



## Guidance on Criminal Convictions

This document provides general guidance for determining the appropriate disciplinary action for employees who are convicted of criminal felony or misdemeanor charges including Driving Under the Influence (DUI). Employees are also required to report charges and convictions in accordance with Operating Procedure 040.1, *Litigation*. To ensure consistency in the Department of Corrections (DOC), any of the scenarios below should be discussed with the appropriate HR officer at Atmore when determining the appropriate action.

- Felony convictions because of their serious nature will normally result in a Group III charge and termination. The situation must be assessed as to the employee's ability to perform the functions of the position including the ability to carry out all job requirements, the nature of the conviction, the impact the conviction has on the DOC and its employees, the public and its perception of the DOC, and other mitigating factors including prior discipline, length of service, and performance.
- Misdemeanor convictions may result in a Group III charge and termination. The situation must be assessed as to the employee's ability to function in the position including the ability to carry out all job requirements, the nature of the conviction, the impact the conviction has on the DOC and its employees, the public and its perception of the DOC, and other mitigating factors including prior discipline, length of service, and performance.
- If a criminal charge is resolved by a court ordering a deferred decision with conditions for the employee to meet, the DOC may return the employee to active status provided the employee meets the terms and conditions established by the court in the deferred adjudication, unless the matter is addressed on an administrative basis, not as a conviction but based on the facts or evidence of conduct that has been factually proved.
- Employees of the DOC who are convicted of DUI, a criminal offense, undermine the public's confidence in the agency and its ability to carry out its mission.
- Employees convicted of a DUI in a state vehicle or while on the job or traveling as a representative of the DOC in a private vehicle are subject to a Group III charge, which could include termination. Employees will be made aware of the *Employee Assistance Program* resources available to them.
- Employees convicted of a first DUI off the job and in a private vehicle are minimally subject to a Group II charge, but depending on the circumstances, a Group III charge and termination may be warranted. Employees will be made aware of the *Employee Assistance Program* resources available to them.
- Employees convicted of a second DUI off the job and in a private vehicle are minimally subject to a Group III charge, which could include termination. The length of time between the convictions may be considered when determining the charge and the disciplinary action.
- Loss of Driver's License Due to Suspension, Revocation, or Court Order, etc.
  - Employees who lose their driver's license for more than 90 days and are in a position that requires them to have a current driver's license must be removed from their positions or placed in a lateral or lower-level position that does not require a driver's license provided they meet the minimum qualifications for the position.
  - Employees who lose their driver's license for 90 days or less and are in a position that requires them to have a driver's license, e.g., uniformed security staff, may be placed in a "limited duty status" and will not be allowed to operate a state vehicle licensed for highway use until the DOC can verify their driver's license has been reinstated.
  - See Operating Procedure, 323.1, *Vehicle Acquisition, Operations, and Maintenance*, and 411.1, *Inmate Transportation* for additional information.
  - All employees who lose their driver's license are subject to disciplinary action as stated above.
- **DUI-Related Charge or Conviction**
  - Pending disposition of the case, employees who have been charged with violating COV §18.2-266, *Driving motor vehicle, engine, etc., while intoxicated, etc.*, COV §18.2-266.1, *Persons under age 21 driving after illegally consuming alcohol; penalty*, COV §18.2-268.3, *Refusal of tests; penalties; procedures*, COV §46.2-341.24, *Driving a commercial motor vehicle while intoxicated, etc.*, COV §46.2-341.26:3, *Refusal of tests; issuance of out-of-service orders; disqualification*, COV §46.2-341.31, *Driving commercial motor vehicle*





*with any alcohol in blood* or equivalent charges imposed by other states, are prohibited from operating a state vehicle or state-paid rental vehicle.

- If no court-ordered or administrative driving restrictions exist, employees who have been charged with violating any of the above code sections will be considered for work related mileage reimbursement in their personal vehicle pending disposition of their case and at the discretion of the Director or his designee.
- Upon conviction of any of the above charges, the employee may receive court-ordered or administrative driving restrictions. To be considered to operate a state vehicle there must be no court-ordered or administrative restrictions. To be considered to operate a state vehicle or state-paid rental, there must be no court-ordered or administrative restrictions.
- If court-ordered or administrative driving restrictions are imposed and the employee is in a position that requires them to have a driver's license, the decision should be made on whether the employee can effectively function in a "limited duty status" without operating a state vehicle for a period not longer than the court-ordered or administrative driving restrictions.
  - This decision should be made based on the employee's ability to function in the limited duty status and the effect on the unit's operation.
  - Employees that are unable to effectively perform job requirements or whose status is negatively impacting the unit's operation may be removed from their positions or placed in a lateral or lower-level position that does not require a driver's license provided they meet the minimum qualifications for the position.
- **Additional guidance on status of employees charged with criminal offenses pending conviction**
  - Employees charged with criminal offenses may be:
    - (1) allowed to work in the normal area of responsibility, or
    - (2) temporarily be reassigned to other duties, or
    - (3) placed on Pre-Disciplinary Leave with Pay pending the outcome of the charges, for a period not to exceed 90 days, administrative investigation must be commenced and completed within 90 days except where extenuating circumstances exist.

The decision should be made based on the nature of the charges, the employee's ability to effectively function in their job or a temporary assignment, the public's confidence in the DOC if the employee continues to work, the effect on the unit's operation, the effect on other employees, and the effect on workplace safety. Decisions on temporary status of employees must be consistent with other similar situations or criminal charges.

- Additionally, employees who are criminally charged may be administratively charged based on the same conduct, if the DOC has the evidence to prove it, and the administrative disciplinary action can move forward rather than waiting for the criminal charges to be processed.

