



State of North Carolina
Department of Correction
Division of Prisons

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Section: .0200
Title: **Inmate Disciplinary Procedures**
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POLICY AND PROCEDURE

.0201 GENERAL

Inmate conformity to prison rules is absolutely necessary for the orderly, safe, and secure operation of correctional facilities. Effective, fair, and consistent disciplinary procedures enhance the orderly operation of the facility and reinforce appropriate behavior and responsibility. The Division of Prisons shall promulgate inmate conduct rules and disciplinary procedures and sanctions for all new admissions to the prison system and make them available in conspicuous locations within each correctional facility. Inmate Disciplinary Policies and Procedures shall be reviewed annually and updated if necessary, by the Division's Chief Disciplinary Hearing Officer (4-4226)

.0202 DISCIPLINARY OFFENSES

Disciplinary offenses are divided into four (4) classes which are Class A through Class D. Class A offenses are the most serious and Class D offenses are the least serious.

- (a) The following are the Class A disciplinary offenses:
- (A1) Seize or hold a hostage or in any manner unlawfully detain any person against his/her will;
 - (A2) Participate in a riot, insurrection, work stoppage or group demonstration, or incite/encourage others to riot, participate in an insurrection, work stoppage or other group demonstration;
 - (A3) Commit an assault on a staff member with a weapon or by any other means likely to produce injury, such as hitting, kicking, pushing, pulling, throwing objects;
 - (A4) Commit an assault on another with a weapon or any other means likely to produce injury;
 - (A5) Commit an assault on another inmate with intent to commit any sexual act;
 - (A6) Escaping or attempting to escape from any prison facility, community assignment, during transport, or from the supervision of DOC staff or its authorized agent. Attempt will include possession of escape plans, possession of any object that could aid in an escape, attempt to hide within the facility to affect an escape, or any other action that could result in escape if correctional staff did not intervene;
 - (A7) Possess, manufacture, and/or detonate an incendiary or explosive device;
 - (A8) Set a fire that endangers the life of another person or damages state property;
 - (A9) Commit an assault on a staff member by throwing liquids, (including but not limited to urine and feces) or spitting on a staff member;
 - (A10) Fight or engage in a mutual physical confrontation involving weapons (including but not limited to knives, locks, and razors); or resulting in outside medical attention;
 - (A11) Commit an assault on a staff member with intent to commit any sexual act;
 - (A12) Manufacture, possess, introduce, sell or use any unauthorized controlled substance,

- (A13) unauthorized intoxicant or alcoholic beverage, or possess associated paraphernalia; Refuse to submit to a drug test or breathalyzer test, or interfere with the taking of such tests;
 - (A14) Participate in, or organize, whether individually or in concert with others, any gang or Security Threat Group (STG), or participate in any activity or behavior associated with a Security Threat Group;
 - (A15) Offer, give, solicit or accept a bribe or offer to give or withhold anything to persuade staff to neglect duties or perform favors;
 - (A16) Possess or use in any manner any type of unauthorized recording or image taking device or any type of unauthorized communication device whether audio, video or data. Examples include but are not limited to cell phones, personal digital assistants, cameras, tape recorders or digital recorders that can be used to send and/or receive any type of messages/images for any purpose;
 - (A17) Commit an assault on any person, other than an employee or inmate, with intent to commit any sexual act;
 - (A18) Knowingly make to any person a false oral or written allegation about a staff member that, if true, could expose the staff member to criminal liability;
 - (A19) Commit an assault on another by throwing liquids (including but not limited to urine and feces) or spitting on another;
 - (A20) Wrongfully take, give away, or carry away, canteen inventory/cash, which results in a loss of more than one hundred dollars (\$100.00);
 - (A21) Extortion, strong-arming, verbal or physical intimidation for personal or financial gain;
 - (A98) Deliberately provide false and/or misleading information to staff during an investigation related to any offense in this class;
 - (A99) Attempt to commit any of the above-listed offenses, aid another person to commit any of the above-listed offenses, or make plans to commit any of the above-listed offenses. It shall be no defense that an individual was prevented from completing any of the above offenses by prison staff or intervening circumstances.
- (b) The following are the Class B disciplinary offenses:
- (B1) Possess or have under control any weapon or instrument to aid in an assault, insurrection or riot;
 - (B2) Flood cell(s);
 - (B3) Willfully tamper with, damage or block any locking device, fence, door, gate or window;
 - (B4) No longer in use. See offense A12.
 - (B5) Knowingly inhale, smell or breathe any vapors, fumes or odors, or possess for the purpose of inducing or attempting to induce intoxication through inhalation; or possess, inject, or ingest any non-controlled substance for the purpose of altering mental or physical capacity;
 - (B6) Commit, solicit or incite others to commit any sexual act or indecently expose oneself, or touch the sexual or other intimate parts of oneself or another person for the purpose of sexual gratification;
 - (B7) Instigate or provoke an assault on another;

- (B8) Interfere with a staff member in the performance of his or her duties;
- *(B9) Violate any law of the State of North Carolina or the United States of America;
- (B10) Commit or incite others to commit acts, which spread or may spread communicable diseases, or possess any instruments capable of spreading communicable diseases (including but not limited to tattooing instruments and needles);
- (B11) No longer in use. See offense A13.
- (B12) Leave, quit without authorization, fail to report, or neglect to adhere to approved schedules for community based programs;
- (B13) Instigate or provoke an assault on a staff member;
- (B14) Willfully damage, destroy, alter, tamper with or lose State property or property belonging to another;
- (B15) Communicating directly, indirectly, via a third party, or in any manner with victims, or family members of the victims, who have requested in writing to Department of Correction officials that such communication is unwanted;
- (B16) Possession of any tobacco products or paraphernalia at a tobacco free facility/segregation/control area or; possession of unauthorized lighters or lighting devices at any facility or; using any tobacco products in an unauthorized area at facilities with designated outside smoking/tobacco use areas;
- (B17) Causing work stoppage, or delaying work while on community work assignment in the community, causing the inmate to be returned to the facility due to inmate misconduct;
- (B18) Threaten to harm or injure staff; (Formerly C12)
- (B19) Sell, accumulate, give, misuse, or hide medication; (Formerly C1)
- (B98) Deliberately provide false and/or misleading information to staff during an investigation related to any offense in this class;
- (B99) Attempt to commit any of the above-listed offenses, aid another person to commit any of the above-listed offenses, or make plans to commit any of the above-listed offenses. It shall be no defense that an individual was prevented from completing any of the above offenses by prison staff or intervening circumstances.

* An inmate should only be charged with Offense B9 in cases wherein a specific statute has been violated and the act is not covered by current Division of Prisons disciplinary offenses. The specific statute should be cited.

(c) The following are Class C disciplinary offenses:

- (C1) No longer in use. See Offense B19.
- (C2) Direct toward or use in the presence of any State official, any member of the prison staff, any inmate, or any member of the general public, oral or written language or specific gestures or acts that are generally considered disrespectful, profane, lewd, or defamatory;
- (C3) Willfully disobey or fail to obey or cause another inmate to disobey or fail to obey any lawful order of a prison official or employee, or any other lawful order to which

- subject;
- (C4) Fight or engage in mutual physical confrontation not involving weapons; or not involving outside medical attention;
 - (C5) Offer, give, solicit or accept a bribe or offer to give or withhold anything to persuade another to neglect duties or perform favors;
 - (C6) Leave, quit without authorization, or fail to report to any facility job, work or program assignment, or scheduled appointment;
 - (C7) Threaten to harm or injure another or threaten to damage the property of any person;
 - (C8) Wrongfully take or carry away the personal property of another or State property or accept or buy such property with the knowledge it has been wrongfully taken;
 - (C9) Barter or trade; loan or borrow; solicit or engage in any business activity;
 - (C10) Intentionally inflict self-injury for any reason;
 - (C11) Misuse or use without authorization, the telephone or mail;
 - (C12) No longer in use. See Offense B18.
 - (C13) Willfully create a hazardous or physically offensive condition or situation; (Formerly Offense D5)
 - (C14) Possess funds in a form other than authorized by Division of Prisons' Policy, in excess of the authorized amount, or from an unauthorized source, or possess any funds at a cashless prison facility; (Formerly Offenses D10 & D11)
 - (C99) Attempt to commit any of the above-listed offenses, aid another person to commit any of the above-listed offenses, or make plans to commit any of the above-listed offenses. It shall be no defense that an individual was prevented from completing any of the above offenses by prison staff or intervening circumstances.
- (d) The following are the Class D disciplinary offenses:
- (D1) Be in an unauthorized location;
 - (D2) Negligently fail to perform or complete assigned duties;
 - (D3) Possess contraband not constituting a threat of escape or a danger of violence;
 - (D4) Gamble or possess gambling paraphernalia;
 - (D5) No longer in use. See Offense C13.
 - (D6) Fail to go to bed when the lights are dimmed or get up during the night without securing permission of the correctional staff;
 - (D7) Exchange articles of clothing or possess unauthorized or excess clothing or mutilate or alter State issued clothing or wear same;
 - (D8) Counterfeit, forge, alter or reproduce without authorization any document, article of identification, stamps or other papers, or knowingly possess such falsified materials;
 - (D9) No longer in use. See Offense to B14.
 - (D10) No longer in use. See Offense C14.
 - (D11) No longer in use. See Offense C14.
 - (D12) Fail to keep living quarters in a clean and/or proper condition;
 - (D13) Fail to observe basic standards of personal hygiene in bathing and grooming;
 - (D14) Feign physical or mental illness or disablement for any purpose;

- (D15) Misuse prison supplies;
- (D16) Assist another person with litigation or legal matters;
- (D99) Attempt to commit any of the above-listed offenses, aid another person to commit any of the above-listed offenses, or make plans to commit any of the above-listed offenses. It shall be no defense that an individual was prevented from completing any of the above offenses by prison staff or intervening circumstances.

.0203 ADMINISTRATIVE FEES

- (a) All inmates whose offenses result in a guilty disposition will be assessed an administrative fee of \$10.00 through the Inmate Banking module of OPUS. Only one fee per disciplinary report is to be assessed regardless of the number of charges or number of reinvestigations.
- (b) All administrative fees will be electronically collected through Inmate Banking and transferred to the General Fund.

.0204 AUTHORIZED DISCIPLINARY PUNISHMENTS

Presumptive punishments are established for the four (4) classes of offenses. Unless the punishment is decreased or suspended by the Hearing Officer per section .0204(e)(4) and (5), or decreased or suspended by the facility head or designee per section .0204(e)(6) and (f)(2), all the presumptive punishments listed for each class may be imposed for conviction of a disciplinary offense within the given class. The facility head/designee may void any disciplinary punishment. In those cases where the facility head/designee voids a disciplinary punishment, designated staff shall forward a memorandum documenting this action to the Chief Disciplinary Hearing Officer who shall ensure that it is documented in the inmate's appropriate electronic file. The presumptive punishments are as follows:

- (a) For a Class A offense, the following presumptive punishments are authorized:
 - (1) Confinement in disciplinary segregation for up to 60 days.
 - (2) Demotion from minimum to medium custody, or medium to close custody.
 - (3) Loss of 40 days sentence reduction credits, as applicable.
 - (4) Up to 50 hours extra duty within the next 60 days following the hearing or release from disciplinary segregation. Not more than 4 hours shall be performed on a work day and not more than 8 hours on other days.
 - (5) Loss of up to three (3) privileges for a period not to exceed 6 months. These privileges include but are not limited to: work release, home leaves, community volunteer leave, canteen, telephone and visitation.

- (6) Limit weekly trust fund withdrawals to \$ 10.00 for a period not to exceed 6 months.
- (b) For a Class B offense, the following presumptive punishments are authorized:
- (1) Confinement in disciplinary segregation for up to 45 days.
 - (2) Demotion from minimum to medium custody.
 - (3) Loss of 30 days sentence reduction credits, as applicable.
 - (4) Up to 40 hours extra duty within the next 60 days following the hearing or release from disciplinary segregation. Not more than 4 hours shall be performed on a work day and not more than 8 hours on other days.
 - (5) Loss of up to two (2) privileges for a period not to exceed 4 months. These privileges include but are not limited to: work release, home leave, community volunteer leave, canteen, telephone and visitation.
 - (6) Limit weekly trust fund withdrawals to \$10.00 for a period not to exceed 4 months.
- (c) For a Class C offense, the following presumptive punishments are authorized:
- (1) Confinement in disciplinary segregation for up to 30 days.
 - (2) If the inmate is in minimum custody, demotion to minimum custody level I or level II.
 - (3) Up to 30 hours extra duty within the next 45 days following the hearing or release from disciplinary segregation. Not more than 4 hours shall be performed on a work day and not more than 8 hours on other days.
 - (4) Loss of up to two (2) privileges for a period not to exceed 2 months. These privileges include but are not limited to: work release, home leave, community volunteer leave, canteen, telephone, and visitation.
 - (5) Loss of 20 days sentence reduction credits, as applicable.
 - (6) Limit weekly trust fund withdrawals to \$10.00 for a period not to exceed 2 months.
- (d) For a Class D offense, the following presumptive punishments are authorized:

- (1) Confinement in disciplinary segregation for up to 15 days.
 - (2) Loss of one (1) privilege for a period not to exceed 1 month. These privileges include but are not limited to radio, canteen, organized sports, gym or recreation building, visitation, telephone privileges, movies, or other leisure time activities and privileges.
 - (3) Up to 20 hours extra duty within the next 30 days following the hearing or release from disciplinary segregation. Not more than 4 hours shall be performed on a work day and not more than 8 hours on other days.
 - (4) Loss of 10 days sentence reduction credits, as applicable.
 - (5) Limit weekly trust fund withdrawals to \$10.00 for a period not to exceed 1 month.
- (e) Other Requirements:
- (1) When initiating disciplinary procedures for an inmate found guilty of possessing funds in a form other than that authorized or in excess of the authorized amount, or possessing funds at a cashless facility, the facility head/designee shall place all of the funds found in the inmate's possession in the Unauthorized Funds Account (as specified in the Fiscal Policy and Procedures Manual, Section .1000) or return the funds to the rightful owner when the funds were obtained through theft or other unauthorized means. Balances in the Unauthorized Funds account will be electronically transferred to the Welfare Fund (as specified in the Fiscal Policy and Procedures Manual, Section .1000).
 - (2) Inmate personal property which is confiscated in conjunction with a disciplinary offense will be treated as contraband. Following a finding of guilty, the facility head /designee shall dispose of the property in accordance with the Disposal of Unauthorized Personal Property Policy, Chapter F .0504(b), or return the property to the rightful owner when the property was obtained through theft or other unauthorized means. Balances in the Unauthorized Funds account will be transferred to the Welfare Fund if the inmate is found guilty, or returned to the inmate if found not guilty (as specified in the Fiscal Policy and Procedures Manual, Section .1000)
 - (3) Should the facility head, designee or Disciplinary Hearing Officer restrict the Trust Fund withdrawal to \$10.00 per week; the action will be applied electronically through the OPUS Inmate Banking system.
 - (4) The Hearing Officer may decrease the presumptive punishment under any Class,

A - D. The reason shall be recorded on the ISO4 screen with comments via comments screen (OR14). In the case of multiple charges incurred from a single incident report, the total amount of disciplinary segregation imposed shall be limited to the maximum allowed for a Class A offense, and no single privilege shall be suspended for more than six (6) months. Periods of suspension of the same privilege shall run consecutively. Periods of suspension of unlike privileges shall run concurrently.

- (5) The Hearing Officer may suspend part or all of the presumptive punishment for a period not to exceed 6 months. The reason for suspending punishment shall be recorded on the IS04 screen via the OR14 screen (comments section). The Hearing Officer may activate a suspended punishment if a disciplinary conviction occurs during the suspension time period.
- (6) The facility head/designee may decrease the presumptive punishment under any class B-D. The reason for the decrease of presumptive punishment or suspension of any part of the presumptive punishment shall be recorded on the IS03 Screen with comments via comments screen (OR14). No single offense to which an inmate voluntarily pleads guilty and waives a hearing before facility head/designee or Hearing Officer shall result in active punishment greater than the presumptive punishment for the offense that is one class below the offense charged or suspension of all the presumptive punishment of the class charged. In the case of multiple charges incurred from a single incident report, the total amount of disciplinary segregation imposed shall be limited to the maximum allowed for the most serious offense of the incident, and suspension of any privilege type shall be limited to six (6) months.
- (7) The facility head/designee may also activate a suspended punishment if a disciplinary conviction occurs during the suspension time period in the case of a waiver of hearing and plea of guilty.
- (8) Punishment is active immediately and may be imposed immediately by the facility head/designee. Appeal of the disciplinary will not delay punishment from being imposed.
- (9) Administrative segregation is authorized to provide necessary control while completing an investigation. No inmate may be placed in administrative segregation for more than 72 hours without the documented approval of the facility head or designated representative. The time that the inmate is assigned on administrative segregation awaiting disposition of an offense shall be credited toward any disciplinary segregation subsequently imposed for the incident.
(4-4235)

- (10) If for any reason a sanction is not fully completed within six months from the date of imposition, or date of activation of a suspended sentence, then the remaining balance will automatically become null and void.
 - (11) Continuous confinement of an inmate to disciplinary segregation for more than 30 days requires review and approval by the Facility Head or designee. An inmate will not serve more than 60 consecutive days in disciplinary segregation. (4-4255)
 - (12) Food may not be used as a form of disciplinary punishment. (4-4320)
 - (13) If an inmate should be found not guilty of an alleged violation, the disciplinary report is removed from all of the inmate's files. (4-4246)
- (f) Other Requirements Which Apply to Specific Classifications of Offenses:
- (1) When an inmate is charged with a Class A offense, the inmate must be referred to the Disciplinary Hearing Officer for disposition and comments should be entered in the Record of Hearing (OR14).
 - (2) Suspension of privileges as presumptive punishment for Class C and D offenses may occur during or after disciplinary segregation, at the discretion of the facility head/designee.
 - (3) When an inmate pleads guilty to an authority for a Class D offense, the punishment will be a suspended Class D punishment.
 - (4) Inmates who escape while participating on work release, study release, home leave, or any other program authorized under G.S. 148.4 will not be prosecuted in court for that escape if:
 - (A) the offense is the inmate's first escape from unsupervised authorized activity while serving this sentence or any previous sentence; and
 - (B) the inmate returns to custody voluntarily within 24 hours of the time he was ordered to return.
- Escapes in this category remain subject administrative disciplinary action for the offense.
- (i) The inmate should be charged with Disciplinary Infraction B-12, (Leave, quit without authorization, fail to report, or neglect to adhere to approved schedules for community based programs) if

the inmate:

- Voluntarily returns to the off-site community-based program site prior to facility staff being notified he/she is unaccounted for;
 - Voluntarily returns to the facility within 24 hours and prior to the initiation of escape procedures; (Escape procedures should be put into effect as soon as staff learn an inmate has left from a community-based program); and
 - Commits no new criminal offenses while away from his/her assigned location regardless of when he/she returned to custody.
- (ii) The inmate should be charged with Disciplinary Infraction A-06, (escape or attempting to escape-this includes possessing any materials that could assist with an escape) if the inmate:
- Does not voluntarily return to the off-site community-based program or the prison facility prior to initiation of escape procedures;
 - Does not return to the facility within 24 hours of leaving the community-based program; or
 - Commits any criminal offense while away from his/her assigned location.
- (5) An inmate will be charged with a (B15) only after having received written notification that Department of Correction officials have received in writing a request that the inmate not communicate with victims or family members of the victims.

.0205 DISCIPLINARY PROCEDURES

(a) Reporting and Preventing Misconduct

- (1) Any Department of Correction employee or agent who witnesses an act of misconduct on the part of an inmate or inmates shall take appropriate action to prevent continuation of the misconduct.
- (2) The employee(s) witnessing the misconduct or other appropriate staff may try to counsel the inmate to stop the misbehavior and prevent recurrence.

- (3) When counseling is not appropriate or is ineffective, a written report of the actual or suspected misconduct should be presented to the facility head/designee as soon after the incident as practical. The written report should include, but not limited to, specific rule(s) violated, any unusual inmate behavior, any staff witnesses, any physical evidence and its disposition, any immediate action taken, including the use of force, and the reporting party's signature and date and time of report.
 - (4) Anyone, including inmates, may report inmate misconduct. When a report of inmate misconduct is received from someone other than an employee, a written witness statement should be requested.
- (b) Time Frames
- (1) The Officer-In-Charge should assign an Investigating Officer after being notified of actual or suspected inmate misconduct or after being notified of a reinvestigation by the DHO or the Chief DHO. Assignment will be documented on the Disciplinary Investigation screen (IS02), and comments can be made on the Comment screen (OR14).
 - (2) When an alleged rule violation is reported or a reinvestigation has been ordered, an appropriate investigation is begun within 24 hours of the time the violation is reported or ordered for reinvestigation and is completed without unreasonable delay unless an extension is granted and documented by the appropriate authority. The Investigating Officer will document the start of the investigation on the Disciplinary Investigation screen (IS02). (4-4234)
 - (3) The Investigating Officer should submit the investigative report through use of the Disciplinary Investigation screen (IS02), and process and summarize the results on the Comment screen (OR14). This report should be completed and submitted to the facility head/designee within 72 hours of beginning the investigation unless an extension is granted and documented by the appropriate authorization. (4-4236/4-4240)
 - (4) The facility head/designee should review the investigation within 72 hours of receiving the investigative report and decide if formal disciplinary action, or further disciplinary action in the case of a rehearing ordered by the Chief DHO, is required unless additional time is granted and documented by the appropriate authority. If disciplinary action is required, the authority or designee will document formal charges on the Disciplinary Charges and Pleas screen (IS03). The summary of the charges will be documented on the Comment screen (OR14). The disciplinary report will then be printed and the inmate should be advised in writing of the charges and given a copy within this time frame. A plea of guilty

and waiver of hearing should be documented on the IS03 screen. (4-4230/4-4238/4-4240)

- (5) The Hearing Officer will access referrals (via IP51 - Pending Review screen), convene the disciplinary hearing, and document the proceedings on the Disciplinary Hearing Officer screen (IS04) within seven (7) days, excluding weekends and holidays, after the inmate has been charged with an offense unless an extension is granted. A plea of guilty and waiver of hearing should be documented on the Disciplinary Hearing Officer screen (IS04). The disposition of the charges is to be documented on the IS04 screen and the summary of the hearing will be entered as comments on Screen OR14.
- (6) The inmate may appeal a guilty finding by the Hearing Officer in writing to the Director of Prisons within 15 calendar days from the date of hearing.
- (7) The Director, or Director's designee, will log receipt of the appeal and supporting documents on the Disciplinary Appeal screen (IS05). Tracking and notification to the facility and the inmate will be accomplished via the IS05 screen and batch jobs, to include appropriate alerts, pending reviews, and appeal letters. The designated facility staff should monitor these transactions daily. The review should be completed within 30 calendar days of receipt of the inmate's appeal and the inmate promptly notified of the results. (4-4248)
- (8) The facility head/designee/appropriate authority shall document the granting of additional time for the beginning or completion of the investigation. The investigating officer will document approval on the Disciplinary Investigation screen (IS02).
- (9) The facility head/designee/appropriate authority may grant in writing additional time for charging the inmate. This will be documented on the Disciplinary Charges and Pleas screen (IS03) by the facility head/designee as appropriate.
- (10) The Assistant Chief Disciplinary Hearing Officer may grant in writing additional time for convening the Disciplinary Hearing. This will be documented on the Disciplinary Hearing Officer (DHO) screen (IS04) as appropriate. (4-4239)
- (11) The following list, which is not an all-inclusive list, provides some reasons for which additional time may be granted: (4-4239)
 - (A) Essential staff or other persons are not available due to holidays, leave, regularly scheduled days off or other factors that prevent the individual from being available.

- (B) Law Enforcement or the District Attorney requests a suspension of the disciplinary procedures to prevent interference with criminal investigations or prosecutions.
 - (C) Witness(es) or evidence is not available or additional time is necessary to obtain additional information.
 - (D) The accused inmate is not available because of transfer for segregation, medical or mental health reasons, or court appearance.
- (c) Inmate Rights
- (1) The inmate has a right to:
 - (A) At least 24 hours advance written notice of the disciplinary charges before the hearing; (4-4236)
 - (B) Be informed of the alleged misconduct, and to make verbal and/or written statements to the Investigating Officer. (4-4242)
 - (C) Request in writing to the Investigating Officer, during the investigation, that a written witness statement(s) or evidence be gathered, or evidence or witness(es) be present at the hearing if charges are referred. If an inmate is unable to write, he may request that the Investigating Officer transcribe his oral request(s) which the inmate will sign and date. Failure to make these requests on the inmate witness form shall be deemed a waiver of such requests.
 - (D) Request the facility head/designee to appoint a staff member to assist the inmate at the hearing; (4-4243)
 - (E) Be read the substance of the evidence and have the opportunity to explain or refute the evidence at the disciplinary hearing; and
 - (F) Appeal to the Director of Prisons.
 - (2) The inmate may waive specific rights in writing or by overt refusal to cooperate with the disciplinary procedures associated with those rights. Overt inmate uncooperativeness that leads to a waiver of a right shall be witnessed by a minimum of two staff persons and documented in the record of the disciplinary process. This includes, but is not limited to any refusal to sign the DC-138A (inmate rights form), the DC-138B (statement by witness form), and Batch Job 50 (Disciplinary Charges and Plea Screen). A right not waived or refused by the

inmate is retained by the inmate.

- (A) Force should not be used to make an inmate attend the hearing.
 - (B) When an inmate refuses to attend, the inmate will be informed that the refusal to attend as scheduled is a waiver of the opportunity to attend and that the hearing will be conducted outside the inmate's presence. (4-4241)
 - (C) When an inmate refuses to attend a hearing, the inmate should be given the opportunity to make a written statement regarding his refusal to attend the hearing and/or providing information to be considered at the hearing. This statement should be submitted at the time of refusal so that the inmate is not allowed to disrupt the hearing schedule. (4-4241)
 - (D) The refusal to attend should be documented (on the Refusal to Attend Disciplinary Hearing form) and witnessed by at least two staff persons, who should sign verifying they witnessed the inmate's refusal. (4-4241)
 - (E) The Hearing Officer will document that the inmate refused to attend the hearing and that the written statements from staff and/or the inmate documenting the refusal were reviewed. (4-4241)
 - (F) A refusal to attend a hearing only applies to the current hearing in question. By waiving a hearing, the inmate does not automatically waive future hearings for other future disciplinary infractions.
- (3) Violation of these rights by staff may be grounds for dismissal of disciplinary charges.
- (d) Investigation Officer Appointment and Responsibilities
- (1) Each correctional facility should have one or more staff trained to serve as Investigating Officer. The Investigating Officer will be required to complete formal OSDT approved Disciplinary Hearing Procedures training prior to being given an OPUS profile to conduct inmate disciplinary investigations.
 - (2) The Officer-In-Charge will notify the Investigating Officer when a report of possible misconduct is reported.
 - (3) A staff person who is witness to an offense cannot serve as the Investigating Officer for that offense.

- (4) Responsibilities:
- (A) Fully investigate the alleged act of inmate misconduct which includes interviewing and acquiring a written statement from the person reporting the misconduct, the accused inmate, and other witnesses, and employing other appropriate investigatory techniques.
 - (B) Advise the accused inmate, in writing and orally, if necessary, of the rights enumerated in Section .0205(c) of this policy.
 - (C) Determine if the inmate is an inpatient mental health resident and, if so, notify the Inpatient Mental Health Director or designee of the charges and the circumstances involved. If the inmate is an inpatient mental health resident, a mental health representative must be present when the inmate is advised of his rights, must assist with communicating statements, must be present when the inmate is referred to the facility head/designee, and/or the Disciplinary Hearing Officer, and must assist with completion of the disciplinary appeal form should the inmate desire to appeal a guilty verdict. Assistance at each level shall be documented on a separate DC-138B.
 - (D) Determine if the inmate is identified as developmentally disabled and, if so, notify the inmate's Case Manager/DD Representative. The Case Manager must be present when the inmate is advised of his rights, must assist with communicating statements, and must be present when the inmate is referred to the facility head, designee, and/or the Disciplinary Hearing Officer, and must assist with completion of the disciplinary appeal form should the inmate desire to appeal a guilty verdict. Assistance at each level shall be documented on a separate DC-138B.
 - (E) During the course of the investigation, should the investigating officer determine that the inmate exhibited behavior not covered by (C) or (D) above, which may be associated with a severe mental health abnormality; the Investigating Officer should then consult with the appropriate health staff.
 - (F) Prepare a written investigation report on the Disciplinary Investigation screen (IS02) with appropriate comments. The report shall summarize the evidence, interviews, and written statements. If written statements are not taken from witnesses, their names and the explanation for not taking statements shall be included in the report. The names of witnesses requested by the inmate to be present at the disciplinary hearing shall be included in the report. The Investigating Officer may make

recommendations regarding proceeding with formal disciplinary action, the presence of witnesses at the disciplinary hearing, and the particular inmate conduct rule violation.

- (G) Complete and present to the facility head or designee the disciplinary package including the written Investigating Officer's Report (Batch Job #45), written witness statements, and forms documenting advisement of inmate rights and compliance with policy requirements.
 - (H) If necessary, acquire documented approval from the facility head/designee/appropriate authority to extend the investigation beyond the 72 hours from the beginning of the investigation.
- (5) The Investigating Officer is the only authorized investigatory staff member for the gathering of evidence.
- (e) Inpatient Mental Health Program Director Responsibilities
- (1) When a mental health inpatient is charged with a disciplinary offense, the Treatment Team or Treatment Team Leader should make a report as to:
 - (A) Whether the patient's current mental illness precludes participation in the disciplinary process, in which case the disciplinary hearing should be postponed;
 - (B) Whether the patient's mental illness contributed significantly to the alleged disciplinary offense; and
 - (C) Whether the patient's mental status contraindicates any particular form of punishment.
 - (2) The evaluation findings and recommendations shall be forwarded to the Investigating Officer, filed as a part of the disciplinary record, and filed in the inmate's inpatient mental health records. The Treatment Team Leader or designee shall sign the report.
 - (3) The Hearing Officer should follow the evaluation, findings and recommendations of the patient's Treatment Team, Treatment Team Coordinator or primary therapist unless there are strong overriding security reasons not to do so. These reasons must be clearly documented by the Hearing Officer and approved by the facility head/designee in consultation with the appropriate Mental Health Coordinator. Unresolved disagreements will be referred to the Chief of Medical Services/designee who may consult with the Chief of Auxiliary Services for resolution.

(f) Facility Head Responsibilities

- (1) The disciplinary process is critical to the safe and orderly operation of prison facilities and the facility head is responsible for managing a fair and impartial process. Procedural correctness, protection of inmate rights, thorough investigations and proper documentation are the facility head/designee's responsibility. The facility head/designee shall review disciplinary hearings and dispositions to assure conformity with policy and procedure. (4-4247)
- (2) The facility head or designated representative also has the following responsibilities:
 - (A) Review the Investigating Officer's report and determine whether to counsel the inmate or proceed with formal disciplinary action. If counseling is used in lieu of formal disciplinary, it should be documented on the Disciplinary Charges & Plea screen (IS03 & OR14) with appropriate comments and the appropriate counseling code.
 - (B) Review the disciplinary package to ensure procedural correctness and the protection of inmate rights.
 - (C) May refer the case in writing back to the Investigating Officer for further investigation or to protect the inmate's rights.
 - (D) Decide whether to charge the inmate with a disciplinary offense and, if so:
 - (i) determine the offense(s) with which the inmate is to be charged;
 - (ii) advise the inmate of the charge(s);
 - (iii) ask the inmate if a staff representative is requested and, if so, appoint a staff member to this role;
 - (iv) if the inmate is an inpatient mental health resident, a mental health representative must serve as Staff Representative;
 - (v) if the inmate is identified as mentally handicapped, a Case Manager DD Representative for the developmentally disabled should serve as the Staff Representative;
 - (vi) complete the disciplinary report (batch job #50) by accessing Disciplinary Charges & Plea screen (IS03) and provide the related comments;

- (vii) give the inmate a copy of the completed; (Offense and Disciplinary Report (Batch Job 50) and;
 - (viii) when required, authorize an extension to charge the inmate beyond 72 hours.
 - (E) Ensure one or more staff are trained to serve as Investigation Officers by completing the required Disciplinary Hearing Procedures training.
 - (F) Ensure that pertinent items of information, reports, evidence, the accused, needed witnesses, and if requested, a staff representative, are available at the time of the disciplinary hearing.
 - (G) May appoint a staff member to present evidence to the Hearing Officer.
 - (H) Shall appoint a recorder to assist the Hearing Officer.
- (g) Staff Representative Responsibilities
 - (1) If the appointed representative was a witness to the alleged misconduct, the facility head/designee should be notified so a new representative may be appointed.
 - (2) The staff representative does not serve as an advocate or assume an adversarial role. The staff representative has no investigative authority.
 - (3) Responsibilities:
 - (A) Assure that the inmate has an opportunity to present his version of the facts to the Hearing Officer;
 - (B) Present the inmate's version for physically, mentally, or language impaired inmates unable to present their version;
 - (C) Assist the inmate with understanding the disciplinary process; and
 - (D) Make a written statement on the way the Representative assisted the accused inmate.
- (h) Waiver of Hearing and Plea of Guilty
 - (1) The inmate may voluntarily plead guilty, waive a hearing before the facility

head/designee or Hearing Officer, and accept a punishment less than the presumptive punishments specified in Section .0204 of this policy. At the Disciplinary Hearing Officer level, a plea of guilty and a waiver of hearing will be documented on the Disciplinary Hearing Officer (DHO) screen (IS04) via the comments screen (OR14). The Waiver of Hearing & Plea of Guilty Report (batch job #65), the Record of Hearing Report (batch job #55), and the Offense and Disciplinary Report (batch job #50) should then be printed. At the Referring Authority level, the Disciplinary Charges and Plea screen (IS03) would be accessed and documentation of the inmate's guilty plea should be noted via the Comment screen (OR14). The Waiver of Hearing & Plea of Guilty Report (batch job #60) and the Offense and Disciplinary Report (batch job #50) should then be printed. The punishment will be one class below the offense to which the inmate is pleading guilty or suspension of the presumptive punishment for the offense to which the inmate is pleading guilty, at the discretion of the facility head/designee, or the Hearing Officer. (4-4237)

- (2) The inmate shall sign the printed Waiver of Hearing & Plea of Guilty report (DHO level batch #65, Unit level batch #60) indicating that the plea and waiver are freely given and are not the result of any coercion or intimidation. This waiver also waives the right to appeal. The inmate will be given a copy of the signed document (batch #60 or #65).
- (i) Hearing Officer Appointments (4-4240)
 - (1) Hearing Officers shall be chosen so as to provide an impartial disciplinary hearing. No person who initiates the disciplinary charges or was a witness in the case may serve as a Hearing Officer. The responsibilities of the Hearing Officer will be related only to the administration of the inmate disciplinary procedure.
 - (2) The Director of Prisons shall appoint and have trained one or more Hearing Officers to hear and determine the disposition of formal disciplinary charges. These Hearing Officers will perform their responsibilities as full time and exclusive duties.
 - (j) Hearing Officer Responsibilities
 - (1) The Hearing Officer reviews all the evidence and disciplinary cases, including both direct and circumstantial evidence; determines guilt or innocence, and determines punishment consistent with this policy.
 - (2) Responsibilities:
 - (A) Review the disciplinary package to ensure procedural correctness and the

protection of inmate rights;

- (B) Arrange for a hearing within 7 days, excluding weekends and holidays, after the inmate has been charged with an offense;
- (C) Assure the presence of the people and evidence needed for the hearing;
- (D) If necessary, refer the disciplinary back to the facility head/designee for one of the reasons enumerated in policy section .0205(b)(11) or .0205(e)(1)(A);
- (E) Read the charges to the accused inmate and obtain a plea of guilty or not guilty;
- (F) Read to the inmate the witness statements and other evidence relating to guilt or innocence. Confidential information shall not be divulged in such a manner as to reveal the identity of the confidential source and/or jeopardize the safety of the confidential source;
- (G) Give the accused the opportunity to make a verbal statement, to refute or explain evidence, and to present relevant evidence. (4-4242)
- (H) Give witnesses requested by the inmate the opportunity to testify either in person or by telephone; (4-4242)
- (I) Document on the Disciplinary Hearing Officer (DHO) screen (IS04) and provide relevant comments, reasons for declining to call requested witnesses or allowing the accused to present items of physical evidence. The factors considered in determining to call witnesses or present evidence shall include but not be limited to: (4-4242)
 - (i) relevance;
 - (ii) duplicative or cumulative testimony;
 - (iii) necessity;
 - (iv) inmate's failure to make timely request for witnesses or physical evidence in advance of the hearing; and
 - (v) undue hazard related to the facility's safety or correctional goals.

Whenever the presentation of live testimony or physical evidence is

denied by the Hearing Officer, written statements gathered by the Investigating Officer may be used. The reason(s) for denial shall be documented on the Disciplinary Hearing Officer (DHO) screen (IS04) with comments on screen (OR14);

- (J) If the inmate pleads guilty or is found guilty, the Hearing Officer may impose punishment consistent with policy section .0204;
 - (K) A Hearing Officer shall not impose a sanction that significantly impairs or impedes the inmate's access to required health or mental health treatment services;
 - (L) Enter the findings of guilty, not guilty or dismissal and the rationale on the Disciplinary Hearing Officer (DHO) screen (IS04) and advise the inmate of the decision. The decision shall be based solely on information, direct and or circumstantial, obtained in the hearing process including staff reports, the status of the inmate charges, evidence from witnesses and all pertinent documentation. Give the inmate a copy of the written statement of the evidence relied upon and the reasons for the punishment imposed by accessing batch job #55. Thoroughly document the course of the hearing on the comment screen (OR14); (4-4244)
 - (M) Enter on the record any objections the inmate may have to the decision; (4-4245)
 - (N) Advise the inmate of the right to appeal to the Director of Prisons within 15 calendar days from the date of hearing; and (4-4245)
 - (O) Complete and distribute the Record of Hearing forms. (4-4245)
 - (P) A record of the hearing and findings is maintained for five years. (4-4240)
- (k) Appeal to the Director of Prisons
- (1) If the inmate appeals to the Director of Prisons, the Director or Director's designee is authorized to:
 - (A) Approve the Hearing Officer's decision.
 - (B) Order a re-investigation or re-hearing in whole or in part.
 - (C) Disapprove the Hearing Officer's decision and dismiss the case.


- (D) Reduce but not increase the punishment determined by the Hearing Officer.
 - (2) The decision by the DHO shall be final. Such decision can only be approved or disapproved by the Director of Prisons, or the Director's designee.
 - (3) Appeals are only available for inmates convicted of disciplinary offenses. The Director or designee cannot initiate an appeal of the DHO's final decision.
 - (4) Any inmate who elects to plead guilty may not appeal the guilty plea. Such an inmate may, however, appeal the issue of whether the DHO imposed a punishment greater than, or not as provided by policy.
 - (5) Tracking and notification to the facility and the inmate will be accomplished via the Disciplinary Appeal (IS05) screens, Alerts and Pending Reviews screens, and appropriate batch jobs, to include the inmate letter (batch job 40). The facility where the incident occurred shall print the appeal letter and give to the inmate and attach another copy with the disciplinary package. If the inmate has transferred, the current housing facility shall also print the appeal letter and give to the inmate.
- (1) Use of Inmate Confidential Informant
- (1) If at all possible, written and signed statements should be obtained from the informant. These statements can be summarized by the person obtaining the statement so that the confidentiality of the informant is maintained. This summary statement will be a part of the disciplinary record; however, the confidential informant's statement will not be a part of the disciplinary record but will be made available to the Hearing Officer and maintained by the facility head in a confidential file for at least five (5) years. The staff member should sign the summary statement.
 - (2) In the event the informant fears for his safety and is unwilling to write a statement, the staff member taking the statement will provide a summary as part of the disciplinary record. The interviewer's notes and the name of the informant will be maintained by the facility head in a confidential file. The statement written for the disciplinary record should be a thorough description of the informant's information. The staff member should sign the summary statement.
 - (3) Before disciplinary action is taken based on information provided by a confidential informant, the following conditions should be met:
 - (A) In order for the information provided by the confidential informant to be

used at the hearing, the staff member making the summary statement must know the informant, have used him in the past and found him reliable, and received the information from the informant based on the informant's personal or firsthand knowledge. The information would also be admissible if physical evidence or other reliable evidence, including similar statements by other informants, corroborates the informant's information.

- (B) The staff member should state the facts that support the reliability of the confidential informant's statement.
- (C) The Hearing Officer should determine independently the reliability of the informant and state his determination in the record.
- (D) The Hearing Officer should find that safety considerations prevent disclosure of the informant's identity.

(m) Modifications

The Director of Prisons may authorize modifications of this procedure consistent with its fundamental principles, provided any modification shall be in writing, approved by the Secretary of Correction and incorporated in the policies and procedures of the Department.


Director of Prisons Date 6/30/09

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