

*State of North Carolina
Department of Public Safety
Prisons*

Chapter: C
Section: .0100
Title: **Offender Custody Classification**
Issue Date: 03/10/21
Supersedes: 08/05/20

POLICY & PROCEDURES

References

5th Edition Standards for Adult Correctional Institutions

Related ACA Standards

5-ACI-5B-01, 5-ACI-5B-02, 5-ACI-5B-03,
5-ACI-5B-04, 5-ACI-5B-06, 5-ACI-5B-07

.0101 PURPOSE

- (a) The purpose of offender custody classification is to facilitate the systematic process of coordinating offender assessment and custody assignment procedures so as to minimize community and institutional risk. *The custody classification process manages and coordinates assignments to custody levels and prison facilities (5-ACI-5B-01).*

.0102 DEFAULT CUSTODY LEVEL ASSIGNMENTS UPON ADMISSION

- (a) *Prisons shall assign each offender, upon admission, an appropriate, default custody classification level considering public safety requirements until such time as intake processing is completed and the resulting recommendations for assignment can be considered by the appropriate reviewing and approving classification authorities (5-ACI-5B-02).*

- (1) Misdemeanor offenders shall be admitted with an assigned Custody designation of Minimum Custody Level One. They shall remain in Minimum Custody Level One for the duration of their term unless a specific event warrants a waiver of this rule. **In general, misdemeanor offenders must be classified as minimum custody and housed at minimum custody facilities. Offenders serving misdemeanor time may only be demoted from minimum custody if (1) they have pending felony charges or active felony detainer or (2) they have a consecutive felony sentence to serve in prison. Offenders serving misdemeanor time may be placed on restrictive housing for control purposes to address behavioral concerns if necessary, but in such cases should be housed at a minimum custody facility with a restrictive housing unit. Misdemeanor offenders should be housed at an all minimum custody level facility unless an offender's need for medical or behavioral health treatment requires them to be housed at a facility with higher custody levels. In such an event, the misdemeanor offender shall promptly be returned to an all minimum custody level facility as soon as treatment is completed.**

- (2) Felon offenders sentenced under the Structured Sentencing Law whose cumulative maximum sentence is less than 240 months shall be admitted with an assigned custody classification level of Medium. Felon offenders sentenced before the Structured Sentencing Law whose cumulative maximum sentence is less than twenty years shall be admitted with an assigned custody classification level of Medium.
- (3) Felon offenders sentenced under the Structured Sentencing Law whose cumulative maximum sentence is equal to or greater than 240 months shall be admitted with an assigned custody classification level of Close. Felon offenders sentenced before the Structured Sentencing law whose cumulative maximum sentence is equal to or greater than twenty years shall be admitted with an assigned custody classification level of Close. Offenders with life sentences under any sentencing law shall be admitted with an assigned custody level classification of Close.
- (4) Felon offenders sentenced to Death shall be admitted with a custody level classification of Close and shall remain so classified unless their status changes.
- (5) Safekeeper and Pre-Sentence Diagnostic admissions will be admitted with custody classification levels of Medium or Minimum Custody Level One, depending upon whether the apparent offense leading to commitment is a felony or a misdemeanor, or, where the criminal conviction is not apparent or is unknown, whether the committing venue is Superior Court or District Court. If the criminal conviction is not apparent or is unknown and the committing venue is Superior Court, the classification shall be Medium. If the criminal conviction is not apparent or is unknown and the committing venue is District Court, the classification shall be Minimum Custody Level One. Admission, processing, and housing shall be under conditions as otherwise authorized by the Commissioner of Prisons or their designee.
- (6) Exceptions may be made to these guidelines by the Commissioner of Prisons or their designee.

.0103 CLASSIFICATION PROCESS OVERVIEW

- (a) Custody classification procedures are structured through the general guidelines established by the following process:
 - (1) Initial Custody Classification Review is a custody level classification action completed when an offender is processed and evaluated at a diagnostic center.
 - (2) Custody Reclassification Review is any custody level classification action which either reviews or modifies an offender's custody assignment.

- (3) Custody Classification Referral is the combination of automatically selected information combined with the narrative report format and recommendation that provides a rationale for maintenance of, or changes in, an offender's custody level assignment.
- (4) Classification Authorities Decision is the decision made upon considering relevant background information, the referral action, departmental needs, the offender's opinions and interests, risk of re-arrest, criminogenic needs, barriers to success and service priority level (SPL) as to what is the most appropriate custody level assignment for the offender being reviewed.

.0104 REQUIRED REVIEW SCHEDULES

- (a) Except those committed for Pre-Sentence Diagnostic Evaluation, Safekeepers (Pre-trial Detainees), Confinement in Response to Violation (90C), Three Month Reimprisonment (PR3), Death Row, Felons assigned to Minimum Custody Level Three, Interstate Corrections Compact (ICC) and Misdemeanants, offenders incarcerated within Prisons should be regularly reviewed by classification authorities.
- (b) *The minimum frequency of custody classification level assignment review by classification authorities should be (5-ACI-5B-02):*
 - (1) *All offenders should have a custody classification level review at least once each year during their confinement unless a classification rule indicates otherwise (5-ACI-5B-06).* Beginning when an offender is within two years of a possible release from prison, reviews shall be completed at least every six months.
 - (2) Offenders assigned to a Rehabilitative Diversion Unit (RDU), Therapeutic Diversion Unit (TDU), Restrictive Housing for Control Purposes (RHCP) or High Security Maximum Control (HCON) shall be assigned to Close Custody, shall not receive a custody classification review while so assigned, and shall not be reviewed until one year after returning to the Regular Offender Population (RPOP).
 - (3) Confinement in Response to Violation (90C) and Three-Month Reimprisonment (PR3) offenders will be assigned to Minimum Custody Level One upon admission and will not receive a review of their assigned custody classification level unless it is event-driven.
 - (4) Additional custody classification reviews may be conducted at the discretion of the reviewing authorities for reasons or events deemed appropriate and necessary.

.0105 OVERRIDES AND WAIVERS

- (a) An override is an exception to the recommended custody classification level based on the best interest of the general public, agency or the offender wherein the suggested custody

level recommendation based on the case factor scoring system is deviated from. An override must be supported by a rationale documented within the review.

- (b) A waiver is an exception to one of the standard custody classification rules that is supported by a rationale detailed within the review.

.0106 CUSTODY CLASSIFICATION REVIEW PROCESS (5-ACI-5B-03)

(a) **Staff Duties (5-ACI-5B-07)**

- (1) The duties of designated classification staff are to complete the regularly scheduled or event driven custody classification level reviews of offenders using the automated OPUS system.
- (2) The appropriate automated custody classification action screen (initial or reclassification) will be used to initiate a custody classification level review.
- (3) The review initiator will review all relevant case materials. The OPUS system automatically compiles relevant information including but not limited to the suggested case factor score and pending charges, if any. ***The review initiator may also include other information for consideration such as requests from the offender or other circumstances or data not automatically compiled by the OPUS system (5-ACI-5B-04).***
- (4) If an override or waiver is employed, an appropriate rationale shall be provided and documented by the review initiator.
- (5) The review initiator shall conduct a personal conference with the offender. The offender should be allowed to ask any relevant questions and to receive a reasonable answer and explanation. Confidential information shall not be revealed to the offender.
- (6) The review initiator will then complete their portion of the classification review process. Any comments by the offender, opinions of the reviewing staff member, or other relevant materials should also be considered. They will either agree with the suggested custody classification level as generated by OPUS or recommend an override or waiver. The review initiator shall ensure that the custody review is routed to the next reviewing staff member and shall be responsible for tracking the process of the review to ensure timely completion.
- (7) The unit level review authority shall render their decision and ensure that the action is then routed to facility level review authority.
- (8) The facility level review authority shall render their decision which shall finalize the review unless they request a consultation from division level classification

staff. With a request for consultation the facility level review authority shall indicate their proposed decision.

- (9) If necessary, the division level review authority shall finalize the custody classification review.
- (10) The assigned staff member will inform the offender of the final disposition of the review and any rationale for the decision.

(b) Staff Involved in The Custody Classification Review Process

There shall be a minimum of three and a maximum of four reviewing authorities for all custody level classification actions.

- (1) Initiator: The staff member that generates the first level of the custody review process, which is either the initial custody classification or a reclassification action. Typically, this staff member will be the offender's assigned case analyst when it is an initial custody level review or their case manager when the action is a custody level reclassification.
- (2) Unit: The staff member that completes the second level of the custody review process after the initiator. Typically, this staff member will be a supervisor or someone designated by the Warden of the facility to complete this level of the review process.
- (3) Facility: The staff member that completes the third level of the review process. This will be the Warden of the facility or their designee.
- (4) Division: The staff member that completes, if necessary, the fourth level of the review process. Typically, this staff member will be a division classification coordinator or the manager of classification as designated by the Commissioner of Prisons.

(c) Necessary Authority Level To Finalize A Custody Classification Action

- (1) If the facility level decision is in agreement with either the case factor score or the standard rule that is in effect, the custody classification review wherein shall be finalized.
- (2) The manager of classification or their designee must review and finalize all custody classification level reviews wherein a sex offender, security risk group (SRG) validated level three offender or offender with a life sentence under any sentencing law is being recommended for promotion to minimum custody level one.

- (3) Any proposed custody classification action wherein the facility level decision is not in agreement with either the case factor score or the standard rule that is in effect will be sent to the Manager of Classification or their designee for review and finalization.

.0107 SPECIAL CONSIDERATIONS FOR SEX OFFENDERS

(a) Definition of Sex Offender

- (1) A sex offender is any offender convicted of a crime that requires post-release registration on the North Carolina sex offender registry.

Offenses Requiring Registration

The below listed Sexually Violent Offenses requiring registration per the North Carolina Sex Offender and Public Protection Registration Programs is not an exhaustive list and other offenses may require registration pursuant to current state laws.

- First Degree Rape (G.S. 14-27.2)
- Second Degree Rape (G.S. 14-27.3)
- First Degree Sexual Offense (G.S. 14-27.4)
- Second Degree Sexual Offense (G.S. 14-27.5)
- Sexual Battery (G.S. 14-27.5A)
- Attempted Rape or Sexual Offense (G.S. 14-27.6)
- Intercourse and Sexual Offense with Certain Victims (G.S. 14-27.7)
- Incest Between Near Relatives (G.S. 14-178)
- Employing or Permitting Minor to Assist in Offenses Against Public Morality and Decency (G.S. 14-190.6)
- First Degree Sexual Exploitation of a Minor (G.S. 14-190.16)
- Second Degree Sexual Exploitation of a Minor (G.S. 14-190.17)
- Third Degree Sexual Exploitation of a Minor (G.S. 14-190.17A)
- Promoting Prostitution of a Minor (G.S. 14-190.18)
- Felonious Indecent Exposure (G.S. 14-190.9 (a)1)
- Participating in the Prostitution of a Minor (G.S. 14-190.19)
- Taking Indecent Liberties with Children (G.S. 14-202.1)
- Solicitation of Child by Computer to Commit an Unlawful Sex Act (G.S. 14-202.3)
- Parent or Caretaker Commit or permit act of Prostitution with or by Juvenile (G.S. 14- 318.4(al))
- Commission or Allowing Sexual Act upon a Juvenile by Parent or Guardian (G.S. 14- 318.4(a2))
- Statutory Rape or Sexual Offense (G.S. 14-27.7A(a))

- (2) The following offenses also require registration if the offense is against a minor and is not committed by the minor's parents: (this is not an exhaustive list and other offenses may require registration pursuant to current state laws)
- Kidnapping (G.S. 14-39)
 - Abduction of Children (G.S. 14-41)
 - Felonious Restraint (G.S. 14-43.3)
 - Aiding and Abetting (G.S. 14-208.6(1i), 14-208.6(4)(a), 14-208.6(5))
 - Attempt (G.S. 14-208.6(4)(a))
 - Conspiracy or Solicitation (G.S. G.S. 14-208.6(1i), 14-208.6(5))
- (b) Sex Offender Eligibility for Promotion To Minimum Custody
- (1) Felon sex offenders who are within sixty months of a possible release may be promoted to minimum custody level one without the completion of a formal risk assessment by appropriate staff.
 - (2) Felon sex offenders assigned to minimum custody level one must be supervised by agency staff or trained custodial agents when and if participating in any work assignment or program not on agency property.
 - (3) Felon sex offenders must have a formal risk assessment completed and be considered an acceptable risk to the community in order to be promoted to minimum custody levels two and three.
 - (4) Felon sex offenders who have received a favorable formal risk assessment and are in minimum custody level two or three may participate in any community-based program that is facilitated without DPS staff or a certified custodial agent supervision.
 - (5) Psychological risk assessments are valid for a period of two years. The completing staff member may extend a favorable initial assessment for two additional years (four years total) by completing addendum reports.
 - (6) Final approval for felon sex offenders to be promoted to minimum custody level one must be given by designated division level staff.
 - (7) Final approval for felon sex offenders to be promoted to minimum custody levels two or three must be given by appropriate region level staff.
 - (8) Sex offenders will be prohibited from participating in study release, home leave and maternity leave.

- (9) Sex offenders will not be eligible to participate in community-based programs until 24 months prior to a possible release date.
 - (10) Sex offenders that meet the criteria for promotion to Minimum Custody Level Three and are within 24 months of a projected release date may be considered for participation in work release.
 - (11) Sex offenders that meet the criteria for promotion to minimum custody levels two or three, and are within 24 months of a projected release, may be considered for participation in the community volunteer program.
- (c) Other Considerations For Sex Offenders In Minimum Custody
- (1) The local Sheriff shall be contacted by letter prior to any sex offender subject to registration being approved for community-based programs. The letter shall advise the Sheriff that the agency is in the process of reviewing the offender for participation in community-based programs and is seeking their input. Specifically, the letter shall ask if the Sheriff opposes granting this privilege. If no response is received within thirty days the facility will contact the Sheriff via telephone for reply. The Manager of Classification or their designee shall be the final reviewing authority in instances where an unfavorable recommendation is received from the Sheriff.
 - (2) All requests for community volunteer leaves for sex offenders must be approved by the facility warden or their designee in their absence. The pass request must comply with all applicable restrictions.
 - (3) All work release jobs for sex offenders must be approved by the facility head or their designee in their absence. The job site must comply with all applicable restrictions.
 - (4) Sex offenders may not be at or within 300 feet of any place intended primarily for the use, care, or supervision of minors, including but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds or any similar location found within a grouping not primarily dedicated to these uses exclusively such as shopping malls and office buildings.
 - (5) Sex offenders may not be at or within 400 feet of any locations where minors gather for regularly scheduled educational, recreational, or social programs.
 - (6) Sex offenders may not instruct, supervise, or care for a minor. It is unlawful for any sex offender to work for any person or as a sole proprietor, with or without compensation, at any place where a minor is present, and the sex offender's responsibilities or activities would include instruction, supervision, or care of a minor or minors.

- (7) Sex offenders are prohibited from having access to the internet. This includes the ability to view internet screens, access any email system, any social networking sites, chat rooms, instant messaging, or message boards.

.0109 SEXUALLY VIOLENT PREDATORS

- (a) Any offenders who have been classified as a sexually violent predator by the courts will be referred to the manager of classification for final decision prior to promotion to minimum custody level one.
- (b) A sexually violent predator shall not be eligible for promotion to minimum custody levels two or three.
- (c) A sexually violent predator shall not be eligible to be assigned to any program or job that takes place off of Department of Public Safety property.

.0110 MINIMUM CUSTODY PROMOTION FOR NON-SEX OFFENDERS

- (a) Community Risk Assessments
 - (1) Approving authorities for minimum custody may request a psychological assessment on any offender for which additional psychological information is deemed necessary.
 - (2) For all non-structured sentence offenders with a sentence of 20 years or greater and all structured sentence offenders with a minimum sentence of 10 years or greater, offenders convicted of a physically violent offense must have a favorable psychological risk assessment prior to approval for offsite assignments and unsupervised access to the community. Physically violent crimes are defined as those where actual physical injury to another was caused directly by the offender under review. The name of the crime shall not be the determining factor of whether or not the crime was Physically Violent. Rather, the Official Crime Version narrative must describe an action taken by the offender that was physically violent in nature for the crime to meet the definition of Physically Violent for the purposes of this section. The offender should have been reviewed and found otherwise favorable for promotion by the approving authority prior to being referred to the psychologist for risk assessment.

.0108 MUTUAL AGREEMENT PAROLE PROGRAM

Custody classification level promotions for offenders who have an approved mutual agreement parole program (MAPP) agreement shall be completed in accordance with the plan's designated schedule, regardless of the offender having circumstances that otherwise would preclude them from promotion if they were not MAPP participants. Examples of other such circumstances can include but are not limited to sex offender, life sentence, first or second-degree murderer, or previous escape.

.0109 INTERSTATE CORRECTIONS COMPACT PROGRAM**(a) Offenders From Other Jurisdictions**

Offenders from other jurisdictions who are in the custody of North Carolina Department of Public Safety, Division of Adult Corrections, Prisons, as a part of the Interstate Corrections Compact Program shall be given an Initial Custody Classification Level Review upon their arrival. They shall not receive additional reviews unless there is an event that necessitates one to be completed. The results of all reviews shall be communicated to the Interstate Corrections Compact Program administrator of the sending jurisdiction.

(b) North Carolina Offenders In Other Jurisdictions

Offenders from the North Carolina Department of Public Safety, Division of Adult Corrections, Prisons who are in the custody of other jurisdictions as a part of the Interstate Corrections Compact Program, will have their custody classification designation managed in accordance with the established policies and procedures of the receiving jurisdiction. Until the offender leaves North Carolina their custody level classification will be managed in accordance with routine practices. The Interstate Corrections Compact Program Manager shall ensure that the results of all reviews from other jurisdictions are documented in the offender's automated record.

.0110 APPEALS (5-ACI-5B-07)

Offenders who wish to appeal any portion of the process for custody classification level reviews shall utilize the administrative remedy procedure, as found in applicable policy.

.0111 EXCEPTIONAL CASE CONSIDERATIONS

The Commissioner of Prisons or their designee may make exceptions to all or portions of this policy as dictated by exceptional circumstances or other agency considerations.



Commissioner of PrisonMarch 10, 2021

Date