



*State of North Carolina
Department of Public Safety*

Chapter: B
Section: .0200
Title: **Offender
Disciplinary
Procedures**
Issue Date: 11/03/20
Supersedes: 08/10/18

POLICY AND PROCEDURE

References

Related ACA Standards

5th Edition Standards for Adult Correctional Institutions 5-ACI-3C-01, 5-ACI-3C-02, 5-ACI-3C-03, 5-ACI-3C-04, 5-ACI-3C-05, 5-ACI-3C-07, 5-ACI-3C-08, 5-ACI-3C-09, 5-ACI-3C-10, 5-ACI-3C-11, 5-ACI-3C-12, 5-ACI-3C-13, 5-ACI-3C-14, 5-ACI-3C-15, 5-ACI-3C-16, 5-ACI-3C-17, 5-ACI-3C-18, 5-ACI-3C-19, 5-ACI-3C-20, 5-ACI-3C-21, 5-ACI-3C-22, 5-ACI-3C-23, 5-ACI-3C-24, 5-ACI-3C-25

.0201 GENERAL

Offender conformity to prison rules is 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. Prisons shall promulgate offender 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. Offender Disciplinary Policies and Procedures shall be reviewed annually and updated if necessary, by Prisons Chief Disciplinary Hearing Officer.

.0202 DISCIPLINARY OFFENSES

Disciplinary offenses are divided into three (3) classes, Class A through Class C. Class A offenses are the most serious and Class C offenses are the least serious.

(a) The following are the Class A disciplinary offense:

- (A01) Seize or hold a hostage or in any manner unlawfully detain any person against **their** will;
- (A02) 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;
- (A03) 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, or throwing objects;
- (A04) Commit an assault on another with a weapon or any other means likely to produce injury, such as hitting, kicking, pushing, pulling, or throwing objects;
- (A05) Commit an assault on another offender with intent to commit any sexual act;
- (A06) Escaping or attempting to escape from any prison facility, community assignment,

- during transport, or from the supervision of prison 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;
- (A07) Possess, manufacture, and/or detonate an incendiary or explosive device;
 - (A08) Set a fire;
 - (A09) 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, unauthorized intoxicant or alcoholic beverage, or possess associated paraphernalia;
 - (A13) 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 Risk Group (SRG), or participate in any activity or behavior associated with a Security Risk 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 any device that has direct outside communication capability: e.g. internet, email, instant message. Examples include, but are not limited to, smart phones, mobile cellular phones, desktops, laptops/electronic tablets, cameras, tape recorders or digital recorders that can be used to send and/or receive any type of messages/images/data for any purpose, or possess any associated component of an above noted device;
 - (A17) Commit an assault on any person, other than an employee or offender, 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;
 - (A22) Instigate or provoke an assault on a staff member; (Formerly B13)
 - (A23) Instigate or provoke an assault on another (including but not limited to other offenders, civilians, etc.); (Formerly B07)
 - (A24) Possess or have under control any weapon or instrument to aid in an assault, insurrection or riot; (Formerly B01)
 - (A25) 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; (Formerly B06)
- (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-listed offenses by prison staff or intervening circumstances.
- (b) The following are the Class B disciplinary offenses:
- (B01) No longer in use. See Offense A24.
- (B02) Flood cell(s);
- (B03) Willfully tamper with, damage or block any camera, locking device, fence, door, gate, window or cell light;
- (B04) No longer in use. See offense A12.
- (B05) 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;
- (B06) No Longer in use. See offense A25.
- (B07) No longer in use. See Offense A23;
- (B08) Interfere with a staff member in the performance of his or her duties;
- (B09) Violate any law of the State of North Carolina or the United States of America;
General Statute must be cited. This offense is to be used only if the misconduct cannot be addressed by an existing infraction;
- (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) No longer in use. See Offense A22;
- (B14) Willfully damage, destroy, alter, tamper with or lose State property or property belonging to another; (Formerly D09)
- (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 Public Safety officials that such communication is unwanted; and/or notified in writing by Department of Public Safety officials of a no contact order;
- (B16) No longer in use. See offenses B23 and C21
- (B17) Causing a work stoppage, delaying work while on community work assignment, or causing the offender to be returned to the facility due to misconduct;
- (B18) Threaten to harm or injure staff or civilian; (Formerly C12)
- (B19) Sell, accumulate, give, misuse, or hide medication; (Formerly C01)

- (B20) Commit an assault on a staff member in a manner unlikely to produce injury;
 - (B21) Commit an assault on another in a manner unlikely to produce injury;
 - (B22) Fight or engage in a mutual physical confrontation not involving weapons, or not involving outside medical attention; (Formerly C04)
 - (B23) Manufacture, distribute or possess a significant amount of tobacco unlikely for personal consumption;
 - (B24) Direct toward or use in the presence of any State official, any member of the prison staff, any offender, 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; (Formerly C02)
 - (B25) Willfully disobey, fail to obey, or cause another offender to disobey or fail to obey any lawful order of a prison official or employee, or any other lawful order to which subject, or cause another to be in an unauthorized location; (Formerly C03)
 - (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-listed offenses by prison staff or intervening circumstances.
- (c) The following are Class C disciplinary offenses:
- (C01) No longer in use. See Offense B19.
 - (C02) No longer in use. See Offense B24.
 - (C03) No longer in use. See Offense B25.
 - (C04) No longer in use. See Offense B22.
 - (C05) Offer, give, solicit or accept a bribe or offer to give or withhold anything to persuade another to neglect duties or perform favors;
 - (C06) Leave, quit without authorization, fail to report or fail to report (on time to any scheduled facility job, work or program assignment, or any other appointment); or overtly refuse to accept a work or program assignment; or negligently fail to perform or complete any assigned duties;
 - (C07) Threaten to harm or injure another offender;
 - (C08) Wrongfully take, carry away, or damage personal or state property or accept or buy such property with the knowledge it has been wrongfully taken;
 - (C09) Barter or trade; loan, give, or borrow; gamble or possess gambling paraphernalia; solicit or engage in any business activity;
 - (C10) No longer in use.
 - (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/verbally offensive condition, or situation, or disruption in any setting (i.e. group meetings, religious services); whether for personal gain or solicitation; (Formerly Offense D05)
 - (C14) Possess funds in a form other than authorized by Prisons' Policy, in excess of the authorized amount, or from an unauthorized source; (Formerly Offense D10)

- (C15) Possess stamps in excess of the authorized amount as specified in Prisons' Policies or possessing counterfeit or altered stamps;
- (C16) Counterfeit, forge, alter or reproduce without authorization any document, article of identification, or other papers, or knowingly possess such falsified materials; (Formerly D08)
- (C17) Possess contraband not constituting a threat of escape or a danger of violence; (Formerly Offense D03)
- (C18) Exchange articles of clothing/linen/sheets, possess unauthorized or excess clothing/linen/sheets, or mutilate or alter State issued clothing/linen/sheets or wear or use same; Misuse prison supplies (Formerly Offense D07 & D15)
- (C19) Feign physical or mental illness or disablement for any purpose; (Formerly Offense D14)
- (C20) Assist another person with litigation or legal matters; (Formerly Offense D16)
- (C21) Possess or use any tobacco products or paraphernalia for personal consumption; or possess unauthorized lighters or lighting devices;
- (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-listed offenses by prison staff or intervening circumstances.

(d) The following are the Class D disciplinary offenses: No longer in use.

- (D01) No longer in use. See Offense C03.
- (D02) No longer in use. See Offense C06.
- (D03) No longer in use. See Offense C17.
- (D04) No longer in use. See Offense C09.
- (D05) No longer in use. See Offense C13.
- (D06) No longer in use.
- (D07) No longer in use. See Offense C18.
- (D08) No longer in use. See Offense C16.
- (D09) No longer in use. See Offense B14.
- (D10) No longer in use. See Offense C14.
- (D11) No longer in use. See Offense C14.
- (D12) No longer in use.
- (D13) No longer in use.
- (D14) No longer in use. See Offense C19.
- (D15) No longer in use. See Offense C18.
- (D16) No longer in use. See Offense C20.
- (D99) No longer in use.

.0203 ADMINISTRATIVE FEES

- (a) All offenders whose offenses result in a guilty disposition will be assessed an administrative fee of \$10.00 through the offender banking system 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 **Offender** banking system and transferred to the General Fund.

.0204 AUTHORIZED DISCIPLINARY SANCTIONS

Presumptive sanctions are established for the three (3) classes of offenses. Unless the sanction is suspended by the Hearing Officer per section .0204(d)(4) and (5) or suspended by the **Warden**/Designee per section .0204(d)(6) and (e)(2), all the presumptive sanctions listed for each class may be imposed for conviction of a disciplinary offense within the given class.

The **Warden/Designee may modify or void any disciplinary sanction.** In those cases where the **Warden**/Designee voids a disciplinary sanction, designated staff shall forward a memorandum or email documenting this action to the Chief Disciplinary Hearing Officer who shall ensure that it is documented in the offender's appropriate electronic file. The presumptive sanctions are as follows:

- (a) For a Class A offense, presumptive sanctions are authorized:
- (1) Confinement in Restrictive Housing for Disciplinary Purposes (RHDP) for up to 30 days.
 - (2) Loss of up to 60 days sentence credits, as applicable.
 - (3) Up to 50 hours extra duty within the next 60 days following the hearing or release from Restrictive Housing for Disciplinary Purposes (RHDP). Not more than 4 hours shall be performed on a workday and not more than 8 hours on other days.
 - (4) Loss of up to three (3) privileges for a period not to exceed ninety (90) days.
 - (5) Limit weekly trust fund withdrawals to \$ 10.00 for a period not to exceed ninety (90) days.
 - (6) Demotion within minimum custody.
- (b) For a Class B offense, presumptive sanctions are authorized:
- (1) Confinement in Restrictive Housing for Disciplinary Purposes (RHDP) for up to 20 days.
 - (2) Loss of up to 30 days sentence credits, as applicable.
 - (3) Up to 40 hours' extra duty within the next 60 days following the hearing or release from Restrictive Housing for Disciplinary Purposes (RHDP). Not more than 4 hours shall be performed on a workday and not more than 8 hours on other days.
 - (4) Loss of up to two (2) privileges for a period not to exceed sixty (60) days.

- (5) Limit weekly trust fund withdrawals to \$10.00 for a period not to exceed sixty (60) days.
 - (6) Demotion within minimum custody.
- (c) For a Class C offense, presumptive sanctions are authorized:
- (1) Demotion within minimum custody.
 - (2) Loss of up to 10 days sentence credits, as applicable
 - (3) Up to 30 hours' extra duty within the next 45 days following the hearing or release from Restrictive Housing for Disciplinary Purposes (RHDP). Not more than 4 hours shall be performed on a workday and not more than 8 hours on other days.
 - (4) Loss of up to two (2) privileges for a period not to exceed thirty (30) days.
 - (5) Limit weekly trust fund withdrawals to \$10.00 for a period not to exceed thirty (30) days.
- (d) Other Requirements:
- (1) When initiating disciplinary procedures for an offender found possessing excess stamps or funds in a form other than that authorized or in excess of the authorized amount, the **Warden**/Designee shall secure all of the money/excess stamps found in the offender's possession in accordance with current Prisons policy for money and stamps. The disposition is to be included in the Investigation Officer's report. Upon a guilty verdict, the disposition of money/stamps taken will be documented on the OR14, Comment screen; at the level, the verdict is rendered. Balances of money and stamps will be transferred in accordance with current Prisons policy for money and stamps if the offender is found guilty. Excess stamps taken will be documented on the OR14, Comment screen, at the level the verdict is rendered and handled in accordance with current Prisons policy regarding authorized items.
 - (2) Offender personal property that is confiscated in conjunction with a disciplinary offense will be treated as contraband and documented on the OR14, Comment screen, by the Investigating Officer. Following a verdict of guilty, the **Warden**/Designee or Disciplinary Hearing Officer shall document disposition of Unauthorized Personal Property in accordance with current Prisons policy on the OR14, Comment screen. Balances in the Unauthorized Funds account will be transferred in accordance with current Prisons policy if the offender is found guilty.
 - (3) Should the **Warden**/Designee or Disciplinary Hearing Officer restrict the Trust Fund withdrawal to \$10.00 per week, the action will be applied electronically through the OPUS **Offender** banking system.

- (4) The Disciplinary Hearing Officer may impose the presumptive sanction under any Class, A – C. The reason shall be recorded on the ISO4, Disciplinary Hearing Officer screen, with comments via OR14, Comment screen. Documentation on the OR14 screen is required for all decisions. In the case of multiple charges incurred from a single incident report, the total amount of Restrictive Housing for Disciplinary Purposes (RHDP) imposed shall be limited to the maximum allowed for the highest-class offense, and no single privilege shall be suspended for more than ninety 90 days. Periods of suspension of the same privilege shall run consecutively. Periods of suspension of unlike privileges shall run concurrently.
- (5) The Disciplinary Hearing Officer may suspend part or all of the presumptive sanctions for a period not to exceed ninety (90) days. The reason for suspending sanctions shall be recorded on the IS04, Disciplinary Hearing Officer screen, via the OR14, Comment screen. The Disciplinary Hearing Officer may activate a suspended sanction if a disciplinary conviction occurs during the suspension time period.
- (6) The **Warden**/Designee may impose the presumptive sanction under any class B – C. The reason for the presumptive sanction(s) or suspension of any part of the presumptive sanction(s) shall be recorded on the IS03, Charges and Plea screen, with comments via OR14, Comment screen. Documentation on the OR14 screen is required for all decisions. No single offense to which an offender voluntarily pleads and waives a hearing before the **Warden**/Designee or Disciplinary Hearing Officer shall result in active sanctions greater than the presumptive sanction. In the case of multiple charges stemming from a single incident report, the total amount of Restrictive Housing for Disciplinary Purposes (RHDP) imposed shall be limited to the maximum allowed for the highest-class offense from this single incident and suspension of any privilege type shall be limited to 90 days.
- (7) The **Warden**/Designee may suspend part or all of the presumptive sanctions for a period not to exceed ninety (90) days. The reason for suspending sanctions shall be recorded on the IS03, Disciplinary Charges and Plea screen, via the OR14, comment screen. The **Warden**/Designee may activate a suspended sanction if a disciplinary conviction occurs during the suspension time period.
- (8) Sanctions are active immediately and may be imposed immediately by the **Warden**/Designee. Appeal of the disciplinary will not delay sanctions from being imposed.
- (9) Restrictive Housing for Administrative Purposes (RHAP) is authorized to provide necessary control while completing an investigation. No offender may be placed in Restrictive Housing for Administrative Purposes (RHAP) for more than 72 hours without the documented approval of the **Warden**/Designee. The time that the offender is assigned on Restrictive Housing for Administrative Purposes (RHAP) awaiting disposition of an offense shall be credited toward any Restrictive Housing for Disciplinary Purposes (RHDP) subsequently imposed for the incident.

- (10) If for any reason a sanction is not fully completed within ninety (90) days from the date of imposition, or date of activation of a suspended sentence, then the remaining balance will automatically become null and void.
 - (11) An offender will not serve more than thirty (30) consecutive days in Restrictive Housing for Disciplinary Purposes (RHDP).
 - (12) Food may not be used as a form of disciplinary sanctions.
 - (13) If an offender should be found not guilty of an alleged violation, the disciplinary report is removed from the offender's electronic files automatically by OPUS.
- (e) Other Requirements Which Apply to Specific Classifications of Offenses:
- (1) For an offender who is found guilty of an A03 which results in physical injury, **Heightened** Sanctions include:
 - (A) Forfeiture of all previously accumulated Good Time, Earned Time, and Meritorious Time.
 - (B) Ineligibility to earn any future Good Time, Earned Time, or Meritorious Time on **their** current term of incarceration.
 - (C) Suspension of personal visitation privileges for a period of 12 months to 24 months. Once visitation privileges are restored, only non-contact visits will be allowed for the remainder of the offender's current term of incarceration. The **Commissioner** of Prisons or designee will review the offender's case annually to determine whether these restrictions can be lifted.
 - (D) Immediate placement on the Interstate Compact Program list for out-of-state housing for a minimum of 5 years.
 - (E) In addition, the Director's Classification Committee (DCC) shall place the offender on **High Security for Maximum Control (HCON)** for a minimum of 12 months, subject to periodic review thereafter. Upon release from **HCON**, the offender shall serve a subsequent period of time on Restrictive Housing for Control Purposes (RHCP) and then be placed in the Rehabilitative Diversion Unit (RDU) program.
 - (2) **Procedures for Heightened Sanctions:**
 - (A) **During the disciplinary process for an A03 offense, the facility charging authority and/or the responsible Disciplinary Hearing Officer may recommend consideration of Heightened Sanctions. The Commissioner of Prisons delegates their authority to an appointed 3-person committee to determine whether or not the offender should receive heightened sanctions. One of the 3- person committee**

should serve as the Chairperson. The committee shall review any pending eligible cases on a monthly basis to determine if offender(s) should receive Heightened Sanctions. The committee should review each case independently and Heightened Sanctions may be imposed upon the recommendation of the majority of the committee. The decisions of the committee shall be reported to the Manager of Classification and Technical Support by the Chairperson. The Manager of Classification and Technical Support shall activate Heightened Sanctions if directed by the Committee

(B) The Manager of Classification and Technical Support shall ensure the offender is notified in writing if they is subject to Heightened Sanctions. If offender wishes to appeal Heightened Sanctions status, the offender will be given an opportunity to appeal in writing on the Heightened Sanctions Notice to Offender & Appeal Form and Offender's Comment Form. The offender's appeal shall promptly be forwarded to the Commissioner of Prisons.

(C) The Commissioner of Prisons or their designee will respond back to the offender with a final decision in writing within 30 days.

- (3) When an offender is charged with any Class A offense, or the B08, B20, or B21 offenses, the offender must be referred to the Disciplinary Hearing Officer for disposition and the Referring Authority should document this on the IS03 screen and comments via the OR14, Comment screen.
- (4) Suspension of privileges as presumptive sanctions for Class C offenses may occur during or after Restrictive Housing for Disciplinary Purposes (RHDP), at the discretion of the Warden/Designee.
- (5) When an offender pleads guilty to an authority for a Class C offense, the sanction will be a suspended Class C sanction.
- (6) Offenders who escape while participating on work release, study release, home leave, or any other program authorized under G.S. 148.4 are subject to administrative disciplinary action as follows:
 - (A) The offender 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 offender:
 - (I) Voluntarily returns to the off-site community-based program site prior to facility staff being notified they is unaccounted for;
 - (II) 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 offender has left from a community-based program); and

- (III) Commits no new criminal offenses while away from **their** assigned location regardless of when **they** returned to custody.
- (B) The offender should be charged with disciplinary infraction A06, (escape or attempting to escape-this includes possessing any materials that could assist with an escape) if the offender:
 - (I) Does not voluntarily return to the off-site community-based program or the prison facility prior to initiation of escape procedures;
 - (II) Does not return to the facility within 24 hours of leaving the community-based program; or
 - (III) Commits any criminal offense while away from **their** assigned location.

.0205 DISCIPLINARY PROCEDURES

(a) Reporting and Preventing Misconduct

- 1) Any Department of Public Safety employee or agent who witnesses an act of misconduct on the part of an offender or offenders 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 offender 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 **Warden**/Designee as soon as possible after the incident but no later than the end of the employees' shift, unless extenuating circumstances exist. The written report should include, but not be limited to, details of the reported misconduct, any unusual offender 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 offenders, may report offender misconduct. When a report of offender 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 within 24 hours after being notified of actual or suspected offender misconduct or after being notified of a reinvestigation by the Disciplinary Hearing Officer or the Chief Disciplinary Hearing Officer via the IP51 0 25 screen. Assignment will be documented on the IS02, Disciplinary Investigation screen, and comments can be made on the OR14, Comment screen.

- 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 within 72 hours, unless an extension is granted and documented by the appropriate authority. The Investigating Officer will document the start of the investigation on the IS02, Disciplinary Investigation screen and on the OR14, Comment screen.
- 3) The Investigating Officer should submit the investigative report through use of the IS02, Disciplinary Investigation screen and process and summarize the results on the OR14, Comment screen. This report should be completed and submitted to the **Warden**/Designee within 72 hours of beginning the investigation unless an extension is granted and documented by the appropriate authority.
- 4) The **Warden**/Designee will access completed investigations via the IP51 0 20, Pending Review screen. That authority will review the investigation within 72 hours and decide if formal disciplinary action, or further disciplinary action in the case of a rehearing ordered by the Chief Disciplinary Hearing Officer, is required unless additional time is granted and documented by the appropriate authority. If disciplinary action is required, the authority/designee will document formal charges on the IS03, Disciplinary Charges and Pleas screen. The summary of the charges will be documented on the OR14, Comment screen. The disciplinary report will then be printed and the offender 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, Disciplinary Charges and Pleas screen and on the OR14, Comment screen. Documentation is required for all decisions whether following presumptive sanctions or deviating from the same.
- 5) The Disciplinary Hearing Officer will access referrals via IP51 0 21, Pending Review screen, convene the disciplinary hearing, and document the proceedings on the IS04, Disciplinary Hearing Officer screen and on the OR14, Comment screen within seven (7) days, excluding weekends and holidays, after the offender has been charged with an offense unless an extension is granted. A plea of guilty and waiver of hearing should be documented on the IS04, Disciplinary Hearing Officer screen and on the OR14, Comment screen. The disposition of the charge is to be documented on the IS04, Disciplinary Hearing Officer screen and the summary of the hearing will be entered as comments on OR14, Comment screen. Documentation on the OR14 screen is required for all decisions whether following presumptive or deviating from the same.
- 6) The offender may appeal a guilty finding by the Disciplinary Hearing Officer in writing to the **Commissioner** of Prisons within 15 calendar days from the date of hearing. The appeal shall be received by the **Commissioner of** Prisons within 15 calendar days from the date of the hearing.
- 7) The **Commissioner of** Prisons/Designee will log receipt of the appeal and

supporting documents on the IS05, Disciplinary Appeal screen. Tracking and notification to the facility and the offender will be accomplished via the IS05, Appeal 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 thirty (30) calendar days of receipt of the offender's appeal and the offender promptly notified of the results

- 8) The **Warden**/Designee may grant in writing additional time for charging the offender. The **Warden**/Designee will document the approval, rationale, and number of days requested, on the IS03, Disciplinary Charges and Pleas screen and OR14, Comment Screen.
- 9) Assistant Chief Disciplinary Hearing Officer may grant in writing additional time for convening the Disciplinary Hearing. The Disciplinary Hearing Officer will document the approval, rationale, and number of days requested, on the IS04, Disciplinary Hearing Officer screen, and OR14, Comment screen.
- 10) Extensions may be granted, with limited timeframe as follows:
 - Investigating Officers-15-day maximum
 - Referring Authority-10-day maximum
 - Disciplinary Hearing Officer-15-day maximum
- 11) The following list, which is not an all-inclusive list, provides some reasons for which additional time may be granted:
 - (A) In the event of extenuating circumstances, investigating officers, referring authorities and /or Disciplinary Hearing Officers may request additional time beyond those noted in section 10. Time extensions for Investigating Officers and Referring Authorities may be granted by the appropriate Region Director or designee. Time extensions for Disciplinary Hearing Officers shall be made to the Assistant Chief Disciplinary Hearing Officer or the Chief Disciplinary Hearing Officer via email. These are the only staff authorized to approve extensions in excess of the times noted in section 10.
 - (B) Law Enforcement or the District Attorney requests a suspension of the disciplinary procedures to prevent interference with criminal investigations or prosecutions.
 - (C) Witness(s) or evidence is not available or additional time is necessary to obtain additional information.
 - (D) The accused offender is not available because of transfer for Restrictive Housing for Disciplinary Purposes (RHDP), medical or mental health reasons, or court appearance.

(c) Offender Rights

- 1) The offender has a right to:
 - (A) At least 24 hours advance written notice of the disciplinary charges before the hearing;
 - (B) Be informed of the alleged misconduct, and to make verbal and/or written statements to the Investigating Officer;
 - (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(s) be present at the hearing if charges are referred. If an offender is unable to write, **they** may request that the Investigating Officer transcribe his oral request(s), which the offender will sign, and date. Failure to make these requests on the offender witness form shall be deemed a waiver of such requests.
 - (D) In cases involving offenders identified as M4 – M5, Behavioral Health staff will complete the DC-556M. Additionally, the Investigative Officer, **Warden**/Designee or Disciplinary Hearing Officer may refer any offender to Behavioral Health staff when any offender displays obvious signs of mental health decline. This referral may occur at any time during the disciplinary process. Behavioral Health staff will conduct an evaluation and complete the DC-556M form within 5 business days from the date of the referral.
 - (E) If the offender is identified as Developmentally Disabled, the offender's Case Manager or another DD trained Case Manager must be notified. The Case Manager must be present when the offender is advised of his rights, must assist with communicating statements, must be present when the offender is charged by the **Warden**/Designee, when the Disciplinary Hearing Officer meets with the offender, and must assist with completion of the disciplinary appeal form should the offender desire to appeal a guilty verdict. Assistance at each level shall be documented on a separate DC-138B, Statement by Witness form and on the appropriate screens (IS02, IS03, or IS04 and OR14 at each level).
 - (F) Request the **Warden**/Designee to appoint a staff member to assist the offender at the hearing;
 - (G) Be read the substance of the evidence and have the opportunity to explain or refute the evidence at the disciplinary hearing; and
 - (H) Appeal to the **Commissioner of** Prisons.
- 2) The offender may waive specific rights in writing or by overt refusal to cooperate with the disciplinary procedures associated with those rights. Overt offender

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, Offender Rights form, the DC-138B, Statement by Witness form, the Offense and Disciplinary report (batch job #50), the Record of Hearing form (batch job #55), and/or the Waiver of Hearing and Plea of Guilty form (batch job #60 or #65). A right not waived or refused by the offender is retained by the offender.

- (A) Force should not be used to make an offender attend the hearing.
 - (B) When an offender refuses to attend a hearing, the offender 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 offender's presence.
 - (C) When an offender refuses to attend a hearing, the offender 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 offender is not allowed to disrupt the hearing schedule.
 - (D) The refusal to attend should be documented on the DC-138G, Refusal to Attend Disciplinary Hearing form, and witnessed by at least two staff persons, who should sign verifying they witnessed the offender's refusal.
 - (E) The Disciplinary Hearing Officer will document that the offender refused to attend the hearing, signed or refused to sign the DC-138G, Refusal to Attend Disciplinary Hearing form, staff names who witnessed the refusal, and that the written statements from staff and/or the offender documenting the refusal were reviewed.
 - (F) A refusal to attend a hearing only applies to the current hearing in question. By waiving a hearing, the offender 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 Officer Procedures training prior to being given an OPUS profile to conduct offender 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 offender misconduct, which includes interviewing and acquiring a written statement from the person reporting the misconduct, the accused offender, and other witnesses, and employing other appropriate investigatory techniques.
 - (B) Advise the accused offender, in writing and orally, if necessary, of the rights enumerated in Section .0205(c) of this policy.
 - (C) Prepare a written investigation report on the IS02, Disciplinary Investigation screen and OR14, Comment screen, with appropriate comments. The report shall summarize the evidence gathered, disposition of money/stamps and/or contraband taken, interviews conducted, offender rights waived and/or requested, extensions requested/ approved, and written statements obtained during the investigation. Each written statement obtained should be summarized. If written statements are not taken from witnesses requested by the offender, their names and the explanation for not taking statements shall be included in the report. The names of witnesses requested by the offender to be present at the disciplinary hearing shall be included in the report, a written statement will be obtained from the requested witnesses to be present at the hearing, and a summary of each 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 offender conduct rule violation.
 - (D) Complete and present to the **Warden**/Designee the disciplinary package including the Investigating Officer's Report (batch job #45), written witness statements, and forms documenting advisement of offender rights and compliance with policy requirements.
 - (E) If necessary, acquire documented approval from the **Warden**/Designee 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) Behavior Health Staff Responsibilities
- (1) When an offender is referred for a mental health evaluation during the investigative process, Behavioral Health Staff will make a report on the DC – 556M, as to:
 - (A) Whether the offender's current mental illness precludes participation in the disciplinary process, in which case the disciplinary hearing should be

- postponed;
- (B) Whether factors related to serious mental illness should be considered during the disciplinary process (not an opinion regarding criminal responsibility) and;
 - (C) Whether the offender's mental status contraindicates assignment to Restrictive Housing
- (2) The evaluation findings shall be forwarded to the Investigating Officer, filed as a part of the disciplinary record, and recorded in the electronic medical record (HERO).
 - (3) The Disciplinary Hearing Officer should follow the findings and recommendations of Behavior Health Staff in parts (A) and (C) above unless there are strong overriding security reasons not to do so. These reasons must be clearly documented by the Disciplinary Hearing Officer on the OR14, Comment screen, and approved by the **Warden**/Designee in consultation with the appropriate Psychology Program Manager/designee. Unresolved disagreements will be referred to the Regional Assistant Director of Behavioral Health, who may consult with the Director for **Rehabilitative** Services. Information provided in part (B) should be considered in combination with other available evidence.
 - (4) All other issues related to the disciplinary process are referenced in the current Offender Disciplinary Policy and Procedure and shall be followed as directed.
- (f) **Warden** Responsibilities
- (1) The disciplinary process is critical to the safe and orderly operation of prison facilities and the **Warden** is responsible for managing a fair and impartial process. Procedural correctness, protection of offender rights, thorough investigations, and proper documentation are the **Warden**/Designee's responsibility. The **Warden**/Designee shall review disciplinary hearings and dispositions to assure conformity with policy and procedure, as well as, sign and date the Offense and Disciplinary Report acknowledging the review.
 - (2) The **Warden**/Designee also has the following responsibilities:
 - (A) Ensure one or more staff is trained to serve as Investigating Officers by completing the required Disciplinary Hearing Officer Procedures training.
 - (B) Review the Investigating Officer's report and determine whether to counsel the offender or proceed with formal disciplinary action. If counseling is used in lieu of formal disciplinary, it should be documented on the IS03, Disciplinary Charges and Plea screen, and the OR14, Comment screen, with appropriate comments and the appropriate counseling code.

- (C) Review the disciplinary package to ensure procedural correctness and the protection of offender rights.
 - (D) May refer the case, in writing, back to the Investigating Officer for further investigation or to protect the offender's rights.
 - (E) Decide whether to charge the offender with a disciplinary offense and, if so:
 - (I) determine the offense(s) with which the offender is to be charged;
 - (II) advise the offender of the charge(s);
 - (III) ask the offender if a staff representative is requested and, if so, appoint a staff member to this role;
 - (IV) complete the disciplinary report (batch job #50) by accessing the IS03, Disciplinary Charges and Plea screen, and provide the related comments on the OR14, Comment screen, to include but not be limited to, who, what, when, where, how, the offender's plea, rationale for sanctions, requested extension(s), reason for request, number of days requested, and approval(s), etc.; Documentation on the OR14 screen is required for all decisions whether following presumptive or deviating from the same.
 - (V) give the offender a copy of the completed Offense and Disciplinary Report (batch job #50) with a summary that addresses the offense(s) for which the offender is being charged, and;
 - (VI) When required, authorize an extension to charge the offender beyond 72 hours.
 - (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 Disciplinary Hearing Officer.
 - (H) Shall appoint a recorder to assist the Disciplinary Hearing Officer.
- (g) Staff Representative Responsibilities
- (1) If the appointed representative was a witness to the alleged misconduct, the Warden/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 offender has an opportunity to present their version of the facts to the Disciplinary Hearing Officer;
 - (B) Assist the offender with understanding the disciplinary process; and
 - (C) Make a written statement on the way the Representative assisted the accused offender.

- (h) Waiver of Hearing and Plea of Guilty
 - (1) The offender may voluntarily plead guilty and waive a hearing before the Warden/Designee or Disciplinary Hearing Officer. At the Disciplinary Hearing Officer level, a plea of guilty and a waiver of hearing will be documented on the IS04, Disciplinary Hearing Officer screen, and the OR14, Comment screen. The Waiver of Hearing & Plea of Guilty Report (batch job #65)-and the Offense and Disciplinary Report (batch job #50) should be printed. The Record of Hearing Report (batch job #55) will only be generated on plea of guilty for (A) class offenses. At the Referring Authority level, the IS03, Disciplinary Charges and Plea screen, would be accessed and documentation of the offender's guilty plea should be documented on the OR14, Comment screen. The Waiver of Hearing & Plea of Guilty Report (batch job #60) and the Offense and Disciplinary Report (batch job #50) should be printed.
 - (2) The offender shall sign the printed Waiver of Hearing & Plea of Guilty report (DHO level batch job #65, Unit level batch job #60) indicating that the plea and waiver are freely given and are not the result of any coercion or intimidation. If the offender is unable to sign due to restraints, this will be documented on the form, on the OR14, Comment screen, and a second witness will sign the form attesting the offender could not sign. This waiver also waives the right to appeal. The offender will be given a copy of the signed document (batch job #60 or #65).

- (i) Disciplinary Hearing Officer Appointments
 - (1) Disciplinary Hearing Officers shall be chosen to provide an impartial disciplinary hearing. No person who initiates the disciplinary charges or was a witness in the case may serve as a Disciplinary Hearing Officer.
 - (2) The Commissioner of Prisons shall appoint and have trained one or more Disciplinary Hearing Officers to hear and determine the disposition of formal disciplinary charges. These Disciplinary Hearing Officers will perform their responsibilities as full time and exclusive duties.

- (j) Disciplinary Hearing Officer Responsibilities
 - (1) The Disciplinary Hearing Officer reviews all the evidence for referred disciplinary cases, including both direct and circumstantial evidence, determines

guilt or innocence, and determines sanctions consistent with this policy.

- (2) Responsibilities:
- (A) Review the disciplinary package to ensure procedural correctness and the protection of offender rights;
 - (B) Determine if the offender has been diagnosed with mental illness;
 - (C) Arrange for a hearing within seven (7) days, excluding weekends and holidays, after the offender has been charged with an offense;
 - (D) Assure the presence of the people and evidence needed for the hearing;
 - (E) If necessary, refer the disciplinary back to the Warden/Designee for one of the reasons enumerated in policy section .0205(b)(11) or .0205(e)(1)(A);
 - (F) Read the charges to the accused offender and obtain a plea of guilty or not guilty;
 - (G) Read to the offender 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;
 - (H) Give the accused offender the opportunity to make a verbal statement, to refute or explain evidence, and to present relevant evidence.
 - (I) Give witnesses, requested by the offender, the opportunity to testify either in person or by telephone;
 - (J) Document on the IS04, Disciplinary Hearing Officer screen, and OR14, Comment screen, providing 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:
 - (I) relevance;
 - (II) duplicative or cumulative testimony;
 - (III) necessity;
 - (IV) offender'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 Disciplinary Hearing Officer, written statements gathered by the Investigating Officer may be used. The reason(s) for denial shall be documented on the IS04, Disciplinary Hearing Officer screen, with comments on the OR14, Comment screen;

- (K) If the offender pleads guilty or is found guilty, the Disciplinary Hearing Officer may impose sanctions consistent with policy section .0204; Documentation is required for all decisions whether following presumptive sanctions or deviating from the same.
 - (L) Enter the findings of guilty, not guilty or dismissal and the rationale on the IS04, Disciplinary Hearing Officer screen, and OR14, Comment screen, and advise the offender of the decision. If offender is unable to sign due to restraints, a second witness will sign the form attesting offender could not sign. The decision shall be based solely on information, direct and/or circumstantial, obtained in the hearing process including staff reports, the status of the offender charges, evidence from witnesses, and all pertinent documentation. Give the offender a copy of the written statement of the evidence relied upon and the reasons for the sanctions imposed by accessing Record of Hearing report (batch job #55). Thoroughly document the course of the hearing on the OR14, Comment screen;
 - (M) For an offender who has been found guilty of an A03 offense that results in physical injury, the Disciplinary Hearing Officer will enter a code that will automatically send the case to the Chief Disciplinary Hearing Officer for review and additional sanctions as noted in .0204 (e) (1).
- (3) Advise the offender of the right to appeal to the Commissioner of Prisons within 15 calendar days from the date of hearing. Appeal should be received by the Commissioner of Prison within 15 calendar days from the date of the hearing.
- (A) Complete and distribute the Record of Hearing forms.
 - (B) A record of the hearing and findings is maintained for five years.
- (k) Appeal to the Commissioner of Prisons
- (1) If the offender appeals to the Commissioner of Prisons, their Designee is authorized to:
 - (A) Approve the Disciplinary Hearing Officer's decision.
 - (B) Order a re-investigation or re-hearing in whole or in part.
 - (C) Disapprove the Disciplinary Hearing Officer's decision and dismiss the case.

- (2) The decision by the Disciplinary Hearing Officer shall be final. Such decision can only be approved or disapproved by the Commissioner of Prisons/Designee.
 - (3) Appeals are only available for offenders convicted of disciplinary offenses. The Commissioner of Prisons/Designee cannot initiate an appeal of the Disciplinary Hearing Officer's final decision.
 - (4) Any offender who elects to plead guilty may not appeal the guilty plea.
 - (5) Tracking and notification to the facility and the offender will be accomplished via the IS05, Disciplinary Appeal screen, Alerts and Pending Reviews screens, and appropriate batch jobs, to include the Offender Appeal Decision Letter (batch job #40). The facility where the incident occurred shall print the Offender Appeal Decision Letter, give to the offender, and attach another copy with the disciplinary package. If the offender has transferred, the current housing facility should print the Offender Appeal Decision Letter and give to the offender.
- (1) Use of Offender 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 Disciplinary Hearing Officer and maintained by the Warden/Designee 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 their 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 Warden/Designee in a confidential file. The statement written for the confidential file should be a thorough description of the informant's information. The staff member should sign, including date and time, the statement, and request the informant to sign or initial.
 - (3) Before disciplinary action is taken based on information provided through confidential information, the following conditions should be met:
 - (A) The staff member making the summary statement must know the informant, have used him/her in the past and found him/her 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, which should be filed with the confidential informant's statement.

- (C) The Disciplinary Hearing Officer should review the confidential statement and the reliability of the informant, as documented by the person obtaining the confidential informant's statement, and state this review in the Record of Hearing, on the OR14, Comment screen.
- (D) All staff involved in the collection and usage of confidential information should take steps to ensure the informant's identity is not disclosed.

(m) Rules Violation Related to Mental Illness

- (1) At any time during the disciplinary process, after offender misconduct has been identified, an authorized official may address the misconduct or otherwise dispose of the disciplinary action or rules violation when information indicates mental illness contributed significantly to the offender's behavior.
- (2) All offenders residing within the confines of Prisons must be held responsible and accountable for their actions; however, special consideration must be given to those offenders whose mental illness contributed significantly to their behavior and actions.
- (3) Offenders shall not be issued a rule violation for any of the following reasons:
 - (A) The behavior occurred in connection with a cell extraction for the administration of involuntary medication or involuntary medical treatment.
 - (B) The behavior occurred in connection with a cell extraction for transfer of the offender to a mental health inpatient unit or between mental health inpatient units.
 - (C) The behavior occurred in connection with being placed in mental health restraints and or stabilization.
- (4) When any of these circumstances are met, the offender's conduct shall be documented on a separate DC-138B, statement by witness form. Any use of force used during these situations shall be documented appropriately on an Incident/Use of Force report form and screens for inclusion in the offender's central file.

(n) Modifications

The Commissioner 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 Public Safety and incorporated in the policies and procedures of the Department.

REFERENCE FORMS

The forms listed below are the forms used specifically for offender disciplinary packages. These forms are located on Prisons web page and maybe accessed by clicking the link below or as indicated. http://internal.doc.state.nc.us/dop/forms_main.htm .

DC-138A – Notice to Offender

DC-138B – Statement by Witness

DC-138F – Request for Extension of Time

DC-138G – Refusal to Attend Disciplinary Hearing

DC-556M – Disciplinary Behavioral Health Report * This form may be accessed at the facility providing mental health services.



Commissioner of Prisons

November 03, 2020

Date

B.0200_11_03_20doc