. State and Federal court decisions;
2. State and Federal laws and regulation;
3. Final decisions on grievances; or
4. Contracting agency (BOP, INS, state department of corrections, etc.) policies, procedures, decisions or matters.

D. GRIEVANCE AVAILABLE REGARDLESS OF CLASSIFICATION

An inmate/resident confined to this facility can invoke the grievance procedure regardless of disciplinary, classification, or other administrative decision to which the inmate/resident may be subject.

E. NO GRIEVANCES TO BE SUBMITTED ON BEHALF OF ANOTHER

While an inmate/resident may not submit a grievance on behalf of another inmate/resident, assistance from a staff member or inmate/resident may be provided when necessary to communicate the problem on the grievance form.

F. FACILITY GRIEVANCE OFFICER

The Warden/Administrator is to designate an individual or individuals as Facility Grievance Officer(s) whose responsibilities will include overall coordination of the grievance procedure, investigation of grievances and preparation of written decisions on the grievance matter. This individual will be responsible for carrying out the duties outlined herein.

G. TIME GUIDELINES

1. The total time for the grievance process will be no more than ninety (90) days from filing to a final appeal decision, unless unusual circumstances are present.
 - a. The inmate/resident must file the grievance within seven (7) days of the alleged incident.

The time for filing may begin from the date the problem or incident became known to the inmate/resident if the problem or incident was such that the inmate/resident did not or could not have known of it on the date of occurrence.
 - b. The Facility Grievance Officer shall, within fifteen (15) days of receipt of an inmate/resident grievance, conduct an investigation of the grievance and render a decision.
 - c. The inmate/resident is to submit any appeal to the Warden/Administrator or designee within five (5) days of receiving the decision from the Grievance Officer.
 - d. The Warden/Administrator will render a written decision on the grievance appeal within fifteen (15) days of receipt from the inmate/resident.
 - e. **AT THIS FACILITY, ADDITIONAL PROCEDURES ARE:**

Inmate Letters utilized for informal resolution shall normally be answered in ten (10) working days.

Interim responses in writing shall be provided where time guidelines can not be complied with.
2. Upon notice to the grievant, the time limitations provided at any stage of this procedure may be extended to allow for a more complete investigation of the claims contained in the grievance. Justification for the extension must be provided in writing on the Inmate/Resident Grievance Form.
3. At all stages of the grievance process, upon receipt of the grievance, the grievance will be date stamped.

H. EMERGENCY GRIEVANCE PROCEDURE

1. If the subject matter of the grievance is such that compliance with the regular time guidelines would subject the inmate/resident to risk of personal injury, the inmate/resident/student may detail the basis for a need of immediate response and ask that the grievance be considered an emergency grievance.
2. If the Facility Grievance Officer, after reviewing the basis for the grievance being designated an emergency, determines that an emergency does exist, action shall be taken to resolve the grievance within twenty-four (24) hours of receipt of the grievance.
3. After the initial action, the Facility Grievance Officer will prepare and give to the inmate/resident, within seventy-two (72) hours of receipt of the grievance, a written decision.
4. If the inmate/resident appeals the decision, the Warden/Administrator or designee will respond with a written decision within five (5) days.

I. GRIEVANCE REMEDIES

The grievance procedure is to afford the grievant a meaningful remedy. Remedies include the following:

1. Replacement - Restoration of property by substituting a similar or like item. This will normally be ordered before monetary reimbursement is given;
2. Reimbursement - Money will be given for items lost or destroyed. The value to be reimbursed will be determined by the Warden/Administrator.
3. Change of procedures or practices;
4. Correction of records; or
5. Other remedies, as appropriate.

J. FILING THE GRIEVANCE

1. In filing a grievance, the inmate/resident must complete the Inmate/Resident Grievance Form (Form 14-5A) and place it in the Grievance Mail Box, or, if a Grievance Mail Box is not used, forward it to the Facility Grievance Officer.

The Grievance Mail Boxes shall be checked daily, except for weekends and holidays, by the Facility Grievance Officer. If a mail box is not used, grievances are to be forwarded daily to the Facility Grievance Officer.

AT THIS FACILITY, THE PROCEDURE FOR FORWARDING THE GRIEVANCE TO THE GRIEVANCE OFFICER IS AS FOLLOWS:

Place in mail box to: Facility Grievance Officer

2. Grievances are considered special correspondence. Sealed letters will not be opened for inspection if the letter is labeled "Grievance" and addressed to the Facility Grievance Officer unless there is reasonable suspicion to believe the sealed envelope contains contraband. If reasonable suspicion exists, the envelope may be opened, after obtaining the Warden/Administrator or designee's approval, and inspected for contraband only.
3. If a grievance is submitted for review and the grievant is released from custody, efforts to resolve the grievance will normally terminate. If the grievant wishes to pursue grievance resolution, as in property losses, it is the grievant's responsibility to notify the Facility Grievance Officer of that intention and to provide an address and any other pertinent information.

K. FACILITY GRIEVANCE OFFICER'S REVIEW

1. Upon receipt of the grievance, the Facility Grievance Officer will assign a number to the grievance and maintain a permanent grievance log.
2. The Facility Grievance Officer shall conduct an investigation into the issue of the grievance, render a written decision on the Report and Decision portion of the Inmate/Resident Grievance Form, and forward a copy to the inmate/resident.
3. When a grievance decision specifies that an action is to be taken, it will include a date for completing the action.
4. In cases where the Facility Grievance Officer has resolved the matter to the inmate/resident's satisfaction, she/he will so note and have the inmate/resident sign the report in the space provided.

L. APPEAL

1. Barring extraordinary circumstances, a grievance shall be considered settled if the decision at any step is not appealed by the inmate/resident within the given time limit.
2. Grievances which are prematurely appealed to the Warden/Administrator or designee will be returned without review.

3. If an inmate/resident is not satisfied with the decision of the Facility Grievance Officer, the inmate/resident may appeal to the Warden/Administrator or designee by completing the Request for Warden/Administrator Review portion of the grievance form and submitting this form to the Warden/Administrator.
4. The Warden/Administrator or designee will review the issue of the grievance and the decision to determine if the grievance has been appropriately addressed. The Warden/Administrator can obtain and review any information necessary to render a decision as to the appeal.
5. A copy of the completed grievance form will be returned to the Facility Grievance Officer who will forward a copy to the inmate/resident.

6. **AT THIS FACILITY, ADDITIONAL PROCEDURES ARE AS FOLLOWS:**

After completion of grievance procedures steps I & II, Hawaii inmates may appeal only grievances pertaining to their placement at DbCF. The appeal form can be obtained from the librarian by showing a copy of the denied form 14-5A from the Warden.

Hawaii inmates should submit their appeal to:

Attn: Grievance Officer
Halawa Correctional Facility
99-902 Moanalua Road
Aiea, HI 96701

M. RECORDS

1. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the Facility Grievance Officer through either hard copy or computerized form. The record shall include a log showing the following:
 - a. grievance number;
 - b. date of receipt;
 - c. name of grievant;
 - d. subject of grievance;
 - e. disposition date;
 - f. brief description of the disposition; and
 - g. appeal results, if any.

This log shall be forwarded to the Vice President, Legal Affairs on a monthly basis.

2. Record Retention. Records will be retained according to CCA Corporate and Facility Policy 1-15.
3. Record Location. No copies of grievances shall be placed in an inmate/resident's file.
4. Confidentiality. Records regarding the participation of an individual in the grievance procedures shall not be available to employees or inmates/residents, except for clerical processing of records by CCA. Employees participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

N. DISTRIBUTION AND TRAINING

A copy of this Policy and Procedure will be provided to each staff member currently employed and will be readily available for each inmate/resident currently housed at the facility. All new

staff will receive a presentation on this Policy and Procedure during pre-service training. New inmates/residents will be informed of the grievance procedure upon entry to the facility and a copy will be posted in each entry area and other appropriate areas. If there is difficulty in understanding the procedure, every effort shall be made to explain the policy and procedure on an individual basis.

O. AT THIS FACILITY, ADDITIONAL PROCEDURES ARE AS FOLLOWS:

1. Initial and major revisions of the inmate Grievance procedures shall be posted in the institution for ten (10) days requesting comments and suggestions from line staff and inmates.
2. Initial claims for lost, stolen or damaged inmate personal property must initially be processed by claim per policy 14-6.
3. CCA grievance forms, 14-5A, are to be used for any issue regarding the Diamondback Correctional Facility, its procedure or staff.

14-5.6 REVIEW:

- A. Grievance procedures shall be monitored by the Vice President, Legal Affairs through review of records and computer printouts.
- B. This policy will be reviewed at least annually by the Vice President, Legal Affairs.

14-5.7 APPLICABILITY:

All CCA facilities.

14-5.8 ATTACHMENTS:

1. Form 14-5A - Inmate/Resident Grievance Form
2. Other Forms for this facility are as follows:
Inmate Letter, Form 14-1A

14-5.9 REFERENCES:

ACA Standards. The ACA Standards for this facility are:
3-4262, 3-4264, 3-4271

CHAPTER 14 PRISONER RIGHTS
SUBJECT: PERSONAL PROPERTY - INMATES
SUPERSEDES: OCTOBER 12, 2000
EFFECTIVE DATE: APRIL 17, 2002
APPROVED: Signature in file
 MICKEY LILES, WARDEN

14-100.1 PURPOSE:

To provide controls and safeguards of personal property and funds belonging to inmates and to specify the personal property which inmates can retain in their possession.

14-100.2 AUTHORITY:

Facility policy.

14-100.3 DEFINITIONS:

None

14-100.4 POLICY:

It is the policy of the CCA CORRECTIONAL FACILITY and the Diamondback Correctional Facility to permit inmates to retain in their personal possession certain approved items which have been determined as not being a threat to the order, safety or security of the facility.

14-100.5 PROCEDURES:**A. Property Claims**

1. Diamondback Correctional Facility will only accept claims involving an inmate's property being lost, stolen or damaged, where it can be reasonably determined that such loss was the direct responsibility of the facility or its staff.
2. Claims for lost/stolen inmate property shall be filed in accordance with CCA Policy 14-6.
3. Inmates shall not be permitted to possess personal property items which have a value in excess of fifty (50) dollars each or a total value of \$100.00.

B. Procedures for Obtaining Personal Inmate Property

1. The Intake officer shall assume custody, inspect and inventory all property received with the inmate at intake, Form 9-108 -B.
 - a. The Intake officer will determine whether the item(s) is to be retained by the inmate (see Attachment 14-100-A), mailed out of the facility or temporarily stored for visitor pickup.
 - b. A complete inventory of all property will be recorded on Form 9-108-B, DbCF Personal Property Inventory Disposition of all contraband or other unauthorized items will be documented on Form 9-108-D, Disposal Procedures for Personal Property. (See Policy 17-100)

c. The inmate shall be given a copy of the inventory as his receipt and a copy shall be affixed to all stored or mailed property, which the inmate is not permitted to retain.

d. All funds received with the inmate shall be accounted for, a receipt provided to the inmate and turned over to accounting personnel for placement in the inmate's trust fund account.

2. Inmates may purchase authorized items through the facility's commissary.
3. With prior approval of the Warden or designee, selected items may be authorized for delivery thru the U.S. mail or parcel delivery services. Example: Christmas Package Program. Approved items are to be added to the inmate's inventory and documented in his file.
4. Personal property may not be received through visits, traded for or received as gifts from inmates or staff.
5. Any item not legally obtained through the above procedures, issued by the facility or in excess of allowable, quantities shall be considered as contraband and confiscated.

C. Storage of Inmate Personal Belongings

1. All personal property must be kept in the inmate's room when not in use; quantities are subject to available storage space, safety, sanitation and security requirements. Large quantities of outdated newspapers, magazines, correspondence and boxes cannot be retained in the cell.
2. Written approvals must be present for exceptions to quantities or for other specially authorized items in cell.
3. Inmates are not permitted to have radios, books, magazines, musical instruments, personal letters, playing cards and other games on work details. These personal property items are restricted to cells, housing unit day rooms and recreation areas. Exceptions will be books and paper in library and education area, and musical instruments in areas designated for their use.
4. Temporary storage up to thirty (30) days may be provided for unauthorized property which is received at the facility, to allow the inmate the opportunity to obtain a mailing address, file an appeal or arrange pickup by a visitor. It is the inmate's responsibility to obtain from admissions staff approval for temporary storage.

D. Disposition of Inmate Personal Property

1. Items received as part of the intake process which are not permitted to be retained by the inmate must be removed from the facility by mail, accepted by a visitor, donated to a charity or destroyed. (Form 9-108-D)
2. Items received in the mail without prior authorization will be returned to sender, mailed out at inmate's expense or destroyed.
3. Contraband items, see CCA Policy 9-6.
4. Disposition of property is to be effected as soon as possible permitting sufficient opportunity for hearings, appeals, etc. (see C.4).

E. Facility Property Possessed by Inmates

1. The inmate may be issued clothing, protective clothing, work uniforms, health and hygiene supplies, etc. as is necessary and for the duration appropriate to meet the intended need of the inmate and/or facility.
2. The inmate shall be held accountable for all property issued to him or in his possession. Exchanging of articles, possession of unauthorized or another's property, excessive quantities, wasting, damaging, altering or tampering with property are cause for disciplinary action including restitution for replacement or costs.
3. Issuing staff/departments shall be responsible for proper documentation and accounting for issued property.

F. Upon being notified of an inmate's release or transfer from the facility the Intake Supervisor shall have the following conducted:

1. All personal property inspected, inventoried and accounted for and ready for release to the inmate or jurisdiction as appropriate. Items not accepted under contract will not be transferred but disposed of per 14-100.5 D. i.e., gloves, handkerchiefs, shower wraps/robes.
2. Reclaim all non-consumable facility property issued to or in possession of the inmate.
3. Initiate disciplinary action where appropriate.

14-100.6 REVIEW:

Annually by the Warden or designated Assistant Warden.

14-100.7 APPLICABILITY:

All DbCF staff and inmates, and shall be made available to inmates upon admission.

14-100.8 ATTACHMENTS:

Forms: Personal Property Inventory

14-100-A, Authorized Inmate Personal Property List

9-108-B, Personal Property Inventory

9-108-D, Disposal Procedures for Personal Property

14-100.9 REFERENCES:

ACA Standards. The ACA Standards for this facility are:

3-4272, 3-4279, 3-4280, 3-4281

CHAPTER 15: INMATE RULES AND DISCIPLINE
SUBJECT: DISCIPLINARY PROCEDURES - ADULT
SUPERSEDES: NOVEMBER 15, 1993
EFFECTIVE DATE: FEBRUARY 15, 1996
FACILITY: DIAMONDBACK CORRECTIONAL FACILITY
FACILITY SUPERSEDES: NONE
FACILITY EFFECTIVE DATE: APRIL 27, 1999

APPROVED: SIGNATURE ON FILE
DAVID L. MYERS
PRESIDENT

APPROVED: SIGNATURE ON FILE
LINDA G. COOPER
VICE PRESIDENT, LEGAL AFFAIRS

15-2.1 PURPOSE:

To provide for a safe and orderly facility; that inmate/resident rule violations are responded to firmly, fairly and consistently; that due process requirements are followed.

15-2.2 AUTHORITY:

Ponte v. Real, 471 U.S. 491, 105 S.Ct. 2768 (1985), Superintendent v. Hill, 472 U.S. 445, 105 S.Ct. 2768 (1985), Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551 (1976); Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974); Mendoza v. Miller, 779 F.2d 1287 7th Cir. (1985) cert. denied.

15-2.3 DEFINITIONS:

Disciplinary Board - A three-person panel, of which one member is from a supervisory level position, or unit team disciplinary committee designated by the Warden/Administrator to conduct hearings on rule violation(s). Each person has an equal vote in the guilt and penalty phase.

Disciplinary Hearing Officer (DHO) - A person from a supervisory level position designated by the Warden/Administrator to hear offenses, determine guilt or innocence and impose appropriate discipline for rule violations. This person performs the same function(s) as a Disciplinary Board.

Disciplinary Report - A written report prepared by a staff member that alleges an infraction(s) of institutional rules.

Another form, such as one required by a contracting agency, may be used if prior approval in writing is obtained from the Vice President/Legal Affairs. Normally, such reports are prepared using Form 15-2A.

Due Process - A series of procedures that are followed to verify that all rights are provided to the inmate/resident prior to disciplinary action.

Investigation - A review of the basis for a Disciplinary Report to be conducted prior to issuance of the report. The investigation report may include interviews with witnesses and review of documents to clarify any information on the report.

Investigative Officer - A person or persons designated by the Warden/Administrator or designee to conduct the investigation of the Disciplinary Report prior to disciplinary hearings.

Pre-Hearing Segregation/Detention - Placement of an inmate/resident in segregation pending a disciplinary hearing when they constitute a threat to themselves or the facility security until such time as a hearing can be held.

Rehearing - A second hearing of a Disciplinary Report by the Disciplinary Board or Hearing Officer at their discretion or upon remand after an appeal. This hearing is conducted to correct procedural errors, consider additional evidence, but in no event solely to increase punishment.

Segregation - Placement away from the general population. The area of placement may be a cell, room or other controlled area to uphold the safety and security of the institution.

15-2.4 POLICY:

All alleged violations of CCA rules are to be dealt with through established policies and procedures to verify that due process rights are afforded to the inmate/resident and that the penalty imposed will be fair, impartially given and appropriate for the offense.

15-2.5 PROCEDURES

A. RESOLUTION OF OFFENSES

1. INFORMAL ACTION

Should a staff member believe an offense may properly be responded to by a reprimand, warning, and/or counseling, or if the inmate agrees-extra duty or restriction as permitted in a Class D offense they may so respond, in which case no Disciplinary Report need be prepared. A counseling report of this action may be made at the staff member's option. Such reports will be placed in the inmate/resident's file and a copy will be given to the inmate/resident. The inmate/resident may prepare a response to counseling reports, which will be placed with the report in the inmate/resident's file.

2. WRITTEN REPORT

Informal resolution of minor incidents is encouraged, however, should a staff member believe an offense cannot be handled by verbal communication, they may file a written Disciplinary Report, using the appropriate form, with the appropriate supervisor of the rank of Shift Supervisor or above.

DISCIPLINARY REPORTS ARE TO BE FILED WITH:

Shift Supervisor, for screening, then to Disciplinary Board to hear class A/B offenses or forwarding to DHO for class C/D offenses

B. DISCIPLINARY REPORT:

1. The Disciplinary Report must be clear, concise and contain only the facts the reporting employee has personally witnessed or otherwise verified, including a statement of how such verification was made.
2. Reports will be made on Form 15-2A or one requested by the contracting agency that has been approved by Vice President, Legal Affairs. These forms are to be kept in a central location for issuance as needed.

THE DISCIPLINARY REPORT FORM USED IS:

15-2A

THE FORMS ARE KEPT IN THE FOLLOWING LOCATION:

Central Control and Forms Room

3. THE REPORT WILL INCLUDE THE FOLLOWING:
 - a. The specific rule(s) violated;
 - b. A formal statement of the charge(s);
 - c. The date and time of the incident;
 - d. The date and time the report was prepared and turned over to the designated supervisor;
 - e. The names of any witnesses;
 - f. Disposition of any physical evidence;
 - g. Any immediate action taken including use of force;
 - h. Any unusual inmate/resident behavior; and
 - i. The reporting officer's signature.
4. Upon completion of a Disciplinary Report, the person writing the report will forward it to the appropriate supervisor for investigation.

REPORTS ARE TO BE FORWARDED TO THE FOLLOWING STAFF MEMBER:

Shift Supervisor, for initial screening-investigation if necessary and forwarding to the DHO for logging and distribution to the appropriate body for docketing and hearings

C. PRE-HEARING SEGREGATION:

1. Following issuance of a written Disciplinary Report, the inmate/resident is entitled to remain in their existing status until a disciplinary hearing is held unless they constitute a sufficient threat to themselves or the security of the facility to warrant confinement prior to the hearing.
2. Only staff with the rank of Shift Supervisor or above may order pre-hearing segregation.
3. The time the inmate/resident is to remain in pre-hearing segregation will be no longer than is necessary to verify their safety or the security of the facility. The inmate/resident's pre-hearing detention status will be reviewed by the Warden/Facility Administrator or designee within 72 hours of placement including weekends and holidays. The reviewer is to consider the need for continued segregation. If the need no longer exists, the inmate/resident is to be released back to general population pending the hearing.
4. No inmate/resident is to be placed and detained in pre-hearing segregation unless a Disciplinary Report is being prepared or and active investigation is being conducted to determine appropriate disciplinary charges.
5. Any time spent in pre-hearing segregation may be credited against any subsequent sentence imposed, by the hearing body.

D. SUPERVISOR INVESTIGATION

The screening officer is to begin an investigation of the Disciplinary Report within 24 hours of the time the violation is reported or as ordered by the hearing body. The investigation will be completed without unreasonable delay unless there are exceptional circumstances for delaying the investigation. Form 15-2C may be filled out to record the investigation of the report. The report is to determine:

1. That all-necessary information is contained in the report;

2. That the information is accurate. In determining whether the information is accurate, the supervisor may question any witnesses and review any documents to determine the cause of the violation, staff and inmate/resident involvement, and any mitigating factors; and
 3. If necessary, assign the appropriate offense to the violation per CCA Policy 15-1 or a penalty list required by the contracting agency.
 4. **AT THIS FACILITY, ADDITIONAL PROCEDURES ARE AS FOLLOWS:**
The ranking correctional officer or duty officer will be the screening officer to review, investigate if necessary; accept pleas of guilt. Assess sanctions for guilty pleas or assign appropriate offense codes and forward for docketing and hearing by appropriate body.
- E. NOTICE OF THE OFFENSE AND RIGHTS
1. Following review of a Disciplinary Report by the designated supervisor, a staff person will provide notice of the offense by delivering the report to the inmate/resident no less than 24 hours prior to the disciplinary hearing.
THE STAFF TO DELIVER THE REPORT IS:
The investigator designated by the Shift Supervisor
 2. The inmate will be advised of his rights at this time and documentation of such will be on the disciplinary report form 15-2A:
 - a. The contents of the Disciplinary Report;
 - b. The opportunity to be present during all phases of the hearing, except deliberation, unless behavior is unruly so as to prevent attendance;
 - c. The opportunity to be represented by a designated staff member, if determined to be necessary by the Disciplinary Board/Hearing Officer;
 - d. The opportunity to have an interpreter present, if the hearing is in a language the accused inmate/resident does not understand;
 - e. The opportunity to make a statement and present documentary evidence, including written statements from others;
 - f. The opportunity to call witnesses on their behalf; unless doing so would be irrelevant, redundant and unduly hazardous to facility safety or would endanger the physical safety of any individual; the reasons for denial are to be stated in writing. Form 15-2D may be used to document a witness statement; and
 - g. The right to waive a hearing and plead guilty to the charge(s).
 3. The appropriate spaces on the Disciplinary Report will be completed documenting the accused inmate/resident's choice or preference as to the above rights.
 4. The person delivering the report will sign it and indicate the date and time the report was given to the inmate/resident.
 5. The inmate/resident will be provided with a copy of the hearing officer's decision (15-2B) report at the conclusion of the disciplinary hearing.

F. DISCIPLINARY BOARD OR HEARING OFFICER

1. The facility may choose to have a three- (3) member Disciplinary Board a single Hearing Officer, or Unit Team disciplinary committee to conduct Disciplinary hearings.

THIS FACILITY WILL USE THE FOLLOWING STAFF MEMBER (S) FOR DISCIPLINARY HEARINGS:

A designated disciplinary hearing board for class A and B offenses, a DHO for class C and D offenses.

2. SELECTION OF THE BOARD OR HEARING OFFICER

- a. The Disciplinary Board, UTDC, or Hearing Officer will be designated by the Warden/Administrator and will be impartial and fair.
- b. If a Disciplinary Board is utilized, one member from a supervisory position who is designated by the Warden/Administrator will be the Chairperson. The Chairperson will act as a coordinator of the hearing and will have one vote in the proceedings.
- c. The UTDC will consist of two members of the team including the Manager, Counselor, or SCO.
- d. If a Hearing Officer is utilized, that person will be from a supervisory position that is designated by the Warden/Administrator.
- e. Any staff will be disqualified in every case in which they have filed the complaint, participated or witnessed the incident; investigated the incident; is the person in charge of any subsequent review of the decision; or has any personal interest in the outcome.

3. DUTIES OF THE BOARD OR HEARING OFFICER

- a. Conduct hearing of all Disciplinary Reports when the inmate/resident involved does not waive their right to a hearing before the Disciplinary Board or Hearing Officer;
- b. Designate appropriate penalty for the offense, which the inmate/resident is found guilty;
- c. Make recommendations as to referrals for prosecution;
- d. Periodically review and make written recommendations, when appropriate, as to the effectiveness and efficiency of the disciplinary process, including the appropriateness of offenses and penalties contained in CCA Policy 15-1; and
- e. Prepare a written report of its activities and keep said record according to the retention periods outlined in CCA Corporate and Facility Policy 1-15.

G. STAFF REPRESENTATION OF AN INMATE/RESIDENT:

1. APPOINTMENT OF STAFF REPRESENTATIVE

A staff representative will be appointed when it is apparent that an inmate/resident is not capable of collecting and presenting evidence effectively on their own behalf. The Disciplinary Board/Hearing Officer will consider the following factors in deciding to appoint a staff representative:

- a. Literacy level of the inmate/resident;
 - b. Complexity of the issues combined with the inmate/resident's overall intelligence and mental/emotional status;
 - c. Location of the inmate/resident (segregation may prevent the accused from gathering information for a defense); and
 - d. Ability of the inmate/resident to speak English or Spanish (if Spanish can not be used by the hearing officer).
2. SELECTION OF STAFF REPRESENTATIVE

- a. The Warden/Administrator may choose to have an approved list of staff representatives from which the inmate/resident may choose or can allow all employees to represent inmates/residents after the Disciplinary Board/Hearing Officer makes the determination that a staff representative needs to be appointed.
- b. Staff members selected for duties as counsel for inmates/residents at Disciplinary Board hearings are to be granted sufficient time to meet with inmates/residents before the hearing, gather evidence and question witnesses and to represent the inmate/resident at the hearing.
- c. Staff members are to be selected for such traits as good judgment and a genuine interest in the assignment.
- d. **THE FOLLOWING STAFF POSITIONS MAY REPRESENT INMATES/RESIDENTS:**

Any staff member who has completed the facilities training module on inmates rights, rules and discipline.

3. ACTIVITIES OF STAFF REPRESENTATIVE:

THE STAFF REPRESENTATIVE MAY, IF NECESSARY, ASSIST AS FOLLOWS:

1. The staff representative will consult with the inmate at least 24 hours before the hearing.
2. The staff representative will explain the charge against the inmate and the potential consequences.
3. The staff representative will explain the ramifications of a guilty plea.
4. The staff representative may assist the inmate in investigating and presenting evidence in the inmate's behalf.
5. The staff representative may represent the inmate at the hearing.
6. The staff representative may question all witnesses, except confidential witnesses.

H. DISCIPLINARY HEARING

1. TIME

The disciplinary hearing will be held as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation.

AT THIS FACILITY, THE TIME GUIDELINES ARE AS FOLLOWS:

The hearing will be held within seven (7) days after the misconduct is written, unless a delay has been granted by appropriate authority.

2. **POSTPONEMENT OR CONTINUANCE**

Postponement or continuance of the disciplinary hearing for a reasonable period may be granted for good cause. Hearing postponement or continuance may be granted for such cause as preparation of a defense, illness or unavailability of an inmate/resident, further investigation of factual matters relevant to the hearing, or pending criminal court prosecution. Delaying a hearing is also justifiable on the basis of factual recording of an inmate/resident's unacceptable behavior during the hearing process or the inmate/resident's refusal to participate in a reasonable manner. Any delays beyond this time will be justified and documented in writing by the Disciplinary Board or Hearing Officer, and included with the Disciplinary Report.

3. **NOTICE**

a. Notice of the hearing is to be provided in writing to the inmate/resident at least 24 hours prior to the hearing. The inmate/resident may agree, in writing, to a hearing with less than 24 hours notice.

b. **THE FOLLOWING STAFF POSITIONS WILL BE RESPONSIBLE FOR NOTIFYING INMATE/RESIDENTS OF THE CHARGES:**

The designated investigating officer.

c. These persons will fully inform inmate/residents of the nature of the waiver of the 24-hour notice and the results of such a waiver. Inmate/residents will be allowed to make a voluntary choice, free from coercion, as to the waiver.

4. **HEARING ON A MINOR OFFENSE**

a. The inmate/resident will be present at all phases of the hearing, unless excluded for reasons of facility security; such reason will be stated in writing.

b. The inmate/resident will be allowed to make a statement and present any reasonable evidence, including written statements from others, in their behalf.

c. At the conclusion of the hearing, the UTDC Chairperson/Hearing Officer will complete the Disciplinary form (15-2B), indicate the finding and, if found guilty:

- i. The sentence imposed;
- ii. The date and time of hearing;
- iii. The signature of the Disciplinary Board/Hearing Officer.

d. The UTDC/Hearing Officer will allow any other evidence that may aid in their decision.

e. Unless the UTDC/Hearing Officer feels additional oral testimony is necessary, their decision may be based on the Disciplinary Report, the statements of the inmate/resident, and any other relevant written information presented at the hearing.

- f. A copy of this record will be given to the inmate/resident at the conclusion of the hearing.
- g. The penalty imposed is to be taken from the penalty list set forth in CCA Policy 15-1 or from a penalty list required by the contracting agency.
- h. The complete Disciplinary Report will then be forwarded to the Chief of Security, Warden/Administrator or appropriate designee for review.

FORWARD THE REPORT TO:

Assistant Chief of Security or Chief of Security

5. HEARING ON A OFFENSE

- a. The inmate/resident will be present during all phases of the hearing except the deliberations phase unless they waive this right or because their unruly behavior does not permit attendance.
- b. If the inmate/resident is not in attendance at the hearing and has not pleaded guilty, the absence may be used against them in the proceedings. However, the absence alone cannot be used as the only evidence of guilt.
- c. The inmate/resident will receive copies of any written information which may be considered except where disclosure of such information would be unduly hazardous to institutional safety or endanger the physical safety of an individual; reasons for non-disclosure will be stated in writing. In all cases where written information is not disclosed, its contents will be summarized for the inmate/resident to the extent this may be done without creating a substantial risk to facility or personal safety.
- d. The inmate/resident will have an opportunity to make a statement and to present documentary evidence. If criminal charges are pending concerning the subject of the hearing, the inmate/resident will be informed of their right to remain silent during the disciplinary proceedings and that anything they say during the course of the disciplinary hearing may be used against them in any subsequent criminal proceedings and that their silence may be used against them in these proceedings. However, this silence alone cannot be used as the only evidence of guilt.
- e. The inmate/resident will have the opportunity to call witnesses on their behalf, unless doing so would be irrelevant, redundant or unduly hazardous to facility safety or would endanger the physical safety of the individual; such reasons for denial are to be stated in writing.
- f. Any time during the hearing, the UTDC Board, or Hearing Officer on their own, or at the request of the inmate/resident, may order an investigation into the incident and continue the hearing to a future time.

6. CONFIDENTIAL INFORMANTS

An inmate/resident may be found guilty of a disciplinary infraction on the basis of reliable information from a source whose identity is not disclosed to the inmate/resident at the hearing. Such information may be presented at the hearing orally or in writing and:

- a. The details of any information from an anonymous source are to be shared with the inmate/resident at the hearing to the extent that this may be done without creating a substantial risk to the safety of the informant;

- b. When information from an anonymous source is considered, the name of the source and all details of such information will be given to the Board/Officer out of the presence of the inmate/resident;
- c. The Board/Officer will make a determination as to the reliability of the anonymous source by determining proven reliability in specific past instances or independent corroboration on specific material points; and
- d. In all cases in which information from an anonymous source is considered, a confidential record will be maintained which indicates the details of such information and, if possible, the identity of the informant and the degree of familiarity with the informant's reliability. Such records will be available only to the Warden/Administrator, Vice President, Legal Affairs and Vice President, Operations.

7. WRITTEN REPORT

At the conclusion of the hearing, a Disciplinary Hearing actions (form 15-2B) report will be prepared and given to the inmate/resident which will include:

- a. The decision;
 - b. The sentence imposed and the reason for imposing the particular sentence;
 - c. A summary of the evidence upon which the decision and sentence was based;
 - d. A list of all witnesses;
 - e. The date and time of the hearing; and
 - f. The signature of all Board Members or Hearing Officer.
8. The UTDC Board/Hearing Officer's decision is based solely on information obtained in the hearing process, including staff reports, the statements of the inmate/resident charged and evidence derived from witnesses and documents.

9. PSYCHIATRIC ILLNESS

If the inmate/resident has been diagnosed as having a psychiatric illness, the Warden/Administrator and the responsible physician or their designee will be consulted prior to the disciplinary measures recommended by the Hearing Officer or Disciplinary Board being taken.

10. RECORD

A record of all disciplinary hearings will be kept and retained pursuant to CCA Corporate and Facility policy 1-15. Form 15.2F or a similar form approved by the Vice President, Legal Affairs will be used to keep this record.

11. REVIEW

A copy of all Disciplinary Reports will be forwarded to the Warden/Administrator or designee at the conclusion of the hearing for review as to conformity with policy.

I. APPEAL

An inmate/resident may appeal the decision of the UTDC Board/Officer as to an offense to the Warden/Administrator, on form (15-2I)

1. TIME GUIDELINES

- a. The inmate/resident is to be advised of their right to appeal the decision of the UTDC/Hearing Officer at the time they are provided the decision. The

inmate/resident has up to 15 days within receipt of the decision to file an appeal.

AT THIS FACILITY, TIME GUIDELINES FOR APPEAL ARE AS FOLLOWS:

An inmate found guilty of an offense may appeal on form 15-2I to the facility head within ten (10) working days of receipt of the Disciplinary Hearing Actions form.

- b. At Adult Local Detention Facilities, the Warden/Administrator is to respond to the appeal in writing affirming or reversing the decision within 5 days of the appeal.
 - c. At Adult Correctional Facilities, the Warden/Administrator is to respond to the appeal in writing affirming or reversing the decision within 30 days of the appeal.
2. The Warden/Administrator is to review the Disciplinary Report to determine:
 - a. That there was compliance with the procedures set out in this policy;
 - b. That there was sufficient evidence for a finding of guilty; and
 - c. That the penalty imposed was appropriate for the rule violation.
 3. The Warden/Administrator, after review, may
 - a. Concur with the findings and penalty;
 - b. Void the report;
 - c. Decrease punishment; or
 - d. Send back for a new hearing to correct any error in procedure but not for an increase in punishment.
 - e. IN NO CASE will the Warden/Administrator make a finding or impose a penalty that increases the category of the offense(s) or penalty (is).
 4. Appeals by Indiana inmates that are denied by the Warden resulting in grievous loss sanctions may appeal to the DOC Disciplinary Review Manager on State form 39587 available in the library.

J. EXPUNGEMENT

If an inmate/resident is found not guilty of an offense, major or minor, either after the hearing or the appeal, all reference to that offense will be removed from their file.

K. CRIMINAL MISCONDUCT

1. If the designated supervisor reviewing the report or Disciplinary Board/Hearing Officer think the conduct for which the inmate/resident is being disciplined is a crime, they will notify the Warden/Administrator who will contact the appropriate law enforcement agency.
2. Any disciplinary hearing for this alleged offense will be conducted following the procedure set out herein and the inmate/resident will be advised that they have the right to remain silent in the hearing and that anything they say during the course of the disciplinary hearing may be used against them in any subsequent criminal proceeding.

L. PROCEDURES FOLLOWING AN EMERGENCY

1. In the event of a widespread facility disruption, which requires emergency action, any or all portions of these regulations may be temporarily suspended.
2. Any inmate/resident involved in the emergency may be detained without a hearing throughout the course of the emergency.
3. Upon the restoration of order, all inmates/residents who were detained will be accorded all disciplinary procedures as provided for by this regulation.

15-2.6 REVIEW:

The Warden/Administrator, Vice President, Operations and Vice President, Legal Affairs will review this procedure on an annual basis.

15-2.7 APPLICABILITY:

All CCA facilities housing adults unless other procedures are required by the contracting agency.

15-2.8 ATTACHMENTS:

1. 15-2A Disciplinary Form
2. 15-2B Hearing Actions form
3. 15-2C Disciplinary Report Investigation Form
4. 15-2D Witness Statement
5. 15-2E Disciplinary Hearing Action
6. 15-2F Disciplinary Log.
7. 15-2G Amendment Form
8. 15-2H Hearing Docket
9. 15-2I Appeal Form
10. 15-2J Extension Request

15-2.9 REFERENCES:

ACA Standards. The ACA Standards for this facility are:
3-4214 through 3-4236

Section - 06 Classification and Case Management	OP-060125	Page: 1	Effective Date: 10/19/00
Disciplinary Procedures	ACA Standards: 2-CO-3C-01, 3-4214 through 3-4236, 3-4243, 3-4268M, 3-ACRS-3C-01 through 3-ACRS-3C-13, and 3-ACRS-3D-05		
James L. Saffle, Director Oklahoma Department of Corrections	Signature on File		

Addendum - 01 Department Inmate Disciplinary Procedures

Changes are: Attachment A "Acts Constituting Rule Violation"

Individual Disruptive Behavior

02-2 X Under the Influence of and/or any use of illegal drugs, alcohol, intoxicating chemicals or any medication in an unauthorized manner, be modified to:

02-2 A Under the Influence of and/or any use of illegal drugs, alcohol, intoxicating chemicals or any medication in an unauthorized manner.

Action

The deputy director/regional director will be responsible for compliance with this procedure.

The legal division will be responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the director.

This procedure will be effective as indicated.

Addendum: OP-060125 entitled "Department Inmate Disciplinary Procedures" dated June 1, 2000

Distribution: Policy and Operations Manual
Department Website

Section--06 Classification and Case Management	OP-060125	Page: 1	Effective Date: 06/01/00
Disciplinary Procedures	ACA Standards:2-CO-3C-01, 3-4214 through 3-4236, 3-4243, 3-4268M, 3-ACRS-3C-01 through 3-ACRS-3C-13, and 3-ACRS-3D-05		
James L. Saffle, Director Oklahoma Department of Corrections	Signature on File		

Department Inmate Disciplinary Procedures

Each facility head/district supervisor will ensure inmates receive equitable treatment and due process when file://C:\Documents%20and%20Settings\tratliff\Local%20Settings\Temp\Oklahoma%20Disciplinary%20I... 7/31/200

alleged to have violated the inmate/offender rules of conduct. This procedure is intended to provide guidance to staff in exercising discretion in the day to day operation of the department. It is not intended to grant any right on any inmate, the right to due process protection comes from the constitution (3-4268M, 3-ACRS-3D-05)

"Acts Constituting Rule Violation" (Attachment A) of this procedure defines all inmate/offender disciplinary rule violations and specifies the allowable range of disciplinary sanctions authorized by the Oklahoma Department of Corrections for each violation. (2-CO-3C-01, 3-ACRS-3C-02, 3-4216, 3-4243) All personnel who work with inmates will receive training so that they are familiar with the rules of inmate/offender conduct, the rationale for the rules, and the disciplinary sanctions available. (3-4217) This procedure will be reviewed annually and provided to all inmates through facility orientation. (3-4214, 3-4215, 3-4216, 3-ACRS-3C-01) To provide for uniformity of the hearings, the "Disciplinary Hearing Guide" (Attachment B) is provided. The hearing officer is encouraged to utilize this attachment as a guide during the hearing.

I. General Information

A. Training Disciplinary Officers, Investigators and Staff

1. Facility heads and district supervisors will appoint employees, Pay Band H and above, to serve as disciplinary officers who will preside at the disciplinary hearings and impose the appropriate disciplinary sanction.
2. Disciplinary investigators and staff representatives will be designated as required.
3. Facility heads/district supervisors will ensure all disciplinary officers, investigators and staff are trained in the disciplinary process prior to assuming responsibilities in the process, at least annually thereafter, and as significant changes occur.

B. Definition of Terms

1. Staff Member

Staff member, as used in this procedure, refers to any employee, student intern, volunteer, employee associated with any contract facility, vo-tech employee, and anyone else who works with inmates/offenders in an official capacity.

2. Direct involvement

The following activities constitute direct involvement in the disciplinary process and precludes the staff member from either conducting the disciplinary hearing or being a staff representative.

- a. Directly witnessed the offense or reviewed/accepted/prepared the "Offense Report." (DOC Form 060125A)
- b. Involved in or witnessed the events leading to and immediately following the offense

c. Engaged in any activity which may compromise the ability to function objectively, e.g., family relationship between staff member writing the "Offense Report" and/or the investigator

d. Neither serving the "Offense Report" nor awareness of the offense constitutes direct involvement.

3. Disciplinary hearing

The review of the evidence and the disposition of the misconduct report.

4. Time frames

Time frames will not include weekends and holidays except as indicated.

a. The disciplinary process from the acceptance by the appropriate supervisor of the offense report to the conclusion of the disciplinary hearing will normally not exceed seven days excluding weekends and holidays.

b. Extensions for reasonable cause/s will be documented in writing and the justification will be attached to the offense report.

c. When it is necessary to extend the time limits set forth in this procedure, the inmate will receive documented notification of the extension.

5. Private contract facility

Any private prison/jail or other non-departmental facility or contractor who has a contract with the Oklahoma Department of Corrections to house inmates assigned to the custody of the Oklahoma Department of Corrections.

6. Completion of an "Offense Report"

An "Offense Report" is not completed until after a supervisor has reviewed the report, all errors are corrected, the supervisor accepts it as a correct report and assigns it to an investigator. Upon assignment to an investigator, the "Offense Report" is a completed report.

C. Guidelines for the use of Confidential Witness Testimony or Physical Evidence

1. If confidential witness testimony constitutes a portion of the evidence, the name and testimony of the confidential witnesses will be documented thoroughly, stating the facts as submitted by the witness and the manner in which knowledge of those facts were acquired. Such documentation will be signed by the confidential witness and/or the staff taking the testimony, placed in an envelope, and sealed. Should the informant decline or refuse to sign the statement the staff member taking the information will document such refusal.

a. An evaluation regarding the reliability of the confidential witness will be prepared by staff taking the testimony and attached to the sealed confidential witness testimony. This evaluation will be submitted with the "Investigator's Report" (DOC Form 060125B) to the disciplinary officer.

b. Use of confidential testimony will only be used to protect the identity of the weak/vulnerable or the release of which might pose a threat to the security of a facility, staff, another inmate, or any person. Confidential information will not be accepted in exchange for avoiding charges, the granting or denial of privileges, or intervening in an inmate's current status.

2. Reports from other agencies, such as police arrest reports, or internal department reports, such as chronological reports, are not confidential material unless they contain the name or identity of a confidential informant, the release of which might pose a threat to the safety of the informant. If such information is contained in such a report, the information will be removed from the report and the report provided to the inmate, if the identity of the informant will not be revealed.

3. If confidential witness testimony is admitted in a disciplinary hearing, the anonymity of the confidential witness will be maintained. If it is not clear from the "Offense Report" and "Investigator's Report" the hearing officer will describe to the accused inmate the substance of the confidential testimony, in general terms so as to protect the identity of the witness and inform the inmate of what evidence/information has been provided.

a. For the taped record, when the hearing convenes, the disciplinary officer will state in the presence of the inmate if confidential testimony will be part of the evidence presented.

b. Confidential evidence will be reviewed by the disciplinary officer to determine the reliability of the confidential witness and whether the confidential testimony will be considered. If considered and found to be reliable and relevant, the disciplinary officer will submit the following written statement which will include the inmate's name, number, offense, and date of offense:

"I have independently reviewed the reliability statement and confidential testimony and have found it to be sufficiently reliable."

The statement will be signed by the disciplinary officer, read during the hearing, and attached to the "Disciplinary Hearing Report" (DOC Form 060125C). The inmate and staff representative will not be present for this review.

4. If confidential physical evidence is used it will be reviewed by the hearing officer it will be described to the inmate in general terms, but the inmate will not be allowed to possess the material. Examples of confidential evidence would be the plans for manufacturing weapons, bombs, drugs etc.

D. Use of Pre-hearing Detention

The inmate may be placed in pre-hearing detention prior to a hearing according to the guidelines established in OP-040204 entitled "Segregation Measures." (3-4223)

E. Violation of Criminal Law

When an inmate allegedly commits an act covered by a criminal law, the case may be referred to the appropriate district attorney or law enforcement agency for criminal investigation or for criminal prosecution. (3-4219, 3-ACRS-3C-03)

F. Evidence

1. Physical material constituting evidence of the alleged violation will be confiscated, labeled, and secured in the unit's designated area in accordance with OP-040109 entitled "Control of Contraband and Physical Evidence" and OP-040110 entitled "Search and Seizure Standards" and will be retained for three years following the final appeal in the disciplinary matter.

2. If such evidence is too voluminous to be readily secured, it may be photographed and described in its original state. Samples and photographs will be retained until the appeal process is complete; photographs will also be attached to the "Disciplinary Hearing Report."

3. Evidence relevant and/or material to the alleged offense will be viewed by the disciplinary investigator who will ensure a field test is completed if identification remains uncertain. The evidence, or the photographs/ photocopies of the evidence, laboratory reports, etc. will be reviewed by the hearing officer during the hearing. If videotapes or audio tapes are part of the evidence, the hearing officer and the inmate will review those items prior to the hearing and such review will be documented.

4. Breathalyzer, urinalysis, or blood tests will be administered in accordance with OP-030134 entitled "Chemical Abuse Testing." If such test is administered, photocopies or photographs of the results will be part of the evidence and attached to the "Disciplinary Hearing Report." If the test kit is such that no photocopy can be made of the results, then at least two staff members will prepare incident reports of their observations of the test and the results. Medical records of each offender who tests positive will be examined by a qualified staff member who will determine if any prescribed medication has affected the test results. Such determination will be documented and provided to the investigator or hearing officer.

Inmates supervised by probation and parole staff and who claim they were on medication must submit evidence to the investigator prior to the disciplinary hearing and make their medical records available for review. Failure to do so constitutes a waiver of the issue.

Breathalyzer, urinalysis, or blood tests are not required to establish that an offender is under the influence of a chemical substance. In lieu of testing, staff members may document their observations of the offender (i.e., slurred speech, smell, uneven walk, etc). Test kits utilizing human body fluids of any kind will be handled as a biohazard in accordance with OP-140125 entitled "Bloodborne Pathogen Exposure Control Program."

5. Photocopies of incident reports, witness statements or evidence, other than confidential witness statements or evidence, utilized for writing the "Offense Report" or discovered during the investigation will normally be provided to the inmate upon completion of the investigation and at least 24 hours before the disciplinary hearing. Exceptions will be documented with justification. (3-4224, 3-ACRS-3C-06)

G. Errors

Clerical errors in a completed disciplinary report will not invalidate the report. Corrections may be made by the reviewing supervisor, investigator or hearing officer. Copies of corrections will be provided to the inmate. If the inmate could have not known of the correct information and the information is material to a determination of guilt, an additional 24 hour preparation period will be offered and provided unless it is waived by the inmate. Items such as misspelled names, incorrect DOC #, or failure to put am/pm on reports are not always material and can be verified and corrected at the hearing without an extension.

H. Amendment of Rule Violation

A charge may be amended by the use of "Amendment of Rule Violation" (DOC Form 060125 G). The inmate will be notified and offered an opportunity for 24 hours to prepare, if the hearing is already scheduled to be conducted within 24 hours of service of the amended disciplinary charge.

The Disciplinary Procedures Process

A. Filing of "Offense Report" (3-4218, 3-4220, 3-4221, 3-ACRS-3C-04, 3-ACRS-3C-05)

1. Upon the reasonable belief that a violation of rules has occurred which cannot be handled informally, an "Offense Report" may be prepared by any staff member or volunteer.

2. Occurrence of Disciplinary Infractions

a. If more than one infraction occurs as a result of a single behavior in which there is more than one victim, the inmate may be charged for the most serious offense or for each offense, as the supervisor deems appropriate.

b. Sequential infractions may be the basis for additional charges and sanctions. Sequential is defined as the following of one thing after another. For example if the inmate is found with several items of contraband the inmate would be charged with the rule violation of possession of contraband and list all the seized items as evidence. However, if the inmate assaults several staff members in a use of force in which contraband is found he may be charged with a battery infraction for each staff member assaulted as well as an infraction for possession of the contraband.

3. The "Offense Report" will identify a specific charge to give the inmate notice of the offending behavior, as well as the date and approximate time of the behavior, to

allow for preparation of a defense.

4. The "Offense Report" will be submitted to the appropriate shift supervisor/unit manager/team supervisor in a timely manner. The supervisor will review the report to ensure it is complete, correct, legible, and understandable. If necessary, the offense report will be corrected if errors are found by the supervisor or returned to the writer for corrections. The supervisor will normally review and refer an accepted/complete "Offense Report" to an investigator within 24 hours of the supervisor's receipt, unless exceptional circumstances dictate otherwise. (3-4222)

5. The supervisor may dispose of an "Offense Report" informally through a verbal warning or dismissal due to lack of evidence. In such cases, the inmate and appropriate staff will be notified.

B. Service of "Offense Report"

1. The "Offense Report" will be served to an inmate within 48 hours after assignment to an investigator, or as promptly as practicable, but no less than 24 hours prior to the disciplinary hearing. (3-4224, 3-ACRS-3C-06) Misconduct reports for escape do not have to be served until the inmate is returned to a Department of Corrections facility.

2. If the inmate is unable or unavailable to receive a copy of the "Offense Report" within the 48 hours, it will be documented in writing and attached to the completed report. It will be presented to the inmate promptly after availability occurs, but in all cases not later than 24 hours before the disciplinary hearing is conducted. (3-4224, 3-ACRS-3C-06)

3. Should a facility emergency occur or if an inmate is detained elsewhere which would preclude service of the "Offense Report" within 48 hours, service will be accomplished as soon as reasonably possible and such action will be documented in writing and attached to the completed report. It will be the responsibility of the originating facility to ensure the disciplinary process is completed within a reasonable time frame.

4. Upon service of the "Offense Report" to the inmate, the employee will ensure Section II of the report is completed before a copy is given to the inmate.

5. The inmate may waive the right to a disciplinary hearing and/or plead guilty. The staff member serving the inmate will ensure the inmate understands that waiving the right to a hearing will constitute a plea of guilty. When the inmate waives a hearing or pleads guilty there will be no hearing. The waiver or plea of guilty also constitutes a waiver of the appeal process by the inmate. Waivers or guilty pleas will be documented and reviewed by the facility head/designee. (3-4225)

6. If the hearing is not waived, the inmate will be offered the opportunity for a 24 hour preparation period, beginning at the time the inmate is served with a copy of the "Offense Report." (3-4226, 3-ACRS-3C-07)

C. Investigation

The investigation of the alleged offense will normally be the responsibility of the facility where the offense occurred.

1. If the inmate waives the hearing or pleads guilty when served, the "Offense Report" will be forwarded to the disciplinary officer, without any investigation. The disciplinary officer will determine and impose discipline without a hearing.

If the inmate pleads guilty at the hearing, the "Investigator's Report" will remain a part of the "Offense Report." An audio recording of the disposition and imposition of discipline is not required when the offender waives a hearing or pleads guilty. If the inmate pleads guilty during the hearing the audio recording may be stopped after the inmate states his plea.

2. Bargaining by the investigator, hearing officer or the staff member serving the "Offense Report" to the inmate/offender for a guilty plea or dismissal of charges is prohibited.

If an inmate chooses to plead guilty during the investigation, the investigator will record the guilty plea on the "Disciplinary Hearing Report" form with the plea acknowledged by both the inmate and investigator.

3. When an alleged rule violation is reported and accepted by the appropriate supervisor, an investigation will be initiated within 24 hours of completion with referral to the investigator. The investigation will be completed without unreasonable delay unless circumstances dictate a need for delaying/extending the investigation. (3-4222)

4. Investigations should be conducted in the following manner:

- a. The disciplinary investigator should review the "Offense Report" and complete the "Investigator's Report" as it relates to the offense. An investigation will be performed by speaking to the witnesses and the accused inmate. Detailed and objective reports will be submitted by the investigator which include all relevant information pertinent to the charge, to include any mitigating or exculpatory information (that information which indicates innocence).

- b. If the inmate refuses to cooperate in the investigation, the failure to cooperate will be documented, and the investigation will be completed.

- c. Upon conclusion of the investigation, the inmate will receive a copy of the investigator's report with photocopies of the attached reports or evidence not previously provided to the inmate, excluding any confidential material.

- d. The inmate will be notified of the scheduled time and location of the disciplinary hearing, having at least 24 hours to prepare after the receipt of notice of the charge. (3-4226, 3-ACRS-3C-07)

- e. Clerical errors found by the investigator may be corrected and a copy