

*Offense Codes and Penalty Guidelines
Governing FBI's Internal Disciplinary Process*



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PREAMBLE TO OFFENSE CODES AND PENALTY GUIDELINES **GOVERNING FBI'S INTERNAL DISCIPLINARY PROCESS**

General Principles: The FBI's Offense Codes and Penalty Guidelines provide general categories of misconduct for which employees may be disciplined. These Offense Codes and Penalty Guidelines, which were amended and became effective on 01/01/2017, supersede the original FBI Offense Codes and Penalty Guidelines adopted on 11/01/2004, and other previously published disciplinary tables.

Organization of the Offense Codes/Penalty Guidelines: The FBI's Offense Codes (Tab A) and Penalty Guidelines (Tab B) are arranged under five main headings:

1. **Investigative Misconduct:** source misconduct and investigative deficiencies, such as the improper handling of evidence and misconduct related to judicial proceedings.
2. **Integrity/Ethical Misconduct:** falsification of FBI documents, lack of candor, misuse of position, failure to cooperate in an administrative inquiry, obstruction of an administrative inquiry, and violation of ethics regulations and guidelines.
3. **Property-Related Misconduct:** loss of government property, misuse of FBI computers or databases, misuse of government credit cards, misuse of government vehicles and other government property, loss of weapon, and loss of credentials/badge.
4. **Illegal/Criminal Conduct:** assault, drug offenses, DWI/DUI, fraud, theft, other illegal interference with property rights, indecent/lascivious acts, other felony and misdemeanor offenses, and the unauthorized disclosure of information. It is not necessary that criminal charges be filed against the employee or that the employee be found guilty of criminal charges for the employee to be subject to disciplinary action.
5. **General Misconduct:** alcohol/substance abuse on duty, failure to report, supervisory dereliction, unwelcome sexual conduct, discrimination, retaliation, disruptive behavior, failure to honor just debts, improper relationship with a subordinate, misuse of weapons, insubordination, security violations, unprofessional conduct, and the violation of miscellaneous rules and regulations.

Purpose and Progressive Nature of Discipline: Disciplinary penalties are imposed to correct behavior and send the message to our workforce, our Congressional overseers, and the general public that misconduct will not be tolerated at the FBI. The FBI's disciplinary process serves to ensure adherence to the Bureau's rigorous standards of conduct. Discipline at the FBI is progressive, meaning that additional acts of misconduct are treated with increasing severity, especially, but not exclusively, when the acts of misconduct are similar in nature. Certain offenses are so egregious (such as theft or lack of candor under oath) that a single act is sufficient to warrant an employee's removal.

Penalty Ranges: The FBI's Penalty Guidelines are expressed in terms of a Standard Penalty, a Mitigated Range, and an Aggravated Range. Suspensions are imposed in *calendar* days, not *work* days. As a general rule, all suspensions start on a Monday. Accordingly, a 7-day suspension will start on Monday morning and be completed the following Sunday night. Although demotion is not specifically designated as a penalty in the Guidelines, demotion may be assessed in appropriate cases involving serious misconduct. In addition, OPR may refer a matter to other Divisions for

appropriate action. For example, a matter may be referred to the Finance Division for the recoupment of monies owed to the government, to the Human Resources Division for consideration of a loss-of-effectiveness transfer, and to the Health Services Unit for a fitness-for-duty examination or medical evaluation.

Factors Considered by OPR in Determining a Penalty: Many factors are considered by OPR in determining the penalty to impose, including the nature of the misconduct and its consequences, as well as the position and record of the employee. Of particular importance are the mitigating and aggravating factors in each case.

- *Mitigating factors* include, but are not limited to, effective efforts to remedy the wrongdoing, limited work experience, and a long period of unblemished service.
- *Aggravating factors* include, but are not limited to, the egregiousness of the misconduct, supervisory or high-grade status, prior disciplinary record, threat to the safety of others, prior warning/advisement not to commit the misconduct, actual or potential harm (including actual or potential harm to the FBI's reputation), repetitive misconduct within the same disciplinary inquiry, and the failure to report. Consideration of the egregiousness of the misconduct as an aggravator, including facts or circumstances cited to substantiate the allegation, is not impermissible "double counting."

The aggravating and mitigating factors listed above are illustrative, not exhaustive, and the Bureau retains the discretion to consider any factors relevant to the case. The listing of an aggravator or mitigator under a particular Offense Code in the Penalty Guidelines does not preclude use of that factor under another Offense Code. Something considered mitigating in one case may be aggravating in another. For example, limited experience may lessen the severity of an employee's conduct in one case, but aggravate it in another, such as a case involving multiple instances of misconduct during a short tenure.

The aggravating and mitigating factors present in a particular case may warrant selecting a penalty outside the range of penalties provided herein -- *i.e.*, deviating from the Guidelines. Only the Assistant Director (AD) of the Office of Professional Responsibility (OPR), the Director, or the Director's designee has the authority to deviate from the Penalty Guidelines and must specify the reasons for doing so in writing. Cases in which the AD, OPR deviates from the Penalty Guidelines are, by definition, aberrational, and they may not be cited or relied on as precedent to assess penalties in future cases. The AD, OPR has authority to designate any decision as aberrational and without precedential weight. Such designations will be recorded in the Case Management System. The Director has the authority to review and amend any disciplinary decision, either in favor of or to the disadvantage of an employee, if the Director considers it necessary to correct an injustice or to prevent harm to the FBI. This authority does not constitute an additional level of appeal for an employee, it will not be routinely exercised, and it remains the sole province of the Director.

Douglas Factors: OPR also considers "Douglas Factors" prior to deciding an appropriate disciplinary sanction. Not all "Douglas Factors" are pertinent to every case. OPR balances the relevant ones in the case before it. The "Douglas Factors" are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Combination of Penalties: In cases where more than one offense is substantiated against an employee, the penalties for the respective offenses will normally be added together, with appropriate aggravation, up to and including dismissal, for repetitive misconduct within the same inquiry. However, in adjudicating cases, OPR is careful to not assess multiple penalties where the substantiated charges are essentially restatements of the same act of misconduct.

Senior Executive Service (SES) Suspensions: By federal regulation, members of the SES may not receive a disciplinary suspension of less than 15 days. 5 C.F.R. §752.601. Accordingly, where the Guidelines indicate a suspension of one to fourteen days for an offense, that sanction cannot be imposed on an SES employee. When OPR concludes that a non-SES employee would have received a punishment of more than a three-day suspension, but less than a 15-day suspension, an SES employee will receive a minimum of a 15-day suspension. If a non-SES employee would have received a one-day to three-day suspension in a given case, an SES employee may receive either a letter of censure or a minimum of a 15-day suspension, as determined by OPR in weighing the facts and circumstances of the case against the heightened behavioral and managerial expectations associated with SES personnel.

Offense Codes Applicable to FBI's Internal Disciplinary Process

- The listed offenses apply to all FBI personnel, regardless of position or title.
- The term “on duty” refers to the period when an employee is performing an official duty or acting in an official capacity, whether or not the employee is being paid at the time (*e.g.*, misconduct occurring while an employee is driving a Bureau vehicle home at the end of the employee’s shift is considered “on duty” for administrative disciplinary purposes.)
- See the Penalty Guidelines (Tab B) for an expanded discussion of applicable penalties, including examples of mitigating and aggravating factors for various offenses.

1. INVESTIGATIVE MISCONDUCT

Offense Code 1.1
Asset/CW/Informant/CHS
(Source) - Failure to Obtain
Authorization or Report
Criminal Activity

Knowingly or recklessly failing to obtain proper authorization for a source’s participation in otherwise illegal activity; or failing to timely inform the appropriate FBI official of a source’s unauthorized criminal activity about which the employee knows, or reasonably should know, based upon all available information. Criminal activity includes all violations of the law.

Mitigated: Letter of Censure - 5 Days

Penalty: 7 Days

Aggravated: 10 Days - Dismissal

Offense Code 1.2
Asset/CW/Informant/CHS
(Source) - Improper Financial
Relationship

Without authorization, directly or indirectly loaning money to or receiving money from a source; giving a favor/gift to or accepting a favor/gift from a source; paying a source for a favor, gift, or service; or attempting to obtain any favor, gift, or service from a source. This includes financial benefits, favors, and gifts conferred upon an employee’s relatives or associates due to the employee’s relationship with the source.

Mitigated: Letter of Censure - 5 Days

Penalty: 7 Days

Aggravated: 10 Days - Dismissal

Offense Code 1.3
Asset/CW/Informant/CHS
(Source) - Improper Intervention
on Behalf Of

Without authorization, aiding, protecting, harboring, or shielding a source, or any attempt to aid, protect, harbor, or shield a source from law enforcement or legal obligations.

Mitigated: Letter of Censure - 5 Days

Penalty: 7 Days

Aggravated: 10 Days – Dismissal

<p>Offense Code 1.4 Asset/CW/Informant/CHS (Source) - Improper Personal Relationship</p>	<p>Engaging in a social, romantic, or intimate relationship or association with a source. Social relationships/associations involve any contact beyond that reasonably necessary for the completion of an investigative mission or beyond that which is authorized. An employee can be disciplined for: (1) engaging in an improper personal relationship, or (2) engaging in unauthorized conduct that would cause a reasonably prudent person to believe that there is an improper relationship. See FBI’s “Personal Relationships Policy” for additional information.</p> <p><i>Mitigated: Letter of Censure - 5 Days</i> <i>Penalty: 7 Days</i> <i>Aggravated: 10 Days – Dismissal</i></p>	
<p>Offense Code 1.5 Asset/CW/Informant/CHS (Source) - Violation of Operational Guidelines and Policies, Other</p>	<p>Knowingly or recklessly failing to operate or obtain proper authorization to operate long-term, high-level, privileged or media-affiliated confidential informants or other informants who are subject to special approval requirements in accordance with FBI or Department of Justice (DOJ) guidelines or policies; or knowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy that governs the handling of informants, assets or cooperating witnesses, in a manner not specifically delineated in any of the other “Asset/CW/Informant/CHS” Offense Codes provided herein.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 30 Days</i></p>	
<p>Offense Code 1.6 Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government</p>	<p>Failing to properly seize, identify, package, inventory, verify, record, document, control, store, secure, or safeguard documents or property under the care, custody, or control of the government, including evidence, non-evidentiary items, and seized property held by the government. This offense includes, but is not limited to, the unauthorized or improper use, loss, damage, destruction, or improper disposal of documents or property, to include ELSUR (electronic surveillance) materials.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 30 Days</i></p>	
<p>Offense Code 1.7 Investigative Deficiency - Misconduct Related to Judicial Proceedings</p>	<p>During the investigative or litigative phases of a criminal or civil case, including a proceeding in a FISA Court or similar tribunal, engaging in conduct that dishonors, disgraces, discredits, or otherwise brings the integrity or reliability of the FBI into question. This does not apply to conduct involving falsification covered under Offense Code 2.6, Lack of Candor - Under Oath.</p> <p><i>Mitigated: Letter of Censure - 5 Days</i> <i>Penalty: 7 Days</i> <i>Aggravated: 10 Days - Dismissal</i></p>	
<p>Offense Code 1.8 Investigative Deficiency - Violation of Operational Guidelines and Policies, Other</p>	<p>Knowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy not specifically delineated in any of the other “Investigative Deficiency” Offense Codes provided herein.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 30 Days</i></p>	

3. PROPERTY-RELATED MISCONDUCT

<p>Offense Code 3.1 Damage, Destruction, or Improper Disposal of Government Property</p>	<p>Without proper authority, damaging, destroying, or disposing of any government document(s) or property. This does not include the destruction or wrongful disposal of the type of property and documents covered in 1.6, Investigative Deficiency - Improper Handling of Document(s) or Property.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 14 Days</i></p>
<p>Offense Code 3.2 Loss of Badge and/or Credentials</p>	<p>Loss or theft of an FBI Special Agent Badge or FBI credentials resulting from employee's failure to adequately safeguard the property. Absent compelling circumstances, the first loss/theft of such items will not be referred for disciplinary action, but rather will be referred to the Security Division for whatever action is deemed appropriate.</p> <p><i>Mitigated: N/A</i> <i>Penalty: Letter of Censure</i> <i>Aggravated: 3 - 10 Days</i></p>
<p>Offense Code 3.3 Loss of Government Property or Document(s) of a Sensitive/Valuable Nature</p>	<p>Loss or theft of government property, including documents, resulting from the employee's failure to adequately safeguard an item, deemed by an appropriate authority to be of a sensitive or valuable nature. This does not include the loss of the type of property and documents covered in 1.6, Investigative Deficiency - Improper Handling of Document(s) or Property. "Loss" includes a significant temporary loss of control or inability to locate, including temporary losses that raise safety or operational concerns.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 14 Days</i></p>
<p>Offense Code 3.4 Loss of Weapon</p>	<p>Loss or theft of a Bureau-issued or Bureau-approved weapon resulting from employee's failure to adequately safeguard the property. "Loss" includes a significant temporary loss of control or inability to locate, including temporary losses that raise safety or operational concerns.</p> <p><i>Mitigated: N/A</i> <i>Penalty: 3 Days</i> <i>Aggravated: 5 - 14 Days</i></p>
<p>Offense Code 3.5 Misuse of FBI Database(s)/ Unauthorized Access</p>	<p>Without authorization, accessing an FBI or other government database or record. This does not include the disclosure of such information to others, which is covered in 4.9, Unauthorized Disclosure - Classified/Law-Enforcement Sensitive/Grand Jury Information or 4.10, Unauthorized Disclosure - Sensitive Information.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 14 Days</i></p>
<p>Offense Code 3.6 Misuse of Government Computer(s)</p>	<p>Using a government computer for personal, unofficial, or unauthorized use. This does not apply to <i>de minimis</i> use, where the cost to the government is negligible, as long as the use is not otherwise objectionable (e.g., pornography). See 5 C.F.R. §2635.704; 28 C.F.R. §45.4.</p> <p><i>Mitigated: N/A</i> <i>Penalty: Letter of Censure</i> <i>Aggravated: 3 - 14 Days</i></p>
<p>Offense Code 3.7</p>	<p>RETIRED</p>

<p>Offense Code 3.8 Misuse of Government Charge Card - Personal Use</p>	<p>Using, or permitting the use of, a Government Charge Card (GCC) for personal purchases, rentals, services, and/or cash advances; failing to pay the balance in a timely manner; or failing to apply a voucher reimbursement to the corresponding GCC debt.</p> <p><i>Mitigated: Letter of Censure - 1 Day</i> <i>Penalty: 3 Days</i> <i>Aggravated: 5 Days - Dismissal</i></p>	
<p>Offense Code 3.9 Misuse of Government Vehicle or Aircraft, Non-Title 31</p>	<p>Using, or permitting the use of, a government owned or leased passenger motor vehicle or aircraft, or the equipment therein, regardless of the employee's intent, for an unofficial purpose; or transporting or allowing another to transport an unauthorized passenger in a motor vehicle or aircraft. See 41 C.F.R. §§301-10.201 and June 2015 FBI Government Vehicle Use Policy Guide for additional information.</p> <p><i>Mitigated: Oral Reprimand - 3 Days</i> <i>Penalty: 5 Days</i> <i>Aggravated: 7 - 14 Days</i></p>	
<p>Offense Code 3.10 Misuse of Government Vehicle or Aircraft, Title 31</p>	<p>Knowingly, or with reckless disregard, using, or permitting the use of, a government-owned or government-leased passenger motor vehicle or aircraft for an unofficial or purely personal purpose (i.e., a purpose other than the facilitation of government work or the execution of the FBI's mission). See 31 U.S.C. §§1344 and 1349(b); 41 C.F.R. §301-10.201 and June 2015 FBI Government Vehicle Use Policy Guide for additional information.</p> <p><i>Mitigated: N/A</i> <i>Penalty: 30 Days</i> <i>Aggravated: 35 Days - Dismissal</i></p>	
<p>Offense Code 3.11 Misuse of Government Property, Other</p>	<p>Using government property, not specifically delineated in another Offense Code, for personal, unofficial or unauthorized use. This does not apply to <i>de minimis</i> use, where the cost to the government is negligible and the use is not otherwise inappropriate. See 5 C.F.R. §2635.704 and 28 C.F.R. §45.4.</p> <p><i>Mitigated: Oral Reprimand</i> <i>Penalty: Letter of Censure</i> <i>Aggravated: 1 – 10 Days</i></p>	

4. ILLEGAL/CRIMINAL CONDUCT

An employee does not have to be arrested, criminally charged, or convicted for the employee to be found in violation of the FBI's Illegal-Criminal Conduct offenses set forth below. However, the involvement of law enforcement or an employee's arrest, charging, or conviction constitute aggravating factors to be considered by OPR in imposing the appropriate disciplinary penalty.

Offense Code 4.1 Assault/Battery	Attempting or offering to inflict bodily harm on another using unlawful force or violence; or inflicting bodily harm on another using unlawful force or violence.	
	<i>Mitigated: Letter of Censure – 14 Days</i>	
	<i>Penalty: 20 Days</i>	
	<i>Aggravated: 25 Days – Dismissal</i>	
Offense Code 4.2 Drugs - Use or Possession	Knowingly and consciously ingesting, injecting, inhaling, or possessing an illegal controlled substance or anabolic steroid, on or off duty, after entering on duty. This does not apply to the possession of controlled substances for official purposes. See 21 U.S.C. §812 for a list of controlled substances.	
	<i>Mitigated: 10 - 60 Days</i>	
	<i>Penalty: Dismissal</i>	
	<i>Aggravated: N/A</i>	
Offense Code 4.3 DUI/DWI - Government Vehicle	Operating or being in actual physical control of any government vehicle while intoxicated or impaired by alcohol or a controlled substance. Impairment can be evidenced by a chemical analysis (breathalyzer and/or blood test), or credible observations of law enforcement personnel, other witnesses, or other reliable evidence.	
	<i>Mitigated: N/A</i>	
	<i>Penalty: 45 Days</i>	
	<i>Aggravated: 50 Days – Dismissal</i>	
Offense Code 4.4 DUI/DWI - Privately Owned Vehicle	Operating or being in actual physical control of any privately owned vehicle while intoxicated or impaired by alcohol or a controlled substance. Impairment can be evidenced by a chemical analysis (breathalyzer and/or blood test), or credible observations of law enforcement personnel, other witnesses, or other reliable evidence.	
	<i>Mitigated: N/A</i>	
	<i>Penalty: 30 Days</i>	
	<i>Aggravated: 35 Days – Dismissal</i>	
Offense Code 4.5 Fraud/Theft/Illegal Interference with Property Rights	Taking, obtaining, or withholding, by any means, from the possession of the government or another owner, any money, property, or article of value of any kind, with the intent to deprive or defraud the government or another owner, of the use and benefit of the property or with the intent to appropriate it for personal use or for the use of another entity or person other than the owner. This Offense Code includes illegal interference with property rights, and is not limited to theft for personal gain. The victim need not be the owner. This Offense Code does not include conduct covered under any of the Offense Codes included in Part 3.	
	<i>Mitigated: 30 - 60 Days</i>	
	<i>Penalty: Dismissal</i>	
	<i>Aggravated: N/A</i>	

Offense Code 4.6 Indecent/Lascivious Acts	<p>Inappropriately acting in a manner to appeal to or gratify the sexual desires of the employee, his victim, or both; or indecently exposing a body part to public view. This Offense Code applies to prostitution and other forms of commercial sex. See, e.g., Attorney General Memorandum For All Department Personnel, “Prohibition on the Solicitation of Prostitution” (April 10, 2015). If a local, state, or foreign jurisdiction lawfully permits any type of indecent/lascivious act described herein, this Offense Code will nevertheless be applied if the act is contrary to the best interests of the FBI.</p> <p><i>Mitigated: 5 - 21 Days</i> <i>Penalty: 30 Days</i> <i>Aggravated: 35 Days - Dismissal</i></p>
Offense Code 4.7 Other Felonies	<p>Engaging in an act, other than one which has been specifically delineated in another Offense Code, which is considered a felony in the jurisdiction in which the act occurred. This does not apply to perjury, which is covered under 2.6, Lack of Candor - Under Oath.</p> <p><i>Mitigated: 30 - 45 Days</i> <i>Penalty: 60 Days</i> <i>Aggravated: Dismissal</i></p>
Offense Code 4.8 Other Misdemeanors	<p>Engaging in an act, other than one which has been specifically delineated in another Offense Code, which is considered a misdemeanor in the jurisdiction in which the act occurred.</p> <p><i>Mitigated: Letter of Censure - 5 Days</i> <i>Penalty: 7 Days</i> <i>Aggravated: 10 Days - Dismissal</i></p>
Offense Code 4.9 Unauthorized Disclosure - Classified/Law-Enforcement Sensitive/Grand Jury Information	<p>Without authorization, disclosing or attempting to disclose classified or law enforcement sensitive material, or Grand Jury information. See the Federal Rules of Criminal Procedure, Rule 6(e), for additional information.</p> <p><i>Mitigated: Letter of Censure - 7 Days</i> <i>Penalty: 10 Days</i> <i>Aggravated: 14 Days – Dismissal</i></p>
Offense Code 4.10 Unauthorized Disclosure - Sensitive Information	<p>Without authorization, disclosing or attempting to disclose the FBI’s, or another agency’s, sensitive material.</p> <p><i>Mitigated: Letter of Censure - 5 Days</i> <i>Penalty: 7 Days</i> <i>Aggravated: 10 Days – Dismissal</i></p>

