



The Prison Disciplinary Process

This booklet explains your rights if you are charged with a disciplinary offence in federal prison.

Contents

Disciplinary offences	3
Informal Resolution	3
The charge	4
The Hearing Process	6
Criminal Charges	7
The first appearance	8
The hearing	10
Penalties	13
Reviewing a disciplinary decision	17
Prisoners' Legal Services	18

Disciplinary offences

You can be charged with a disciplinary offence if a staff member reasonably believes that you have done one of the things listed as an offence in the *Corrections and Conditional Release Act*, and the charge is approved.

Offences include things like disobeying a justifiable order of a staff member or being in possession of contraband. It is also an offence to try to do any of the listed offences or to help someone else commit an offence. There are 21 offences listed in total.¹

If you are charged with a disciplinary offence, you can call Prisoners' Legal Services for help. If you are called to a hearing before you have been able to speak with a legal advocate, ask for an adjournment to get legal advice before your hearing starts. Prisoners' Legal Services can give you advice on how to represent yourself at your hearing, and in some cases might appoint a lawyer to represent you at your hearing.

Informal Resolution

Before you can be charged with an offence, staff must try to resolve the issue informally, if possible.² If the issue cannot be resolved, the warden, or someone authorized by the warden (usually a Correctional Manager), can charge you with a disciplinary offence.³

1 *Corrections and Conditional Release Act* ("CCRA"), s 40.

2 CCRA, s 41(1).

3 CCRA, s 41(2).

“Informal resolution” is a way of resolving a problem other than by charging you. You and the staff or other prisoners involved need to agree to the resolution. It is a good idea to apologize for your actions if you think that it is fair. You should not be charged if the issue was informally resolved.

You can also request that the issue be informally resolved after you have been charged. In fact, an issue can be informally resolved at any point before you are found guilty of the offence.⁴

What you say during informal resolution should not be shared in your hearing if you are later charged, unless you say something in your hearing that contradicts something you said during informal resolution. But your efforts to informally resolve the issue can be shared with the decision-maker during sentencing.⁵

If you are Indigenous, you can ask that an Elder or Aboriginal Liaison Officer be involved in informal resolution.⁶ If you feel that CSC has not considered informal resolution in your case, you can call Prisoners’ Legal Services for advice.

The charge

If you are charged with an offence, staff must give you a written notice of the charge.⁷ You should get this notice within 2 working days of the charge being approved.⁸

4 *Laplante v Canada (Attorney General)* 2003 FCA 244; Correctional Service Canada, “Commissioners’ Directive 580: Discipline of Inmates” (2015-10-26), paragraph 20 [CD 580].

5 CD 580, para 38.

6 CD 580, para 5.

7 CCRA, s 42.

8 CD 580, para 17.

You have the right to know the case against you and to prepare a defence to the charge. The notice must tell you:

- whether the charge is minor or serious;⁹
- what you did that led to the charge, including the time, date and place of the alleged offence;
- a summary of the evidence that supports the charge; and
- the time, date and place of the hearing.¹⁰

You must also be given any observation reports or other documents that will be given to the chairperson of the hearing.¹¹

You should be charged with a **serious** offence **only** if you are accused of:

- a serious breach of security;
- violence;
- acts that are harmful to others; or
- repeatedly breaking rules.¹²

The person who decides whether you should be charged with a minor or serious offence should not have anything to do with the incident that led to the charge.¹³

9 CCRA, s 42.

10 *Corrections and Conditional Release Regulations* (“CCRR”), s 25.

11 CD 580, para 17.

12 CD 580, Annex A “Definitions” - Serious Offence.

13 CD 580, para 10.

You should only be charged with one offense from any one incident, unless you did two or more completely different acts during the incident that can give rise to different charges. For example, if you refuse to give a urine sample when asked, you should not be charged both with “disobeys a justifiable order” **and** “refuses to provide a urine sample when demanded”.¹⁴ If you are charged with more than one offense from one incident, all the charges should be heard together in one hearing.¹⁵

If you are charged with a serious disciplinary offence, you have the right to consult a lawyer and have a lawyer represent you at your hearing.¹⁶ You can call a private lawyer, or you can call Prisoners’ Legal Services. In some cases, we might be able to provide a legal aid lawyer to represent you. But having the right to a lawyer does not mean you have the right to a *free* legal aid lawyer.

The Hearing Process

Minor disciplinary charges are decided by the Warden, or someone authorized by the Warden to hear the charge (usually a Correctional Manager). **Serious** disciplinary charges are decided by an Independent Chairperson.¹⁷

You have all of the same rights to a fair hearing in minor court as you do in serious court, other than a right to have a lawyer represent you at your hearing.

14 CCRR, s 26; CD 580, para 12.

15 CCRR, s 30(1).

16 CCRR, s 31(2).

17 CCRR, s 27.

Criminal Charges

You can be charged criminally for the same incident that led to your institutional charge. Things you say in your institutional hearing cannot be used as evidence against you in your criminal proceeding.* But if you give different information in the two hearings you could be charged for perjury. If the incident could lead to criminal charges, talk to your criminal lawyer before proceeding with the institutional hearing, especially if you are charged with a serious offence.**

* *Haines v Kingston Prison for Women* (1990), 40 FTR 76

** CD 580, paras 11, 14, 15

In either case, the decision-maker must make sure the hearing is fair to you.¹⁸ This means that you must know what you are accused of, know the evidence against you, and be given a chance to respond to the evidence and give your side of what happened. The decision-maker must look at both sides. You must also be provided with an interpreter if needed.¹⁹

When you attend serious disciplinary court, there will be a number of people present. The decision-maker at the hearing is the Independent Chairperson, or “ICP.” The ICP is supposed to be independent from CSC. A Correctional Manager will act as the hearing advisor for CSC,

18 *Canada (Correctional Service) v Plante*, [1995] FCJ No 1509, para 6.

19 CD 580, para 21.

and may give the ICP documents or advise the ICP on sentencing if you are found guilty. The court clerk will also be present. The court clerk assists the ICP and the hearing advisor, organizes the hearing schedule, provides documents and keeps the record of the hearing.

Every time you appear in disciplinary court, be sure to ask that the appearance or hearing is being recorded before the proceeding starts.

The first appearance

Your notice should include the date and time of your first appearance. This should be within 10 working days of the charge being laid.²⁰ You must be given at least 3 days' notice of the charge in writing before the first appearance, unless you agree to less notice.²¹

At the first appearance, the ICP should tell you what you are charged with and give you a brief description of the incident. The ICP can change a serious charge to a minor charge, so you may want to ask the ICP to consider doing this at the start of the hearing if the alleged act was not a serious breach of security, violent, harmful to others, or a repeated breaking of rules.²²

The ICP should make sure that you understand the charge. They will then ask you to plead “guilty” or “not guilty.”²³ If you do not enter a plea, you should be considered to have pleaded “not guilty.”

20 CD 580, para 26.

21 CCRR, s 28.

22 CCRR, s 30(3); CD 580, para 29.

23 CD 580, para 33.

If you have not had a chance to call a lawyer or Prisoners' Legal Services, you can ask for an adjournment before you enter your plea. If you are charged with a serious disciplinary offence, it is your legal right to have a reasonable opportunity to consult with legal counsel.

If the ICP refuses to adjourn the hearing to let you call for legal advice, you should say clearly that you object to going ahead with the hearing for the recording, and do not talk about your charge. Exercise your right to remain silent.

If you decide to enter a “guilty” plea, the ICP should summarize the evidence in the case and provide you an opportunity to explain your side and say what sanction (sentence or penalty) you think is fair.²⁴ The ICP will then decide what sanction you will get. See the section on sanctions later in the booklet for more information.

If you enter a “not guilty” plea or do not enter a plea, you have the right to a full hearing. If you need time to get ready for your hearing, or you need to arrange for your witnesses to appear at your hearing, you should ask for an **adjournment**.

You also have the right to question any witnessing officers at your hearing. If these officers are not present at your first appearance, you can ask the ICP to adjourn the hearing to a date when these officers are available. If a witness who is needed for the hearing will not be able to attend even after an adjournment, or if the adjournment will cause a long delay, you should ask the ICP to dismiss the charge. You can argue that the institution cannot prove their case without the officer, that you cannot put forward your defense without being

24 CD 580, para 33.

able to question the officer, or that your ability to defend yourself is weakened by the long delay.²⁵

You should not be asked to talk about your charge until you have entered a plea. If you have not entered a plea, do not discuss your charge. State clearly for the recording that you object to going ahead with your hearing and remain silent.

The hearing

You can call Prisoners' Legal Services for advice on how to present your defence to a charge or how to make submissions about fair sanctions (sentencing). An advocate will review your documents and discuss the charge with you to help you with your defence. In some cases, Prisoners' Legal Services can provide a legal aid lawyer to represent you at your hearing.

It is best to ask that CSC present its evidence **before** you give your side, so that you know what you have to respond to. You have a right to cross-examine (question) the officers before you start your defence. If you give your evidence first, you will not know the case against you.

CSC must prove that you are guilty of the charge. This means that the "onus" is on the institution to give enough evidence to prove your guilt. If CSC does not give enough evidence to prove your guilt, you might decide not to give any evidence.

25 CD 580, para 40.

If you choose to give evidence at your hearing, you can:

- question witnesses through the person conducting the hearing;
- present evidence in your defence;
- call relevant witnesses to give evidence in your defence;
- examine evidence and documents; and
- make submissions during the hearing, including on sentencing.²⁶

The rules from a criminal trial in court do not apply, so you do not need to meet any special rules to put in your evidence. The decision-maker should let in any evidence from you if it is reasonable or trustworthy.²⁷

The decision-maker may ask you questions during the hearing. You do not have to answer the questions, but it could help your case to explain your side of what happened.

In order to find you guilty, the decision-maker must be satisfied “beyond a reasonable doubt” that you are guilty of the offence, based on the evidence presented at your hearing.²⁸ This means the decision-maker must be sure that you did the act that is written in the charge notice, and that it took place at the time, date and place, and against the person alleged in the notice. They should only find you guilty if there are no other reasonable explanations for what happened.

CSC also has to prove that you did the act on purpose. For example, CSC has to prove that you *intended* to threaten or *knowingly* had

26 CCRR, s 31.

27 CD 580, para 37.

28 CCRA, s 43(3).

contraband in your cell. There is no way to prove what was going on in your head, so the decision-maker might infer your intent from the situation and what was done or said. You might want to explain or give other evidence that you did not have that intention or that there are other reasonable explanations.²⁹

You can call Prisoners' Legal Services for advice about your defence before your hearing.

If a lawyer is representing you at your hearing and they are not present for your hearing, you can ask for an adjournment to a time when your lawyer can attend.

You have the right to a hearing within a reasonable time. If CSC delays your hearing unreasonably, you can ask for your charge to be dismissed. If there has been a long delay in your case, you can call Prisoners' Legal Services for advice.

You have the right to be present in person for all of your hearing, including any discussion about the penalty. The institution can deny your right to attend the hearing only if your presence would jeopardize the safety of a person at the hearing, or you seriously disrupt the hearing. You can also choose not to attend your hearing.³⁰

If you are asked to leave the hearing room at any point during the hearing process, you should clearly state that you have a right to be present unless any of the above reasons are given.

29 *Schmit v Canada (Attorney General)*, 2016 FC 1293 at paras 46-47; *Campbell v Canada (Attorney General)*, 2017 FC 971 at para 19.

30 CCRA, s 43.

Penalties

If you are found guilty of the offence, the decision-maker can give you a penalty, or sanction, for the offence. This can include one or more of the following:

- a warning or reprimand;
- a loss of privileges;
- an order to make restitution (to pay for damage you caused);
- a fine;
- extra duties; or
- segregation for up to 30 days (only for a serious offence). The government is changing the law about segregation. Segregation might not be allowed as a penalty for a disciplinary conviction soon.³¹

The decision-maker must consider the following before giving you a penalty:

- the seriousness of the offence;
- how responsible you are for committing the offence;
- the least restrictive measures that are appropriate in your case;

31 CCRA, s 44(1); *BCCLA and JHSC v Attorney General of Canada*, 2018 BCSC 62; Bill C-83, *An Act to Amend the Corrections and Conditional Release Act and another Act*, 1st Sess, 42nd Parl, 2018.

-
- any circumstances that would warrant a more severe or less severe penalty, such as your institutional behaviour;
 - what penalties were given to other prisoners in similar cases;
 - whether you have been given any other penalties for other offences, to be sure that the penalties together are not too harsh;
 - any measures taken by CSC about the offence before the hearing;
 - any recommendations about the appropriate penalty made during the hearing;³²
 - your Indigenous background, how it has affected you, and culturally appropriate or restorative options (see PLS’ booklet: “Aboriginal Prisoners’ Legal Rights”);³³and
 - how the penalty would impact your Correctional Plan.³⁴

If you are Indigenous, the decision-maker should also consider your Indigenous Social History and take your special needs as an Indigenous person into account before deciding on the penalty or sanction for the offense. They should ensure that their sentence does not increase systemic discrimination against you.³⁵

32 CCRR, s 34.

33 CCRA, s 4(g); CCRR, s 34; *Ewert v Canada*, 2018 SCC 30 at paras 57-59 (“*Ewert*”); *Twins v Canada (Attorney General)*, 2016 FC 537 at paras 57, 64; CD 580, Annex A: Definitions – Aboriginal social history.

34 CD 580, para 42.

35 CCRA, s 4(g); *R v Gladue*, [1999] 1 SCR 688 at paras 67-68; *Ewert v Canada*, 2018 SCC 30 at paras 57-66.

You can ask that staff come to your sentencing so that they can speak about these factors. This could include Elders, mental health professionals, or other institutional staff.³⁶

At the time of sentencing, the ICP should also be told about any private family visits that you have scheduled.³⁷

There are limits on how certain penalties can be used, including:

- **Segregation:** The ICP can order you to serve time in segregation for up to 30 days for a single serious disciplinary offence.³⁸ If you have already been sentenced to time in segregation for another disciplinary offence, the ICP must tell you if your new time in segregation will follow your current sentence, or if the new sentence will be served on the same days that you are already in segregation. Your total time in disciplinary segregation (the combination of your sentences) cannot be more than 45 days.³⁹
- **Extra Duties:** The decision-maker can order you to perform extra duties as a sanction for a disciplinary offence. These duties will be unpaid and done in your free time. The ICP must tell you the types of duties you must do and when they must be finished. You can be ordered to do up to 10 hours of extra duties for a minor disciplinary offence and up to 30 hours for a serious disciplinary offence.⁴⁰
- **Loss of Privileges:** The only kinds of privileges that a decision-maker can limit are privileges that are recreational

36 CD 580, para 43.

37 CD 580, para 44.

38 CCRA s 44(f).

39 CCRR, s 40(1) &(2).

40 CCRR, s 39.

in nature, if it would not be contrary to your correctional plan.⁴¹ You can lose up to 7 days of recreational privileges for a minor disciplinary offence and up to 30 days for a serious disciplinary offence.⁴² Examples of privileges that may be affected are out-of-cell exercise time, television and electronic games, hobby crafts, music and musical instruments, and opportunities to associate with others.⁴³

- **Restitution:** The decision-maker can order you to pay the cost of repairing property that was damaged or lost because of the disciplinary offence.⁴⁴ You can be ordered to pay up to \$50 for a minor disciplinary offence or up to \$500 for a serious disciplinary offence.⁴⁵
- **Fine:** The decision-maker can order you to pay up to a \$25 fine for a minor disciplinary offense, and up to \$50 for a serious offense.⁴⁶

The decision-maker must consider your ability to pay a fine or restitution before ordering these sanctions. A fine or restitution will be taken out of your earnings.⁴⁷ 25% of your income will be taken from each deposit into your account until the fine or restitution is paid, unless the decision-maker specifies a higher or lower amount to be taken out of each deposit.⁴⁸ Any outstanding debts will be taken out of your account when you are released.⁴⁹

41 CCRR, s 35(2).

42 CCRR, s 35(1).

43 CD 580, Annex D.

44 CCRR, s 36(2).

45 CCRR, s 36(1).

46 CCRR, s 37.

47 CCRR, s 38(3).

48 CD 580, para 47.

49 Correctional Service Canada, "Commissioner's Directive 860:

The decision-maker can give you a “suspended sentence”. This means that if you do not commit any other disciplinary offenses for a certain number of days, you will not face the penalty for this offense. The maximum time that the sentence can be suspended for is 21 days for a minor offense and 90 days for a serious offense. If you are found guilty of another offence within that time, then you will face the penalty for both offenses.⁵⁰

Reviewing a disciplinary decision

If you were found guilty of a disciplinary offence or were sentenced unfairly, you might be able to have the decision overturned. Minor court decisions can be grieved through the CSC grievance process. ICP decisions in serious court can be judicially reviewed by a judge in the Federal Court of Canada.

If you would like to apply for a judicial review of the ICP’s decision, you must request the hearing recording right away. CSC is required to record disciplinary hearings and you have the right to access the recording.⁵¹ Request a copy of the recording at the end of your hearing. You should also submit a written request to the Court Clerk for a copy of the recording as soon as you can.

It is best to consult a lawyer about judicially reviewing disciplinary decisions. You can call the Legal Services Society Appeals Department at **604-601-6085**, or through the Legal Services Call Centre at **1-888-839-8889**. Legal Services Appeals will decide if there is a good legal argument for judicial review, and might appoint a lawyer to your case.

Offender’s Money” (2014-10-27), para 38.

50 CCRR, s 41.

51 CCRR, s 33.

Judicial review applications must be made within 30 days. If you want to apply for judicial review of a disciplinary decision, you must request your hearing tape and contact the Legal Services Society right away.

The Warden has the authority to cancel a disciplinary sanction for rehabilitative or humanitarian reasons.⁵² If you would like a review of your sentence for these reasons, you can write directly to the Warden.

If new evidence comes up after you are found guilty of a serious offense, or you have evidence that there was a problem with the hearing procedure, you can ask the ICP to re-open the hearing.⁵³

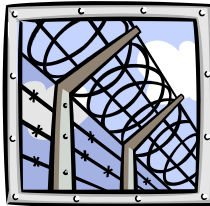
Prisoners' Legal Services

If you are a prisoner in British Columbia, you can contact Prisoners' Legal Services for legal help with prison problems. For assistance, you must have a referral from the Legal Services Society. Contact their call centre at 1-888-839-8889. Once you have a referral, you can call Prisoners' Legal Services directly at 1-866-577-5245. Prisoners' Legal Services phones are open Monday to Friday from 9:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 3:00 p.m.

52 CCRR, s 41(3).

53 CD 580, para 55.

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



Produced by Prisoners' Legal Services with funding from the Law Foundation of British Columbia.

A project of the West Coast
Prison Justice Society

December 2018

