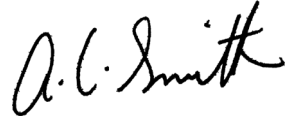




Department of  
Rehabilitation & Correction

SUBJECT: <b>Disciplinary Procedures for the Rules Infraction Board</b>	PAGE <u>1</u> OF <u>8</u>
	NUMBER: <b>56-DSC-02</b>
RULE/CODE REFERENCE: AR 5120-9-06, 5120-9-07, 5120-9-08, 5120-9-09, 5120-9-10; ORC 2967.271	SUPERSEDES: <b>56-DSC-02 dated 03/08/17</b>
RELATED ACA STANDARDS: 5-ACI-3C-02 (4227), 5-ACI-3C-05 (4230), 5-ACI-3C-12 (4237) thru 5-ACI-3C-23 (4248), 5-ACI-4A-06 (4252)	EFFECTIVE DATE: <b>February 3, 2020</b>
	APPROVED: 

## I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

## II. PURPOSE

This policy sets forth requirements for the initiation of and the second stage of the disciplinary process for incarcerated individuals.

## III. APPLICABILITY

This policy applies to all employees and incarcerated individuals who are involved in the disciplinary process for incarcerated individuals.

## IV. DEFINITIONS

**Charging Official** - The employee who issued a conduct report to an incarcerated individual for an alleged rule violation.

**Disciplinary Case Number** - A unique identifier assigned to each disciplinary case that contains the following three elements: (1) abbreviation of the institution's name, (2) two-digit number identifying the year in which the case was generated, and (3) a sequential ordering number (e.g., OSR-00-00000).

**Extended Restrictive Housing (ERH)** - A security classification level represented as "E" in the Departmental Offender Tracking System (DOTS). ERH is the most restrictive security level in the ODRC reserved for incarcerated individuals who constitute the greatest threat to the safety and security of the community, staff, others, and/or the secure operations of a correctional facility.

**Hearing Officer** - The person(s) designated by the managing officer to conduct an informal hearing with an incarcerated individual who received a conduct report.

**Restrictive Housing (RH)** - Housing that separates an incarcerated individual from the general population and restricts the incarcerated individual to their cell twenty-two (22) hours or more per day.

**Rules Infraction Board (RIB)** - A panel of two (2) correctional staff who have been selected by the managing officer and who have received training issued by Legal Services. The RIB has the authority to determine guilt and issue penalties for violations of the incarcerated individual rules of conduct.

**Statement of Loss/Injury** - A written or oral statement that describes the effect of an incarcerated individual's rules infraction on the charging official, other institutional staff, other incarcerated individuals, members of the general public, or against state property.

## **V. POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) that the disciplinary process for incarcerated individuals will be carried out promptly and fairly, allow individuals directly affected by an incarcerated individual's rule infraction to provide input into the disciplinary process, to not punish incarcerated individuals for being seriously mentally ill, and to abide by the Administrative Rules.

## **VI. PROCEDURES**

### **A. Rules Infraction Board Member Certification**

1. No employee may serve as a member of the RIB unless the employee has completed certification training issued by Legal Services. The training may be conducted at the institution by the managing officer's designee using the training developed by Legal Services.
2. A staff member who issued the conduct report, witnessed or investigated the alleged violation cannot serve on the RIB in relation to that violation.
3. The RIB shall consist of two (2) staff persons designated by the managing officer, sitting as a panel. Each panel shall consist of a chairperson who manages the hearing and a secretary who prepares a record of the proceedings. The RIB shall have the authority to determine guilt and impose penalties for violations of the rules of conduct for incarcerated individuals.

### **B. Time of RIB Hearing**

1. Incarcerated individuals must be notified of the time of their RIB hearing by the assigned hearing officer at least twenty-four (24) hours in advance of the RIB hearing. The incarcerated individual may waive this twenty-four (24) hour notice. If the incarcerated individual appears before the RIB prior to twenty-four (24) hours after being advised by the hearing officer and they have not waived the notice requirement, the RIB chairperson shall postpone the hearing until the required notice period is satisfied.
2. Incarcerated individuals charged with a rule violation must be scheduled for a hearing before the RIB as soon as practicable but no later than seven (7) calendar days after the issuance of the conduct report, unless the hearing is prevented by exceptional

circumstances, unavoidable delays, or reasonable postponements. The exceptional circumstances, unavoidable delays, or reasonable postponements must be documented on the electronic audio recording of the RIB hearing and the disposition of the RIB.

3. If the hearing officer has indicated on the Hearing Officer Report (DRC4020) that the incarcerated individual is on the mental health caseload, the RIB chairperson shall determine from the DOTS Portal CLASI screen whether the incarcerated individual is listed as a C1, C2 or “IDD.”

If the incarcerated individual is listed as a C1, C2, or “IDD,” the RIB chairperson shall determine whether a Mental Health Assessment/RIB (DRC2530) or its electronic equivalent has been completed. Pursuant to ODRC Policy 67-MNH-31, Mental Health Procedures for TPU and Death Row Housing Units, the mental health treatment team is required to complete this process in seven (7) calendar days or less and provide the required information to the RIB chairperson. Once Mental Health Assessment/RIB (DRC2530) or electronic equivalent has been received by the RIB, the hearing shall be scheduled. If Mental Health staff have requested to participate to give assistance or provide input into the proceedings, their attendance at the hearing shall be arranged by the RIB and documented on the Record of Proceedings of RIB (DRC4025). No incarcerated individual on the mental health caseload shall be heard by the RIB without the RIB being provided the Mental Health Assessment/RIB (DRC2530) or electronic equivalent.

4. The RIB chairperson may postpone or continue a hearing for a reasonable period and good cause. The period of postponement or continuance and the reason must be documented on the electronic audio recording of the RIB hearing and the disposition of the RIB. Good cause includes:
  - a. Preparation of the incarcerated individual’s defense;
  - b. Illness or unavailability of the incarcerated individual, relevant witness, or charging official;
  - c. Further investigation of factual matters relevant to the charge(s);
  - d. Pending criminal prosecution;
  - e. Unacceptable behavior of the incarcerated individual during the hearing process;
  - f. Incarcerated individual’s refusal to participate in a reasonable manner;
  - g. The incarcerated individual cannot meaningfully participate due to their physical or mental condition; or
  - h. Pending completion of Mental Health Assessment Report/RIB (DRC2530) by Mental Health staff.

#### C. Procedural Requirements of RIB Hearing

1. All hearings of the RIB must be recorded digitally and saved on the institution’s server named by the disciplinary case number. All digital recordings of the hearings must be accessible to the managing officer, designees, and the Director/designees.
2. Incarcerated individuals must have an opportunity to make a statement and present documentary evidence at the RIB hearing in addition to the rights set forth in Administrative Rule 5120-9-08 regarding the discipline process. The incarcerated

individual shall be asked to admit or deny the rule violation. The RIB shall proceed with the hearing in accordance with the incarcerated individual's plea.

3. An incarcerated individual charged with a rule violation must be present at the hearing before the RIB, unless the individual refuses to appear or engages in disruptive behavior around or during the hearing that is a threat to institutional order, safety, or security.
4. If the incarcerated individual refuses to appear, the RIB must document on the disposition of the RIB and on audio that the individual was advised of their right to appear at the hearing, that they refused to appear, and the name of the staff member who advised them and received their refusal.
5. If the incarcerated individual engages in disruptive behavior, RIB must document how their behavior was a threat to institutional order, safety, or security on the electronic audio record and the disposition of the RIB. The managing officer/designee must review any refusal or specific disruptive behavior resulting in an incarcerated individual's absence from the RIB hearing.
6. The RIB must enter automatically a plea of not guilty for the incarcerated individual at any hearing where they are not present as a result of a refusal or specific disruptive behavior.
7. An incarcerated individual may also voluntarily waive a full hearing before the RIB; however, the individual must be present at the RIB hearing to do so. The RIB shall explain to the individual that a waiver will be considered a not guilty plea, but that they will not be able to present a defense. This explanation and an incarcerated individual's decision to waive a full hearing shall be documented on the disposition of the RIB and on audio.
8. The RIB chairperson shall postpone the hearing if the chairperson believes that the incarcerated individual is demonstrating behavior indicative of serious mental illness and shall make a referral to the institutional Mental Health staff for a mental health assessment. The RIB hearing shall only be rescheduled in accordance with the recommendation of Mental Health staff.
9. The RIB panel may, at any time prior to or during a RIB hearing, change the designation of the rule or rules alleged to have been violated based on the conduct report, or testimony or evidence presented at the RIB hearing. The incarcerated individual shall be given timely notice of such a change. Such a change shall be made part of the record of the hearing and noted in the RIB panel's disposition. If the change is made during the RIB hearing, the incarcerated individual may request a reasonable continuance. If the continuance is granted, the RIB hearing may recommence from the point of the continuance.

#### D. RIB Hearing Witnesses

1. The RIB shall review the incarcerated individual's requests for witnesses and advise them of any preliminary determinations made. The RIB may deny a requested witness for relevancy, redundancy, unavailability or security reasons.
2. Witnesses shall testify and be examined in the manner set forth in paragraph (F) of Administrative Rule 5120-9-08.
3. The incarcerated individual charged with a rule violation must not be present during the testimony or consideration of information from a confidential source, or the evaluation of the credibility of a confidential source.
4. The RIB shall evaluate the credibility of each confidential source using the factors set forth in paragraph (H) of Administrative Rule 5120-9-08. The RIB shall also determine whether the entire statement from the source is confidential or whether any of it may be disclosed to the incarcerated individual charged with the violation without disclosing the identity or jeopardizing the safety of the confidential source. The RIB shall record its evaluation on the appropriate form.
5. During the RIB hearing with the incarcerated individual, the victim (institution staff or another incarcerated individual) shall be permitted to either orally testify or provide a written statement (institution staff, another incarcerated individual, or a member of the general public) to the RIB as to the effects that the incarcerated individual's action had on them.
6. The charging official shall appear if requested by the incarcerated individual, if the RIB has questions for the charging official or if the charging official requests to appear and speak at the hearing.
7. The RIB may ask questions of the witnesses or call additional witnesses as necessary. Witnesses may appear in person, by telephone or other electronic means. The RIB may take testimony or receive evidence in any form or manner it deems appropriate.

E. RIB Deliberations

1. The charging official, victim, or other witnesses shall not be permitted to participate in the deliberations of the RIB.
2. The incarcerated individual charged with the rule violation shall not be present during deliberations.
3. The RIB shall consider the effect of any relevant information obtained from available mental health assessments, input provided by the mental health treatment team if a member participated in the hearing and/or the incarcerated individual's mental health caseload status.
4. The decision of the RIB must be based solely on information obtained in the hearing process, including staff reports, the statements of the incarcerated individual charged, and evidence derived from witnesses and documents.

## F. RIB Dispositions

1. The RIB shall make an audio and written record of its determination of guilt.
2. No incarcerated individual shall be found to have violated a rule based solely on past conduct.
3. Past conduct may be considered when determining issues such as credibility and intent; or in considering suitable penalties.
4. Both panel members must concur in a finding of guilt in order to find an incarcerated individual guilty of a rule violation and to impose a disposition. In the event there are conflicting guilty and not guilty votes, the tie shall be broken by a staff member designated by the managing officer, who shall cast the deciding third vote. The managing officer's designee shall vote only after reviewing the oral and written record of the hearing.
5. The managing officer's designee who casts a deciding vote in a RIB proceeding shall not be the same designee performing the administrative review and appeal review functions.
6. If the incarcerated individual is found guilty, the RIB shall also document, in detail, the specific penalties or combination of penalties imposed from paragraph (L) of Administrative Rule 5120-9-08. The penalties may include up to 180 calendar days in Restrictive Housing for a single offense, but a penalty of Restrictive Housing may not be imposed consecutively to another penalty of Restrictive Housing.
7. Upon a finding of guilt, the RIB chairperson shall determine if the individual has been designated an "SB201 inmate" in DOTS. If such is the case, the RIB chairperson shall determine if the disposition should be electronically referred to the Parole Board.
8. If the incarcerated individual is found guilty by the RIB, then the RIB must notify the incarcerated individual that the decision may be appealed to the managing officer or designee within seven (7) calendar days of receipt of the RIB's disposition and must offer the individual a disciplinary appeal form.
9. At any hearing where the incarcerated individual is not present as a result of a refusal or specific disruptive behavior, and where they are found guilty by RIB, then the incarcerated individual must be served with the RIB's disposition and notified that it may be appealed to the managing officer/designee within seven (7) calendar days of receipt. The individual must be offered a disciplinary appeal form.
10. All decisions of the RIB shall be posted by the RIB chairperson on a weekly basis where it is accessible to all institution employees.
11. Unless scanned into or otherwise made part of the electronic record, non-electronic RIB forms must be maintained in the incarcerated individual's RIB file except for confidential information. Documents containing information from confidential sources that are generated in the disciplinary process must be kept separately from the incarcerated individual's files in a properly secured, locked container that is in a location precluding

incarcerated individual access. Access must be limited to employees approved by the managing officer.

12. If the incarcerated individual is found not guilty of an alleged rule violation, this fact will not appear on their disciplinary record.

#### G. Administrative Review and Appeals

1. The managing officer/designee shall conduct administrative reviews on all RIB decisions within fourteen (14) calendar days of the incarcerated individual's receipt of the RIB's disposition and decide any submitted appeal in accordance with paragraphs (N) and (O) of Administrative Rule 5120-9-08.
2. During the administrative review, if an incarcerated individual is charged with an escape related offense (Rules 29-34), the managing officer/designee shall evaluate the totality of the circumstances of the case to determine if the individual's offense indicates there is a substantial risk that they may try to escape/walk away from:
  - a. The secure perimeter of a facility,
  - b. A transport; and/or,
  - c. A camp or halfway house.
3. If the RIB offense indicates a substantial risk of these behaviors, the managing officer/designee shall notify the Bureau of Classification and Reception (BOCR) regional administrator that they recommend the application of the Escape Risk Flag. The BOCR regional administrator shall either approve or disapprove the recommendation. If approved, the BOCR regional administrator shall notify the Bureau of Records Management (BORM) chief who shall ensure that the flag is applied in DOTS Portal. If denied, the BOCR regional administrator shall notify the managing officer/designee in writing with a reason for the denial.
4. If the RIB's decision of guilt is affirmed by the managing officer/designee, then the managing officer/designee must notify the incarcerated individual that the decision may be appealed to Chief Legal Counsel within fourteen (14) calendar days of receipt of the managing officer/designee's decision and must offer the individual a Notice of Disciplinary Appeal – Chief Legal Counsel (DRC4074).

#### H. Appeal to Chief Legal Counsel

1. An incarcerated individual may appeal to the Chief Legal Counsel/designee within fourteen (14) calendar days after being notified of the Decision of the Administrative Review.
2. The Chief Legal Counsel/designee shall render a decision within fourteen (14) calendar days of receipt of the incarcerated individual's appeal.

- I. The Director/designee may review any RIB decision that, in the view of the Director/designee, presents issues that may have significant impact on the operation of the ODRC. This paragraph

does not provide an additional appeal for the incarcerated individual above the appeal to the Chief Legal Counsel.

**Related Department Forms:**

Incident Report	DRC1000
Statement of Loss/Injury	DRC1652
Mental Health Assessment Report/RIB	DRC2530
Conduct Report	DRC4018
Hearing Officer Report	DRC4020
Record of Proceedings	DRC4025
Notice of Disciplinary Appeal - Chief Legal Counsel	DRC4074