

## Elements of Prohibited Acts

- I. Elements of Prohibited Acts:** Elements of prohibited acts are the definitions of the conduct which constitutes commission of the prohibited acts. Elements are facts which must be present in order to prove the commission of a prohibited act. There are specific facts which constitute or make up each prohibited act that must be established in the record before you can find guilt or commission of the act.

Elements consist of four or five categories (depending on the offense) which must be present in order to prove commission of the prohibited act. They are:

- A. Subject:** The inmate accused of committing the prohibited act must be properly identified and described in the "description of the incident" and in the "specific evidence relied upon." Normally, the name and register number is sufficient.
- B. Time:** Usually described as the day and hour the incident occurred.
- C. Location:** The place or places the offense was committed. Gives notice of what to defend and establishes our right to regulate the inmate's conduct.
- D. Act:** The description of the actions or conduct of the inmate which constitute the commission of the specific prohibited act. ***\*\*This is the most significant element and presents the most problems in definition.***
- E. Victim:** Must be described and identified in those instances where the prohibited act or offense is against another person. An assault requires a victim. Failing to provide a urine sample does not.

## **II. Elements Determine What Offense is to be Charged**

- A. Description:** The description of the incident on the incident report.
  - 1. Staff must describe in factual terms what they observed, heard, tasted or smelled.
  - 2. Section 11 must contain all elements of prohibited acts.
  - 3. This description provides the Wolff notice requirement.

## Elements of Offense

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
100	Killing.	Deprive of life.
101	Assaulting any person, or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or accomplished).	An attempt or threat to do violence to another; includes battery, or the unconsented touching of another.
102	Escape from escort; escape from any secure or non-secure institution, including community confinement, escape from unescorted community program or activity; escape from outside a secure institution.	Escape - departure from custody without permission or authority or before official release.
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest severity, e.g., in furtherance of a riot or escape; otherwise, the charge is properly classified Code 218 or 329).	To cause ignition or combustion; includes destructive burning.
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument used as a weapon.	Possess - to have on one's person or under one's dominion or control. Manufacture - to make or fashion something.  Introduce - to bring in from outside the institution; any of the objects listed.
105	Rioting.	Participates with two or more other persons in a disturbance for purpose of preventing or coercing official action with actual or threats of violence.
106	Encouraging others to riot.	Promotes or urges others to participate in a riot.
107	Taking Hostage(s).	To take someone captive with threats to kill or harm if demands are not met.
108	Possession, manufacture, introduction, or loss of a hazardous tool (tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; (e.g., hacksaw blade, body armor, maps, handmade rope, or other escape paraphernalia, portable telephone, pager or other electronic device).	Possess - to have on one's person or under one's dominion or control Manufacture - to make or fashion something.  Introduce - to bring in from outside the institution; any of the objects listed.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
110	Refusing to provide a urine sample; refusing to breath into a Breathalyzer; refusing to take part on other drug abuse testing.	Voluntary or intentional decision not to provide a specimen of urine for testing; a stated inability to provide a urine sample within reasonable time, normally two hours. Voluntary or intentional decision not to breathe into a Breathalyzer for alcohol or other intoxicant testing. Voluntary or intentional decision not to take part in other alcohol/intoxicant testing/drug abuse testing as required.
111	Introduction or making of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	Introduce - to bring in from outside the institution.  Making- to make or construct any narcotics, drugs, alcohol, intoxicants, or related paraphernalia.
112	Use of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	To be seen using or testing positive for the use of any narcotics, marijuana, drugs, alcohol, intoxicants, that has not been prescribed for the individual by the medical staff.
113	Possession of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	To possess means to have on one's person or under one's dominion or control of the hard contraband identified.
114	Sexual assault of any person, involving non-consensual touching by force or threat of force.	Sexual assault includes the unconsented intimate physical contact with another person which includes an attempt or threat of physical violence.
115	Destroying and/or disposing of any item during a search or attempt to search.	Includes throwing items away from staff or flushing items when a search is being conducted or attempting to conduct a search.
196	Use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act.	Use of the mail to commit or aid in the commission of a crime or a Greatest category prohibited act.
197	Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.	Using the telephone to commit or aid in the commission of a crime or a Greatest category prohibited act.
198	Interfering with a staff member in the performance of duties most like another Greatest category prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest categories prohibited acts.	Interfering - to hamper, hinder, or disturb a staff member performing his duties. Must be related to 100 level activities.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
199	Conduct which disrupts or interferes with the orderly running of the institution or the Bureau of Prisons most like another Greatest category prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest categories prohibited acts.	Any act of Greatest Severity level which is not specifically described in other prohibited acts listed above, but which causes disorder or turmoil in the operation of a prison.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
200	Escape from a work detail, non-secure institution, or other non-secure confinement, including community confinement, with subsequent voluntary return to the Bureau of Prisons custody within four hours.	Departure from custody without permission or authority or before release; includes failure to follow instructions of staff as to the limits of the activity; or commission of an act which prevents the inmate from returning at the time and place prescribed (such as an arrest based on probable cause), and the inmate voluntarily returns within four hours.
201	Fighting with another person.	A "fight" is a hostile, physical or verbal encounter or engagement between two or more persons.
203	Threatening another with bodily harm.	A communication of an intent to inflict physical or other harm on any person or on property.
204	Extortion, blackmail, protection, demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	To obtain anything of value from another induced by the wrongful use of actual or threatened force, violence or fear.
205	Engaging in sexual acts.	Take part in intimate physical contact with self or another.
206	Making sexual proposals or threats to another.	Offering or encouraging another to engage in a sexual act or in intimate physical contact; a threat is a communicated intent to inflict physical or other harm on the person or on property.
207	Wearing a disguise or a mask.	Have on one's face or other portion of one's body an item which conceals, changes or alters identity or appearance.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.	Possess - have on one's person or have under one's control.  Tamper - to meddle with for purpose of altering, destroying, etc.
209	Adulteration of any food or drink.	Adulterate - to debase or make impure.
211	Possessing any officer's or staff clothing.	Possess - have on one's person or have under one's control or dominion.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
212	Engaging in or encouraging a group demonstration.	To participate or promote others to participate with two or more persons gathering together to support a cause.
213	Encouraging others to refuse to work, or to participate in a work stoppage.	To promote or urge other inmates to refuse to work or participate in a work stoppage.
216	Giving or offering an official or staff member a bribe, or anything of value.	Bribe - giving something of value to persuade or induce favor or action.
217	Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.	Contraband - anything an inmate is not permitted to have in his possession, i.e., not issued or not authorized to retain.
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00, or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value.	The \$100+ value applies to both government and personal property; otherwise, it is a Code 329 offense.
219	Stealing; theft (including data obtained through the unauthorized use of a communications device, or through unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored).	Stealing - to take or appropriate the property of another without permission or right.
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized by staff).	"Martial" refers to war or warlike; we prohibit all but punching a bag because this conduct may be mistakenly perceived as fighting or may precipitate disruption or a disturbance. It also encourages militant group behavior which is inconsistent with security.
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	An area may be "unauthorized" because of a written rule, an oral order or direction by staff, or because of circumstances. The "person of the opposite sex" refers to inmates or visitors, not staff. A prohibited act described to cover a situation where two inmates of opposite sex at co-correctional institution are discovered in an inappropriate area, but before there is any evidence of sexual intent or content.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
224	Assaulting any person (a charge at this level is used when less serious physical injury or contact has been attempted or accomplished by an inmate).	See Code 101. Assault is an attempt or threat to do violence to another and includes battery or the unconsented touching of another.
225	Stalking another person through repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct.	A documented pattern of repeated behavior which harasses, alarms, or annoys a person <b>after</b> being ordered or previously warned to cease such conduct.
226	Possession of stolen property.	To have in one's possession, control, or domain any stolen item(s).
227	Refusing to participate in a required physical test or required examination unrelated to testing for drug abuse (e.g., DNA, HIV, tuberculosis).	Voluntary or intentional decision not to take part in a required physical test or examination unrelated to drug abuse or alcohol testing.
228	Tattooing or self-mutilation.	To put indelible patterns on the skin; to injure, disfigure or make imperfect by removing or irreparably damaging parts of the body (wrist cutting falls within this offense).
229	Sexual assault of any person, involving non-consensual touching without force or threat of force.	Sexual assault includes the unconsented intimate or non-sexual physical contact with another person which does not include a threat of physical violence.
231	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce, display his/her own court documents for any unauthorized purpose to another inmate.	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any unauthorized purpose to another inmate.
296	Use of the mail for abuses other than criminal activity which circumvent mail monitoring procedures (e.g. use of the mail to commit or further a High category prohibited act, special mail abuse, writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person.	Use of the mail in violation of the policy on mail regulations which circumvents mail monitoring procedures.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
297	Use of the telephone for abuses other than criminal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.	Using the telephone in violation of the policy on telephone regulations which circumvents telephone monitoring procedures.
298	Interfering with a staff member in the performance of duties, most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.	See Code 198.
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High Severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.	See Code 199.



<b><i>Code</i></b>	<b><i>Offense</i></b>	<b><i>Elements</i></b>
300	Indecent Exposure.	Indecent means offending against recognized standards of propriety; exposure means to display; non-accidental display of genitals.
302	Misuse of authorized medication.	To use authorized/prescribed medication in a manner contrary to instructions.
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	Possess - to have on one's person or under one's control.
304	Loaning of property or anything of value for profit or increased return.	To grant temporary use for the purpose of gaining money or an advantage.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	To possess means to have on one's person or under one's dominion or control; although notice of what constitutes contraband generally is presumed, look to policies, rules, procedures and law to establish where reasonably questioned.
306	Refusing to work or accept a program assignment.	Declining or expressing a determination not to perform assigned tasks; also, includes program assignments like general population and educational classes.
307	Refusing to obey an order of any staff member (may be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed, e.g., failure to obey an order which furthers a riot would be charged as Code 201, ( Fighting; refusing to provide a urine sample when ordered would be charged as 110).	Declining or expressing a determination not to follow commands (instructions and restrictions) of a BOP employee and others placed in a position of authority by a BOP employee.
308	Violating a condition of furlough.	To break or fail to follow rules listed on the furlough form.
309	Violating a condition of a community program.	Failure to follow established rules other than those set forth on furlough papers; usually CCC's.
310	Unexcused absence from work or any program assignment.	Not at an assigned place at a certain time.
311	Failing to perform work as instructed by the supervisor.	Similar to 319; use when specific orders of the work supervisor are violated.
312	Insolence towards a staff member.	Contemptuously rude or impertinent in behavior or speech toward a staff member.
313	Lying or providing a false statement to a staff member.	Self-explanatory offense; must disrupt security, order or discipline.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper (may be categorized in terms of greater severity according to the nature of the item being reproduced; (e.g., counterfeiting release papers to affect escape, Code 102).	Self-explanatory offense as described.
315	Participating in an unauthorized meeting or gathering.	To take part in meeting or gathering of inmates without staff permission.
316	Being in an unauthorized area without staff authorization.	Located in a place that an inmate is forbidden to be in because of orders, policies or established procedures.
317	Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).	Nonperformance of established rules concerning safety and sanitation.
318	Using any equipment or machinery without staff authorization.	Self-explanatory offense as described.
319	Using any equipment or machinery contrary to instructions or posted safety standards.	Similar to 317; specifically covers use of equipment or machinery.
320	Failing to stand count.	Absent during count or failing to stand up during count.
321	Interfering with the taking of count.	Any action which hampers or inhibits staff from taking a count other than those actions listed in Code 320.
324	Gambling.	To play any game of chance for stakes.
325	Preparing or conducting a gambling pool.	See Code 324; to be used where evidence establishes the inmate is responsible for setting up or running the game of chance.
326	Possession of gambling paraphernalia.	See Code 324; where evidence only shows possession of gambling items, but not used in a game.
327	Unauthorized contacts with the public.	Self-explanatory offense: to be used where an inmate needs permission to contact someone outside the institution.
328	Giving money or anything of value to or accepting money or anything of value from another inmate, or any other person without staff authorization.	Self-explanatory offense as described. See also Code 217 where evidence shows the purpose of giving is for introducing contraband or other illegal purpose.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
329	Destroying, Altering, or Damaging Government Property, or the Property of Another Person, Having a Value of \$100 or Less.	Self-explanatory offense; see Code 218 for higher severity offense for value more than \$100.
330	Being Unsanitary or Untidy; Failing to Keep One's Person and One's Quarters in Accordance with Posted Standards.	Self-explanatory offense: used where living area is unclean or not maintained in an acceptably clean and tidy manner.
331	Possession, Manufacture, or Introduction of a nonhazardous tool or other Non-Hazardous Contraband (tool not likely to be used in an escape attempt or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; other nonhazardous contraband includes such items as food or cosmetics).	Self-explanatory offense; see Code 104 for description of possession, manufacture or introduction. See also Code 108 for greater severity offense.
332	Smoking where prohibited.	Smoking in an area that is designated by policy to be a non- smoking area.
333	Fraudulent or deceptive completion of a skills test (e.g., cheating on a GED, or other education or vocational skills test).	Self-explanatory offense; used when cheating on an educational or vocational test.
334	Conducting a business; conducting or directing an investment transaction without staff authorization.	To direct, engage, carry on an occupation, profession, or trade. Occupation means the person's usual or principal work. A profession usually refers to an occupation which requires extensive education. Trade refers to buying, selling, or exchanging commodities or other items.
335	Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.	Used when an inmate is wearing clothing, items, etc. to show gang affiliation, making hand signals, etc. Use other higher and greater severity codes when behavior involves fighting, assaults, and group demonstrations.
336	Circulating a petition.	Circulating a petition to protest conditions or to effect a change of some sort.
396	Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act.	Use of the mail in violation of policy which does not circumvent mail monitoring procedures.
397	Use of telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.	Use of the telephone in violation of policy which does not circumvent telephone monitoring procedures.

<i><b>Code</b></i>	<i><b>Offense</b></i>	<i><b>Elements</b></i>
398	Interfering with a Staff Member in the Performance of Duties, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 198.
399	Conduct which Disrupts or Interferes with the Security or Orderly Running of the Institution or the Bureau of Prisons, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 199.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
402	Malingering, Feigning Illness.	Malingering means to feign illness.
404	Using Abusive or Obscene Language.	Using coarsely insulting, indecent or lewd language.
407	Conduct with a Visitor in Violation of Bureau Regulations.	Inappropriate actions with a visitor after notice of written rule (would include excessive sexual contact short of engaging in a sex act, Code 205).
409	Unauthorized Physical Contact.	Unacceptable physical contact, usually with another inmate; see also Code 205, Engaging in Sexual Acts, and Code 407 for visitor related activities.
498	Interfering with a Staff Member in the Performance of Duties, Most Like Conduct must be of the Low Moderate severity nature. This charge is to be used only when another charge of low moderate severity is not applicable.	See Code 198.
499	Conduct which Disrupts or Interferes with the Security or Orderly Running of the Institution or the Bureau of Prisons, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 199.