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*Division of Institutions*  
*Policy and Procedure*

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I. PURPOSE

The North Carolina Department of Adult Correction (DAC), Division of Institutions, acknowledges that effective, fair, and consistent offender disciplinary procedures help ensure and enhance the safety, security, and orderly operation of institutions and public safety, as well as reinforce appropriate behavior and responsibility. With this in mind, the Division of Institutions has promulgated the offender conduct rules, disciplinary procedures, and sanctions.

II. DEFINITIONS

A. Disciplinary Incentive Credit

Credit earned for infraction free behavior reducing the time spent in RHDP or SMDP as disciplinary housing sanctions. This credit applies only to disciplinary housing sanctions and not to an offender's sentence.

B. Facility Supervisor (FS)

For facilities with Unit Management, custody staff at the Assistant Unit Manager level or above. For facilities without Unit Management, custody staff at the Sergeant level or above.

C. Restrictive Housing for Administrative Purposes (RHAP)

Housing for offenders who are being investigated for potential Class A Category I offenses. May be used as a 72 hour "cooling off period."

D. Restrictive Housing for Disciplinary Purposes (RHDP)

The classification status assigned to offenders who are subject to sanctions after being found guilty of Class A Category I offenses.

E. Sentence Credits

Time credits applied to an offender's court-ordered term-of-years sentence for the purpose of reducing the amount of time to be served.

F. Special Management for Administrative Purposes (SMAP)

Housing for offenders who are being investigated for any disciplinary infraction that is not a Class A Category I. May be used as a 72 hour “cooling off period.”

G. Special Management for Disciplinary Purposes (SMDP)

Housing for offenders subject to sanctions after being found guilty of Class A Category II offenses.

H. Unit Disciplinary Hearing Committee (UDHC)

A committee of three staff members per shift and rotation who have received disciplinary training. Custody staff at a sergeant level or above ~~for custody~~ or staff at a programs supervisor or above will serve as the committee’s chairperson.

III. POLICY

A. General

1. **Offender Disciplinary Procedures are 1) applicable to all new offender admissions; 2) made available in conspicuous locations within each correctional facility (5-ACI-3C-03); and 3) reviewed annually and updated, if necessary, by the Deputy Secretary of Institutions.**
2. Wardens and their designees are responsible for managing and implementing a fair and impartial disciplinary process. This includes ensuring the correct procedures are followed, offenders’ rights are protected, investigations are thorough, there is proper documentation, and sanctions are not imposed in a retaliatory manner.

B. Disciplinary Offenses

1. **Disciplinary offenses are divided into three classes, Class A through Class C. Class A is subdivided into two categories, Category I and II. Class A Category I offenses are the most serious, and Class C offenses are the least serious (5-ACI-3C-01).** (The list of offenses is contained in Appendix A and the list of sanctions is listed in Appendix B.)
  - a) Class A, Category I and II offenses will be documented on the DC-138B, Statement by Witness form to be investigated and processed by the Disciplinary Hearing Officer. Class B and C offenses occurring at the same date and time should be documented and managed in the same package through the investigation process outlined in this policy, IV. Procedures.
  - a) Class B and C offenses will be documented on the DC-138T, Offender Rule Violation Ticket. The UDHC and ticket processes are outlined in Appendix D, Offender Rule Violation Ticket Process and Appendix E, Unit Disciplinary Hearing Committee. No Class A, Category I and II offenses shall be documented on the DC-138T.

2. Escape Offenses

Offenders who escape while on work release, study release, home leave, or any other program authorized under NC Gen. Stat. § 148.4 are subject to administrative disciplinary action as follows:

- a) The offender shall be charged with disciplinary infraction B12, (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 are 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 are returned to custody.
- b) The offender shall 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.

#### C. Procedures for Heightened Sanctions

1. During the disciplinary process for an A03 offense, the responsible DHO and/or the facility charging authority may recommend consideration of Heightened Sanctions. The Deputy Secretary of Institutions delegates their authority to an appointed three-person committee to determine whether the offender should receive heightened sanctions. One 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.
2. The Manager of Classification and Technical Support shall ensure the offender is notified in writing if they are 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 Deputy Secretary of Institutions.

3. The Deputy Secretary of Institutions or their designee will respond back to the offender with a final decision in writing within 30 days.
4. 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 Deputy Secretary of Institutions 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 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 RHCP and then be placed in the Rehabilitative Diversion Unit (RDU) program.

D. Administrative Fees

1. 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.
2. All administrative fees will be electronically collected through the offender banking system and transferred to the General Fund.

E. Incentives

1. Disciplinary Incentive Credits

- a) Every three consecutive days that an offender on SMDP or RHDP is infraction free, a one-day credit will be automatically subtracted from the offender's disciplinary sentence.
  - b) This credit does not apply to those offenders who:
    - i. Receive a heightened sanction; or
    - ii. Are convicted of a disciplinary infraction considered aggressive or predatory. (Appendix C)
  - c) Forfeiture. All accumulated Disciplinary Incentive Credits will be automatically forfeited, and are not subject to return, when an offender violates any conduct regulations while on RHDP or SMDP, and no further credit will be awarded for the current disciplinary sentence.
  - d) Credits will not be maintained after the expiration of an offender's Special Management or Restrictive Housing status, nor can they be transferred to other future disciplinary sentences.
  - e) If an offender on RHAP/SMAP remains infraction-free while on RHAP/SMAP, the Disciplinary Incentive Credits the offender earned will automatically be deducted from the time the offender spends on RHDP/SMDP, if the offender is in fact placed on RHDP/SMDP.
  - f) Earning Disciplinary Incentive Credits does not affect the Warden or designee's discretion to release an offender from disciplinary housing at any time.
2. Release by the Warden or Designee
- a) The Warden or designee may release an offender from disciplinary housing at any time for good behavior and/or program completion.
3. Additional Incentives shall be approved and implemented by the Warden or designee.

**IV. PROCEDURES (5-ACI-3C-02)**

**A. Reporting Misconduct, Ticketing, and Initiation of Disciplinary Action**

- 1. Anyone, including offenders, may report offender misconduct.
- 2. Any Institutions employee or agent who witnesses an act of misconduct or to whom an offender misconduct is reported, shall take appropriate action to prevent continuation of the misconduct.

3. The employee observing misconduct or to whom it was reported will provide the appropriate information on the DC-138B, Statement by Witness form, or DC-138T, Offender Rule Violation Ticket form, depending upon the class of the offense matching the alleged misconduct.
4. The DC-138B shall be referred to the OIC as soon as possible, but not later than the end of employee's shift, unless there are documented extenuating circumstances.
5. If the Facility Supervisor determines the charge on the DC-138T, Offender Rule Violation Ticket is a Class A offense, the FS will have the suspected misconduct documented on the DC-138B, Statement by Witness form for assignment to an investigator. ***The investigator will complete a written report that should include, but should not be limited to, the following (5-ACI-3C-08):***
  - a) A formal statement of the charge;
  - b) Details of the reported misconduct, any unusual offender behavior, any physical evidence involved and how it was handled;
  - c) A list of any staff witnesses;
  - d) A written witness statement, if the report of offender misconduct is received from someone other than an employee or agent;
  - e) Any immediate action taken, including the use of force;
  - f) The reporting party's signature; and
  - g) Date and time of report.

## B. Disciplinary Process

### 1. Officer-In-Charge

- a) ***The Officer-in-Charge shall assign an Investigating Officer within 24 hours after being notified of suspected misconduct, or after being notified of a reinvestigation by the DHO or the Chief DHO via the IP51 0 25 screen (5-ACI-3C-09).***
- b) If possible, the Investigating Officer assigned should be one who is on duty at the time the assignment is made.
- c) Assignments will be documented on the IS02, Disciplinary Investigation screen, and comments can be made on the OR14, Comment screen.

### 2. Investigating Officer

- a) Each correctional facility shall have one or more staff trained to serve as an Investigating Officer.
  - i. The Investigating Officer will be required to complete formal OSDT approved DHO Procedures training prior to being given an OPUS profile to conduct offender disciplinary investigations.
  - ii. Only the Investigating Officer is authorized to gather evidence of an alleged infraction.
  - iii. A staff person who is witness to an offense cannot serve as the Investigating Officer for that offense.
- b) The Investigating Officer should begin an appropriate investigation within 24 hours of the time the violation is reported or ordered for reinvestigation and completed within 72 hours, unless an extension is granted and documented by the Warden or designee.
- c) The Investigating Officer will document the start of the investigation on the IS02, Disciplinary Investigation screen, and on the OR14, Comment screen.
- d) During the investigation, the Investigating Officer is required to:
  - i. Fully investigate the alleged misconduct. This includes:
    - a. Interviewing and acquiring a written statement from the person reporting the misconduct, the accused offender, and other witnesses;
    - b. Gather, retain, and document in the investigative report the availability or unavailability of surveillance evidence ; and
    - c. Employing other appropriate investigatory techniques.

Note that, if the accused requests that the Investigating Officer take the accused's statement, the Investigating Officer is required to take that statement.
  - ii. Advise the accused offender of the alleged misconduct.
  - iii. Advise the accused offender, in writing and orally, of the offender's rights.
  - iv. Ensure that procedures are followed to provide the accused of the rights.
- e) The Investigating Officer shall submit the investigative report through use of the IS02, Disciplinary Investigation screen and process, and summarize the results on the OR14, Comment screen.

- i. The report shall summarize the evidence gathered to include the availability of video, in the video field, 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.
  - ii. The report shall summarize each written statement obtained. 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.
  - iii. The report shall include the names of witnesses requested by the offender to be present at the disciplinary hearing, the written statement obtained from the requested witnesses to be present at the hearing, and a summary of each.
  - iv. 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.
- f) ***The Investigating Officer should complete and submit to the Warden or 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 within 72 hours of beginning the investigation, unless an extension is granted and documented by the approving authority. (5-ACI-3C-07).***
- g) It is the Investigating Officer's responsibility, if necessary, to acquire documented approval from the Warden or designee to extend the investigation beyond the 72 hours from the beginning of the investigation.
3. Warden or Designee (Referring Authority)
- a) Warden or designee must ensure one or more facility staff is trained to serve as Investigating Officers by completing the required formal OSDT approved DHO Procedures training.
  - b) When the Investigating Officer submits the disciplinary package to the Warden or designee, the Warden or designee will access the completed investigation via the IP51 0 20, Pending Review screen.
  - c) The Warden or designee will review the investigation within 72 hours and
    - i. ***Ensure that this policy was followed, the procedures used were correct, and the offender's rights were protected (5-ACI-3C-22).***
    - ii. Determine whether the case needs to be referred back to the Investigating Officer for further investigation or to protect the offender's rights. If so, the Warden or designee should refer the case back to the Investigating Officer.

- iii. Determine whether to offer counseling in lieu of formal disciplinary charges. If the Warden or designee does offer counseling, 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.
  - iv. Decide whether to charge the offender with a disciplinary offense and, if so, what offense.
  - v. 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.
  - vi. The appropriate authority can authorize an extension of the time if more than 72 hours is needed to charge the offender. Any extension and the reason for it should be documented on the OR14, Comment screen.
- d) If the Warden or designee determines disciplinary action is appropriate,
- i. The Warden or designee will:
    - a. Document formal charges on the IS03, Disciplinary Charges and Pleas screen;
    - b. Summarize the charges, including details of the alleged misconduct, on the OR14, Comment screen. These details should include but are not limited to the who, what, when, where, and how;
    - c. Advise the offender of the charge(s); and
    - d. Appoint a staff representative if requested by the offender on the DC-138B.
  - ii. The disciplinary report will be printed and a copy given to the offender. This constitutes written notice of the disciplinary charges and alleged misconduct, to which the offender is entitled.
  - iii. ***If an offender should later be found not guilty of an alleged violation, the disciplinary report is removed from the offender's electronic files automatically by OPUS (5-ACI-3C-21).***
  - iv. The reason for the sanction(s) or suspension of any part of the sanction(s) shall be recorded on the IS03, Charges and Plea screen, with comments via OR14, Comment screen.
  - v. When an offender pleads guilty to a Class C offense, the sanction will be a suspended Class C sanction.

- vi. Documentation is required for all decisions.
  - a. 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.
  - b. The Waiver of Hearing & Plea of Guilty (batch job #60) and the Offense and Disciplinary Report (batch job #50) should also be printed out and given to the offender.
  - c. The offender shall sign the printed Waiver of Hearing & Plea of Guilty report (batch job #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.
  - d. The signed Waiver of Hearing & Plea of Guilty report (batch job #60) should be retained by the facility, and the offender should be given a copy of the signed report.
- vii. If the offender is unable to sign due to restraints, this will be documented on the Waiver of Hearing & Plea of Guilty report (batch job #60), on the OR14, Comment screen, and a second witness will sign the Waiver of Hearing & Plea of Guilty report (batch job #60) attesting the offender could not sign.
- viii. Documentation is required for all decisions whether following sanctions or deviating from the same.
- e) All Class A charges are referred to the DHO for disposition. The Warden or designee should document the referral on the IS03 screen and comments via the OR14, Comment screen.
- f) For all charges referred to the DHO for a disciplinary hearing, the offender must be given written notice (batch job #50) of the hearing at least 24 hours prior to the hearing. The hearing will be conducted at the facility where the offender is housed after 24 hours of signature unless waived by the offender. This notice must include the following:
  - i. Date the written notice was given to the offender;
  - ii. Name of the staff member who gave the offender the written notice; and
  - iii. The referred disciplinary infraction(s).
- g) Other Requirements:
  - i. 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 or designee shall secure all of the money/excess stamps found

in the offender's possession in accordance with current DAC policy for money and stamps. The disposition is to be included in the Investigating 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 DAC 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 DAC policy regarding authorized items.

- ii. 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 or Designee or DHO shall document disposition of Unauthorized Personal Property in accordance with current DAC policy on the OR14, Comment screen. Balances in the Unauthorized Funds account will be transferred in accordance with current DAC policy if the offender is found guilty.

h) Warden or Designee

i. Is required

- a. to 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;
- b. Appoint a recorder to assist the DHO; and
- c. All relevant parts of the disciplinary report (batch job #50) are completed. This includes but is not limited to the addition of comments to the OR14, Comment screen, which should contain the 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 or deviating from the same.

- ii. May appoint a staff member to present evidence to the DHO at the disciplinary hearing.

4. Disciplinary Hearing Officer (DHO)

a) Appointment

- i. The Deputy Secretary of Institutions or designee shall:

- a. Appoint one or more DHOs per facility to hear and determine the disposition of formal disciplinary charges; and
- b. Ensure that the DHOs are properly trained to perform these duties.
- ii. ***DHOs shall be chosen to provide an impartial disciplinary hearing.***
- iii. ***No person who initiates the disciplinary charges or was a witness in the case may serve as a DHO. A record of the hearing is completed and maintained for a minimum of six months (5-ACI-3C-15).***
- iv. DHO positions are full-time positions and their duties are exclusive.
- b) ***Within three business days after an offender has been charged with an offense, unless an extension is granted, the DHO will:***
  - i. ***Access referrals via IP51 0 21, Pending Review screen;***
  - ii. ***Convene the disciplinary hearing; and***
  - iii. ***Document the proceedings on the IS04, Disciplinary Hearing Officer screen and on the OR14, Comment screen (5-ACI-3C-13).***
- c) ***Within 24 hours prior to the hearing, the offender must be given notice of the hearing (5-ACI-3C-11, 5-ACI-3C-13).***
- d) If, prior to or at the hearing, the offender pleads guilty and waives the hearing, the DHO should document the plea and waiver on the IS04, Disciplinary Hearing Officer screen and on the OR14, Comment screen.

No single offense to which an offender voluntarily pleads and waives a hearing before the DHO shall result in active sanctions greater than the sanction. In the case of multiple charges stemming from a single incident report, the total amount of RHDP or SMDP imposed shall be limited to the maximum allowed for the highest-class offense from this single incident.

- i. The following should be printed out for all offenses:
  - a. The Waiver of Hearing & Plea of Guilty Report (batch job #65); and
  - b. The Offense and Disciplinary Report (batch job #50).
- ii. For Class A offenses, the Record of Hearing Report (batch job #55) should also be printed out.

- iii. The Waiver of Hearing & Plea of Guilt (batch job #65), the Offense and Disciplinary Report (batch job #50), and if applicable, the Record of Hearing Report (batch job #55) should be given to the offender.
  - iv. The offender shall sign the printed Waiver of Hearing & Plea of Guilty report (batch job #65) 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.
  - v. The signed Waiver of Hearing & Plea of Guilty report (batch job #65) should be retained by the facility, and the offender should be given a copy of the signed report.
  - vi. If the offender is unable to sign due to restraints, this will be documented on the Waiver of Hearing & Plea of Guilty report (batch job #65), on the OR14, Comment screen, and a second witness will sign the Waiver of Hearing & Plea of Guilty report (batch job #65) attesting the offender could not sign.
  - vii. Documentation is required for all decisions whether following sanctions or deviating from the same.
- e) DHO Responsibilities
- i. Review the disciplinary package to evaluate all evidence submitted and ensure procedural correctness and the protection of offender rights;
  - ii. Determine if the offender has been diagnosed with mental illness, and if so take the appropriate action;
  - iii. **Arrange for a hearing within three business days after the offender was charged with an offense (5-ACI-3C-05).**
  - iv. Assure the presence of the people and evidence needed for the hearing.
  - v. If necessary, refer the disciplinary back to the Warden or designee for one of the reasons enumerated in policy section IV. B. 6. or IV. D. 2. C) i.
  - vi. Read the charges to the accused offender and obtain a plea of guilty or not guilty;
  - vii. Read to the offender the witness statements and other evidence relating to guilt or innocence;
- Note that 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. [cross reference section on CIs.]
- viii. Give the accused offender the opportunity to make a verbal statement, to refute or explain evidence.

- a. Factors the DHO can consider when determining whether to allow the accused offender to do so include but are not limited to the following:

The evidence or testimony is:

- i. relevant;
- ii. Duplicative or cumulative, and/or
- iii. Not necessary.

- b. The offender failed to make timely request to call witnesses or present physical evidence in advance of the hearing; and
- c. Allowing the offender to call the witness(es) or present physical evidence would be unduly hazardous to the facility's safety or correctional goals.
- d. ***Whenever the presentation of live testimony or physical evidence is denied by the DHO, written statements gathered by the Investigating Officer may be used.***
- e. ***The reason(s) for denial shall be documented on the IS04, Disciplinary Hearing Officer screen, with comments on the OR14, Comment screen (5-ACI-3C-17).***
- ix. Give live witnesses requested by the offender the opportunity to testify either in person or by telephone;
- x. Review all the evidence for referred disciplinary cases, including both direct and circumstantial evidence; determine guilt or innocence; and determine sanctions consistent with this policy.
- xi. Enter a finding of guilty or not guilty, or a dismissal.
  - a. ***The DHO should base the decision 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 (5-ACI-3C-19).***
  - b. The DHO should advise the offender of the decision.
  - c. 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.
  - d. The signed Record of Hearing (Batch Job #55) will be retained and a copy given to the offender.

- e. ***The offender should also be given 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).***
  - f. ***The course of the hearing should be thoroughly documented on the OR14, Comment screen (5-ACI-3C-20).***
- xii. Impose sanctions
- a. Whether the offender pleads guilty or is found guilty, the DHO may impose the sanction under any Class A-C infraction.
  - b. Documentation on the OR14 screen is required for all decisions whether following or deviating from the same.
  - c. The DHO may suspend, in whole or in part, the sanctions for a period not to exceed 90 days.
    - i. The reason for suspending sanctions shall be recorded on the IS04, Disciplinary Hearing Officer screen, via the OR14, Comment screen.
    - ii. The DHO may activate a suspended sanction if a disciplinary conviction occurs during the suspension time period.
  - d. ***Advise the offender that the offender has a right to appeal to the Deputy Secretary of Institutions and that the appeal, if any, must be received by the Deputy Secretary or designee within 15 calendar days from the date of the hearing (5-ACI-3C-23).***
  - e. Complete and distribute the Hearing forms.
  - f. Disciplinary hearings can be in person or virtual.
  - g. ***The disciplinary package shall be maintained for five years (5-ACI-3C-15).***
5. Appeal to the Deputy Secretary of Institutions
- a) The offender may appeal a guilty finding by the DHO in writing to the Deputy Secretary of Institutions. The appeal shall be received by the Deputy Secretary of Institutions within 15 calendar days from the date of the hearing.
  - b) Offenders who plead guilty may not appeal their guilty pleas.

- c) Appeals are only available for offenders convicted of disciplinary offenses. The Deputy Secretary of Institutions or designee cannot initiate an appeal of the DHO's final decision.
  - d) The Deputy Secretary of Institutions or designee will log receipt of the appeal and supporting documents on the IS05, Disciplinary Appeal screen.
  - e) The decision by the DHO shall be final. Such decision can only be approved or disapproved by the Deputy Secretary of Institutions or designee. Thus, the Deputy Secretary of Institutions or designee is authorized to
    - i. Approve the DHO's decision;
    - ii. Order a re-investigation or re-hearing in whole or in part; or
    - iii. Disapprove the DHO's decision and dismiss the case.
  - f) In reviewing the DHO's decision, the Deputy Secretary/Designee should ensure that all procedures outlined in this policy were followed. If procedures were not adequately followed, the Deputy Secretary or designee has the authority to send the matter back to the facility and to direct the correction of deficiencies. This includes directing the DHO to hold another hearing.
  - g) *The Deputy Secretary or designee should complete their review within 30 calendar days of receipt of the offender's appeal.*
  - h) ***The offender should be promptly notified of the results (5-ACI-3C-23).***
  - i) 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).
    - i. The designated facility staff should monitor these transactions daily.
    - ii. 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.
6. Extensions of Time

- a) The Warden or designee may grant additional time for investigating and charging the offender. The Warden or designee will document the approval, rationale, and number of days granted, on the appropriate screens.
- b) The Chief DHO or designee or Assistant Chief DHO may grant in writing additional time for convening the disciplinary hearing. The DHO will document the approval, rationale, and number of days requested and granted, on the IS04, Disciplinary Hearing Officer screen, and OR14, Comment screen.
- c) Extensions may be granted, with limited timeframe as follows:
  - i. Investigating Officers – 6-day maximum granted by Warden or designee
  - ii. Referring Authority – 3-day maximum granted by Warden or designee
  - iii. DHO– 3-day maximum granted by Chief DHO or designee
- d) Additional extensions of time may be requested by and granted to:
  - i. Investigating officers, referring authorities, and/or DHOs for extenuating circumstances.
    - a. Additional time extensions for investigating officers and referring authorities should be made to and granted by the appropriate Region Director or designee.
    - b. Additional time extensions for DHOs should be made via email to and granted by the Assistant Chief DHO or the Chief DHO.
- e) Additional extensions of time may also be granted where:
  - i. Witness(s) or evidence is not available or additional time is necessary to obtain additional information.
  - ii. ***The accused offender is not available because of transfer for security purposes, medical or mental health reasons, or court appearance (5-ACI-3C-14).***
  - iii. Law enforcement or district attorneys seeking to suspend the disciplinary procedures to prevent interference with criminal investigations or prosecutions.

## 7. Use of Offender Confidential Informants

If possible, written and signed statements should be obtained from the informant.

- a) When an informant does provide a written and signed statement the statements can be summarized by the staff member 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 DHO and maintained by the Warden or designee in a confidential file for at least five years. The staff member must sign, date, and provide the time on the staff summary statement.

- b) In the event the informant fears for their safety and is unwilling to write a statement, a staff member should interview the informant and 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 or 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 shall sign, including date and time, the statement, and request the informant to sign or initial.
- c) Before disciplinary action is taken based on information provided through confidential information, the following conditions must be met:
  - i. The staff member writing the summary statement must know the informant, have used them in the past and found them reliable, and received the information from the informant based on the informant's personal or firsthand knowledge. Or
  - ii. The physical evidence or other reliable evidence, including similar statements by other informants, corroborates the informant's information;
  - iii. The staff member shall document in detail the facts that support the reliability of the confidential informant's statement, and that documentation shall be filed with the confidential informant's statement;
  - iv. The DHO shall review the confidential informant's statement and the staff member's documentation about the reliability of the informant. The DHO shall document this review in the Record of Hearing, on the OR14, Comment screen;
  - v. All staff involved in the collection and usage of confidential information shall take steps to ensure the informant's identity is not disclosed.

### C. Offender

#### 1. Offender Rights

- a) The offender has a right to:
  - i. **Written notice of the disciplinary charges, and time and place of hearing, at least 24 hours before the hearing (5-ACI-3C-11, 5-ACI-3C-13);**
  - ii. **Be informed of the alleged misconduct, and to make verbal and/or written statements to the Investigating Officer (5-ACI-3C-11);**

- iii. **Attend the disciplinary hearing unless they waive that right in writing or through their behavior (5-ACI-3C-16);**
  - iv. Request in writing to the Investigating Officer, during the investigation, that:
    - a. Written witness statement(s) or evidence be gathered;
    - b. Evidence or witness(s) be present at the hearing if charges are referred;
    - c. The offender must make these requests on the offender witness form. Failure to make these requests on that form shall be deemed a waiver of such requests; and
    - d. If an offender is unable to write, the offender may request that the Investigating Officer transcribe his oral request(s), which the offender will sign, and date.
  - v. Request the Warden or designee to appoint a staff member to assist the offender at the hearing;
  - vi. Have the evidence or the substance of evidence reviewed with them and have the opportunity to explain or refute the evidence at the disciplinary hearing.
  - vii. Appeal decisions by the DHO to the Deputy Secretary of Institutions.
- b) Violation of the offender's rights by staff may be grounds for dismissal of disciplinary charges.
- c) **The offender may waive specific rights in writing or by overt refusal to cooperate with the disciplinary procedures associated with those rights (5-ACI-3C-12).**
- i. 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.
  - ii. Overt refusal to cooperate 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).
  - iii. A right not waived or refused by the offender is retained by the offender.
  - iv. Refusal to attend a hearing.
    - a. Force should not be used to make an offender attend the hearing.
    - b. When an offender refuses to attend a hearing:

- i. 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; and
      - ii. 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.
    - c. Documentation of Refusal to Attend the Hearing
      - i. The refusal to attend should be documented on the DC-138G, Refusal to Attend Disciplinary Hearing form. The form must be signed by at least two staff persons verifying that they witnessed the offender's refusal.
      - ii. The DHO shall 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.
    - d. When an offender waives their right to a hearing by refusing to attend, the offender does not waive the right to future hearings on future disciplinary charges.
- 2. Offenders and Mental Illness
  - a) All offenders 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
  - b) At any time during the disciplinary process, , an authorized official may address the offender misconduct or otherwise dispose of the disciplinary action if there is information indicating mental illness contributed significantly to the offender's behavior.
  - c) Offenders shall not be issued a rule violation for any of the following reasons:
    - i. The behavior occurred in connection with a cell extraction for the administration of involuntary medication or involuntary medical treatment.
    - ii. 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.

- iii. The behavior occurred in connection with being placed in mental health restraints and or stabilization.

d) When any of these circumstances exist, 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.

#### D. Role of Other Staff

##### 1. Staff Representative

- a) Appointed by the Warden or Designee
- b) An employee who witnessed the alleged misconduct cannot be appointed as a staff representative. If at any time during the disciplinary process it is discovered that the appointed representative witnessed the alleged misconduct, the Warden or designee should be notified so a new representative may be appointed.
- c) The staff representative does not serve as an advocate or assume an adversarial role. The staff representative has no investigative authority.
- d) Responsibilities:
  - i. Assure that the offender has an opportunity to present their version of the facts to the DHO;
  - ii. Assist the offender with understanding the disciplinary process; and
  - iii. Make a written statement about how exactly the representative assisted the accused offender.

##### 2. Behavioral Health Staff and M4-M5 Offenders

- a) Behavioral Health staff must complete the DC-556M for M4 – M5 offender.
- b) The Investigating Officer, Warden or designee, or DHO may refer any offender to Behavioral Health staff when any offender displays obvious signs of mental health decline.
  - i. This referral may occur at any time during the disciplinary process.
  - ii. Behavioral Health staff will conduct an evaluation and complete the DC-556M form within five business days from the date of the referral.

- c) 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:
  - i. Whether the offender’s current mental illness precludes participation in the disciplinary process, in which case the disciplinary hearing should be postponed;
  - ii. Whether factors related to serious mental illness should be considered during the disciplinary process (not an opinion regarding criminal responsibility); and
  - iii. Whether the offender’s mental status contraindicates assignment to Restrictive Housing.
- d) 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).
- e) The DHO/UDHC should follow the findings and recommendations of Behavior Health Staff in parts (C) i. and iii. above unless there are strong overriding security reasons not to do so. These reasons must be clearly documented by the DHO/UDHC on the OR14, Comment screen, and approved by the Warden or designee in consultation with the appropriate Psychology Program Manager or designee. Unresolved disagreements will be referred to the Regional Assistant Director of Behavioral Health, who may consult with the Director for Operations. Information provided in part C) ii. should be considered in combination with other available evidence.

**3. Case Managers and Developmentally Disabled Offenders (5-ACI-3C-18)**

- a) If the offender is identified as Developmentally Disabled, the offender’s Case Manager or another DD trained Case Manager must be notified.
- b) The Case Manager must:
  - i. Assist with:
    - a. Communicating statements; and
    - b. Completion of the disciplinary appeal form should the offender desire to appeal a guilty verdict.
  - ii. Be present when:
    - a. The offender is advised of their rights;
    - b. The offender is charged by the Warden or designee; and
    - c. The DHO or UDHC meets with the offender.

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).

E. Modifications

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

V. REFERENCES

A. 5<sup>th</sup> Edition Standards for Adult Correctional Institutions

5-ACI-3C-01, 5-ACI-3C-02, 5-ACI-3C-03, 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-4A-06, 5-ACI-4A-26, 5-ACI-4B-07

B. NC Gen. Stat. § [148-4](#)

C. [Disciplinary Services Forms](#)

1. DC-138A – Notice to Offender
2. DC-138B – Statement by Witness
3. DC-138F – Request for Extension of Time
4. DC-138G – Refusal to Attend Disciplinary Hearing
5. DC-138T – Offender Rule Violation Ticket
8. DC-556M – Disciplinary Behavioral Health Report \* This form may be accessed at the facility providing mental health services.

D. Disciplinary Appendices

1. Appendix A – Disciplinary Offenses
2. Appendix B – Authorized Disciplinary Sanctions
3. Appendix C – Offense Types
4. Appendix D – Offender Rule Violation Ticket Process
5. Appendix E – Unit Disciplinary Hearing Committee (UDHC)

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