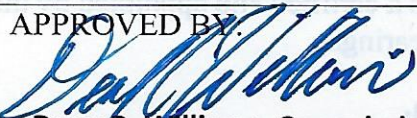


**STATE OF ALASKA
DEPARTMENT OF CORRECTIONS**



POLICIES & PROCEDURES

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CHAPTER: 809	NUMBER: 809.04	P&P TYPE: Public
TITLE: Disciplinary Committee, Hearing Officers And Basic Operation		
APPROVED BY:  Dean R. Williams, Commissioner		DATE: 05/18/17

ATTACHMENTS / FORMS: (A.) Incident Report Form. (B.) Disciplinary Hearing Notice. (C.) Disciplinary Hearing Postponement Form. (D.) Disciplinary Hearing Advisor Packet. (E.) Report Of Disciplinary Decision. (F.) Disciplinary Hearing Script. (G.) Appeal Of Disciplinary Action Form. (H.) Imposition Of Sanctions Form. (I.) Summary Findings. (J.) Evidence Disposition Form. (K.) Superintendent's Appeal Checklist.	AUTHORITY / REFERENCES: 22 AAC 05.155 22 AAC 05.400 – 485 22 AAC 05.610 AS 33.05.010 AS 33.16.180 AS 33.30.011 AS 33.30.021 AS 44.28.030 DOC P&P 1208.08
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POLICY:

- I. It is the policy of the Department of Corrections (DOC) that each institution shall establish a Disciplinary Hearing Committee and a Disciplinary Hearing Officer position.
- II. It is the policy of the Department that each institution shall follow the disciplinary procedures under 22 AAC 05.400- 480 to adjudicate prisoners' rule violations in a uniform manner.

APPLICATION:

This policy and procedure will apply to all Department employees and prisoners.

DEFINITIONS:

As used in this policy, the following definitions shall apply:

Adjudicative Phase of Hearing:

The phase of a disciplinary hearing where guilt or innocence of a rule infraction is established.

Disciplinary Hearing Committee:

A three (3) person committee appointed by the Superintendent to preside over and issue decisions in prisoner disciplinary hearings.

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Disciplinary Hearing Officer:

A single officer, who is a certified and appointed by the Superintendent to preside over and issue decisions in prisoner disciplinary hearings.

Disciplinary Tribunal:

A single Disciplinary Hearing Officer or a three (3) person Disciplinary Hearing Committee appointed by the Superintendent. Appointment of a three (3) person Disciplinary Hearing Committee is required for all major infractions.

Dispositive Phase of Hearing:

The phase of a disciplinary hearing where the penalty for a disciplinary infraction is determined.

Harmless Error (22 AAC 05.610):

Failure of a staff member to follow the regulations set out in this policy does not invalidate a decision absent a showing of prejudice by the prisoner.

Hearing Advisor:

A staff member who assists a prisoner in disciplinary proceedings.

Informal Resolution Officer:

An officer appointed by the Superintendent or to informally resolve disciplinary infractions.

Offer of Proof:

An explanation offered by the accused prisoner to the Disciplinary Tribunal as to how a proposed witness, a proposed line of questioning, or a certain item of physical evidence, would help prove his innocence in the adjudicative phase of the hearing, or mitigate punishment in the dispositive phase of the hearing. The purpose of an offer of proof is to assist the Disciplinary Tribunal in deciding whether the proposed witness, line of questioning, or evidence, is relevant to the disciplinary hearing.

Preponderance of the Evidence:

A preponderance of evidence means that a party has shown through evidence admitted at the hearing, that its version of facts, causes, damages, or fault is more likely than not the correct version.

Working Day:

A 24-hour period of which no portion includes a Saturday, Sunday, or holiday; in computing a period of time prescribed or allowed by this policy and pertaining to a "working day," the day of the act, event, or default from which the designated period of time begins to run is not to be included; the last day of the period is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which case the period runs until the end of the next working day; a half-holiday is considered as other working days and not as a holiday.

PROCEDURES:

I. Incident Reports:

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A. All incident reports must be written by the staff member with the most direct knowledge of the incident using the *Incident Report Form* (Attachment A). The incident report should be completed before the end of the reporting officer's shift, unless the Superintendent allows an extension of time. The report must include:

1. The prisoner's name, birthdate and prisoner number;
2. A citation to 22 AAC 05.400;
3. A description of the alleged infraction;
4. The facts describing the incident;
5. A description of the disposition of physical evidence relating to the infraction, if any;
6. The identity of witnesses or existence of informants (informants need not be named if safety or security considerations are a concern);
7. Any informal action taken if the incident involves a minor infraction; and
8. Where appropriate, that the prisoner requested or refused medical care, and requested or declined to contact law enforcement to press criminal charges or make a report.

B. All incident reports must be referred to the Assistant Superintendent for review and disposition. The Assistant Superintendent shall review all incident reports for:

1. Signs of self-harm. If self-harm was indeed a factor, a copy of the incident report should be forwarded to the mental health clinician for further review.
2. Whether a prisoner's mental disabilities or mental illness contributed to his or her behavior when determining what type of report is appropriate. (A prisoner's medical file may be consulted.)
3. Whether the level of write-up is appropriate for the offense, taking into consideration the prisoner's transition plan.

C. After the Assistant Superintendent has reviewed the report, as described above, the report will then proceed in one (1) of the three (3) ways set out below:

1. Information Report:

- a. If the Assistant Superintendent decides that no action is necessary or the infraction is informally resolved, the report shall be filed in the prisoner's institutional file as an "Information Report".
- b. If, during a disciplinary hearing, the Disciplinary Tribunal finds that insufficient evidence exists to support a finding of guilt, the Disciplinary Tribunal may designate the report as informational. The report shall be filed in the prisoner's institutional record as an "Information Report" for purposes of program assessment.

2. Informal Resolution Report:

- a. An institution staff member may informally handle prisoner conduct that constitutes a minor infraction by correcting, counselling, or advising the prisoner as to the proper or acceptable

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behavior.

- b. The Assistant Superintendent may designate a staff member as an Informal Resolution Officer. The Informal Resolution Officer shall resolve minor, low-moderate, or high-moderate infractions that the Assistant Superintendent determines are inappropriate for formal disciplinary action.
- c. Informal resolution consists of correcting the behavior through verbal counseling or through a voluntary agreement that addresses the behavior, in lieu of formal disciplinary action.
- d. If the infraction is resolved, the Informal Resolution Officer shall fill out the disposition section of the *Incident Report Form* (Attachment A) and give the prisoner a copy of the report within five (5) working days of the resolution. The Informal Resolution Officer shall file the report in the prisoner's institutional file.
- e. If the Informal Resolution Officer and the prisoner do not informally resolve the infraction, the Informal Resolution Officer shall return the incident report to the Assistant Superintendent for formal disciplinary action.

3. Disciplinary Report:

If the Assistant Superintendent refers the incident report to the Disciplinary Tribunal for formal action, the report becomes a "Disciplinary Report". The prisoner must be served with a *Disciplinary Hearing Notice* (Attachment B) along with a copy of the Disciplinary Report within five (5) working days of the alleged infraction or the date that the prisoner is identified as a suspect, whichever occurs later. If serving the prisoner with notice is likely to jeopardize an ongoing investigation by a law enforcement agency, a copy of the report must be given to the prisoner upon the completion of the ongoing investigation.

II. Disciplinary Hearing Process:

A. Referral Of Incidents To The District Attorney:

1. The Superintendent shall promptly notify the District Attorney of an infraction that, if established, would constitute a violation of a felony criminal statute. If the District Attorney files a criminal complaint, the Superintendent may postpone the disciplinary hearing until the conclusion of criminal prosecution.
2. While awaiting disposition from the District Attorney, the Superintendent shall:
 - a. Request the status of any criminal charges against the prisoner within seven (7) days of referral and every 30 days thereafter until the District Attorney files a formal complaint with the court, declines to prosecute, or the court otherwise dismisses or concludes the action;

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- b. Ensure correspondence with the District Attorney's office is documented, and included in the written record;
- c. Inform the Disciplinary Tribunal of the District Attorney's response.

B. Disciplinary Hearing Timeframes:

1. Prisoners shall receive a disciplinary hearing no more than seven (7) working days after receiving a *Disciplinary Hearing Notice* (Attachment B), unless a postponement is approved by the Disciplinary Tribunal. A prisoner shall receive a *Disciplinary Hearing Notice* at least 48 hours prior to the disciplinary hearing. A prisoner may waive this notice requirement by requesting an earlier appearance and signing the *Disciplinary Hearing Notice*.
2. A disciplinary hearing may be postponed for one or more of the following reasons:
 - a. Upon the prisoner's written request, if the request is received by the Disciplinary Tribunal no later than 24 hours prior to the original scheduled hearing. Except in cases where the prisoner is due to be released and delaying the hearing would mean that the prisoner is released before the hearing is resolved;
 - b. The prisoner requests the writer of the report or another staff member as a witness, and the writer is temporarily unavailable. The hearing shall be postponed until the staff member is available;
 - c. The prisoner or their attorney is awaiting access to unrestricted portions of requested records. The requests must be made at least three (3) working days prior to the scheduled hearing, and the institution must give the prisoner access to the authorized material at least 24 hours before the hearing;
 - d. The staff requires further investigation of the alleged rule infraction:
 - i. A 30 day continuance may be granted to staff upon a showing of good cause for further investigation.
 - ii. In extraordinary circumstances, additional continuances of up to 30 days may be granted if further investigation is required.
 - e. At the hearing, the Disciplinary Tribunal may approve a postponement of two (2) working days for good cause shown; or
 - f. For good cause shown.
3. No more than six (6) months may elapse between the date of the alleged infraction and the hearing unless:
 - a. The District Attorney files a criminal complaint, and the Superintendent postpones the disciplinary hearing until the conclusion of criminal prosecution; or
 - b. The prisoner temporarily leaves DOC custody.
4. Hearings postponed from the original date in the *Disciplinary Hearing Notice* (Attachment B),

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require:

- a. Completion of a *Disciplinary Hearing Postponement Form* (Attachment C). The reason for the postponement shall be stated on the form. Copies shall be distributed to the prisoner and relevant parties.
- b. Written notice of continuance from the Disciplinary Tribunal to the prisoner every 30 days until the hearing is held or otherwise concluded.

C. Hearing Advisor:

1. The accused prisoner is entitled to the assistance of a Hearing Advisor to assist in the disciplinary proceedings.
2. An accused prisoner who desires to be represented by a Hearing Advisor may request an advisor from a pool of staff members designated by the Superintendent. The prisoner has the right to select from at least two (2) of the staff members in the pool.
3. Once selected, the Hearing Advisor shall meet with the prisoner at least 36 hours before the scheduled hearing to assist in investigating the facts and preparing and presenting a defense at a disciplinary hearing, unless the infraction charged is a minor infraction. The Hearing Advisor shall also complete the *Disciplinary Hearing Advisor Packet* (Attachment D).
4. If necessary, the Hearing Advisor shall have the assistance of an interpreter.

D. Right To An Attorney:

1. A prisoner is entitled to legal representation at the disciplinary hearing if a criminal complaint is filed by the District Attorney. The prisoner may retain a private attorney or may contact the Alaska Public Defender to determine eligibility for representation. The Department is not responsible for obtaining an attorney on behalf of the prisoner.
2. Legal representation at a disciplinary hearing is for the limited purpose of preserving and protecting the prisoner's Fifth Amendment right against self-incrimination. The attorney's participation in the proceeding is limited to preserving the prisoner's right against self-incrimination. Attorneys are not allowed to argue the merits of the case or the sanctions.

E. Disciplinary Hearing Tribunal:

1. All Disciplinary Hearing Officers must be trained in the proper way to conduct hearings and receive a Basic Disciplinary Hearing Officer certification from the Department's Training Academy.
2. The Superintendent may use either a Disciplinary Hearing Officer or a Disciplinary Hearing Committee. Major infractions require a Disciplinary Hearing Committee. If a Disciplinary Hearing Committee is used, it shall include three (3) members appointed by the Superintendent.

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3. Except as provided in C. above, staff members may not informally discuss the facts of an alleged infraction with other staff members other than the Assistant Superintendent, or prisoners, in order to ensure impartiality in the disciplinary process.
4. Staff may not serve on a Disciplinary Tribunal if they:
 - a. Wrote the disciplinary report concerning the alleged rule violation;
 - b. Are responsible for or assisted in the investigation of the infraction;
 - c. Know any facts that form the basis of the disciplinary report, unless the facts have become common knowledge in the institution. In that case, the person may serve on the committee or as a Disciplinary Hearing Officer if they were not directly involved in the incident and can decide the adjudicative phase of the hearing solely on the facts presented at the hearing;
 - d. Are responsible for reviewing the disciplinary decision or witnessed the alleged infraction;
 - e. Are a witness to the alleged infraction; or
 - f. Cannot, for any reason, remain impartial toward the prisoner. A member of the Disciplinary Tribunal must voluntarily disqualify themselves and withdraw from a case in which they cannot accord a fair or impartial hearing or consideration.

F. Evidence And Witnesses:

1. The Disciplinary Tribunal shall present any physical evidence with an intact, complete chain of custody (see DOC P&P 1208.08, Searches Of Prisoners And Institutional Areas) and shall present any field results. If it is determined that evidence cannot be present at the hearing (for example it is contraband or perishable) then photographs of the evidence shall be presented instead.
2. The accused prisoner must request witnesses and other evidence for their defense at the hearing by submitting a written request to the Disciplinary Tribunal no later than 24 hours before the hearing. Exceptions to this time requirement may be made for good cause shown.
3. The Superintendent shall allow the accused prisoner or Hearing Advisor to have a reasonable opportunity to interview witnesses, collect statements, or compile other evidence including video and audio recordings, if that action would not create a risk of reprisal or undermine security. In situations where providing evidence may create a security risk, such interviews and evidence may be denied. The accused prisoner may use a Hearing Advisor to assist in the collection of evidence if the prisoner or the witness is being held in segregation, or the witness to be interviewed is a staff member, or for other good cause shown.
4. The Disciplinary Tribunal may decline to call a witness that the accused prisoner has requested to appear for good cause. The Disciplinary Tribunal may restrict the introduction of other evidence to avoid repetitious or irrelevant evidence. Before a witnesses or evidence is disallowed, the Disciplinary Tribunal shall require the prisoner to make an offer of proof of what the witness or evidence would tend to prove at the hearing. The Disciplinary Tribunal shall review the offer of proof and determine whether the requested evidence is irrelevant to the hearing, repetitious, or may cause a

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risk of reprisal or the undermining of security. The reason for declining to call a witness or admit evidence must be explained orally on the record and in writing in section 17 on the *Report of Disciplinary Decision* (Attachment E). All witnesses and evidence the prisoner requested and was disallowed shall be listed on this form.

5. The Disciplinary Tribunal and the prisoner's Hearing Advisor may direct questions to the accused prisoner and other witnesses. The accused prisoner may question any witnesses but must direct questions through the Disciplinary Tribunal. The Disciplinary Tribunal may, for compelling reasons, limit the prisoner's right to examine witnesses to avoid repetitious or irrelevant evidence or to preserve decorum, if those reasons are stated orally for the record.
6. All evidence used to determine the adjudicative phase of the hearing must be preserved as part of the record for appeal purposes.

G. Confidential Informants:

1. Confidential Informant statements require an *Incident Report Form* (Attachment A) to be written to include:
 - a. The reason why the informant is not being identified;
 - b. The reason the confidential informant is reliable, such as:
 - i. Any corroborating testimony; and
 - ii. The facts that make the informant and information reliable.
 - c. A statement from the writer of the report that he truthfully reported the informant's statements in the report.
2. The Disciplinary Tribunal Chairperson and Hearing Advisor shall interview the informant before the hearing. If this is not done, the reason shall be specified on the record at the hearing.
3. The writer of the report regarding the informant shall testify at the hearing. This part of the hearing shall be recorded separately from the main hearing audio recording, and will not be provided to the prisoner or his attorney. The Disciplinary Tribunal shall make findings on the record as to the reliability of the informant and why the informant could not testify at the hearing. The report, separate audio recording and findings associated with the confidential informant shall be marked confidential, secured and preserved with the record.

H. Disciplinary Hearing Procedures:

1. A disciplinary hearing occurs in two phases, known as the adjudicative phase and the dispositive phase. If the accused prisoner refuses to appear or participate in the hearing, adjudication and disposition may be made on record, in the prisoner's absence.
2. Adjudicative Phase:

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- a. The Disciplinary Tribunal may use the *Disciplinary Hearing Script* (Attachment F) as a guide for how the hearing should proceed.
- b. A prisoner is presumed innocent of an infraction, and the institution has the burden of establishing guilt. A prisoner cannot be found guilty of an alleged infraction unless the Disciplinary Tribunal is convinced from the evidence presented at the hearing that the prisoner's guilt is established by a preponderance of the evidence. The decision in the adjudicative phase of the hearing must be based only on evidence presented at the hearing.
- c. The Disciplinary Tribunal shall:
 - i. Call the hearing to order and ensure that the proceedings are recorded. All participants shall identify themselves on the record by name, title and role in the hearing.
 - ii. The Disciplinary Tribunal shall read the disciplinary report to the prisoner, on the record.
 - iii. The Disciplinary Tribunal shall request the prisoner to admit or deny the infraction alleged, on the record.
- d. If an admission is entered, the dispositive phase may begin.
- e. If a denial is entered, the Disciplinary Tribunal shall proceed as follows:
 - i. The Disciplinary Tribunal may call and question the witnesses, and introduce evidence.
 - ii. The Disciplinary Tribunal shall allow the accused prisoner to present their version of events and question witnesses. The accused prisoner may not question witnesses directly. Questions for witnesses must be directed through the Disciplinary Tribunal.
 - iii. The Disciplinary Tribunal shall call the writer of the report to appear as a witness either in person or telephonically, if requested by the prisoner. If the prisoner calls the writer of the report to be present and does not ask any questions, the Disciplinary Tribunal shall ask the writer of the report to state their version of facts for the record.
 - iv. If the charge is based in whole, or in part, upon information supplied by another prisoner, a confidential informant, or other witness, the Disciplinary Tribunal shall allow the accused prisoner to be present while the witness testifies, unless it would create a risk of reprisal, or undermine security or public safety.
 - v. For hearings involving Confidential Informant statements, the Disciplinary Tribunal may exclude the accused prisoner from the hearing while the witness testifies, but the

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Disciplinary Tribunal's reasons for excluding the accused prisoner must be noted orally for the record and in section 17 of the *Report of Disciplinary Decision* (Attachment E). The Hearing Advisor may examine such a witness on behalf of the excluded accused prisoner in accordance with section G. above.

- vi. When the accused prisoner is finished presenting evidence the Disciplinary Tribunal shall decide whether the preponderance of the evidence proves the prisoner committed the infraction. The prisoner may be excused from the hearing and the deliberations of the Disciplinary Tribunal need not be recorded with the audio recorder.
 - vii. The prisoner must be called back into the room and informed, on the record, of the Disciplinary Tribunal's decision.
- f. If the Disciplinary Tribunal is not convinced from the evidence presented at the hearing that the prisoner is guilty of committing the infraction charged, the prisoner may be found guilty of a lesser included infraction if:
- i. The lesser infraction is closely related to the infraction charged, so that proof of the greater would ordinarily entail proof of the lesser;
 - ii. The infraction charged requires the Disciplinary Tribunal to find a disputed fact that is not required for conviction of the lesser infraction; and
 - iii. The evidence relied on by the Disciplinary Tribunal supports conviction of the lesser infraction by preponderance of the evidence.

3. Dispositive Phase:

- a. If the prisoner admits the alleged infraction or is found guilty the Disciplinary Tribunal shall consider what sanction(s) to impose.
- b. The prisoner may present any evidence or information they believe may mitigate punishment. The Disciplinary Tribunal must consider such evidence or information when imposing a penalty. The decision in the dispositive phase of the hearing may be based on evidence presented at the hearing or contained in the prisoner's institutional file.
- c. The prisoner may be excused from the room while the Disciplinary Tribunal determines what penalty to impose. The audio recorder need not be operating during the deliberations of the Disciplinary Tribunal. Once a decision is reached the prisoner must be informed on the record of the Tribunal's decision. The prisoner must also be informed verbally, on record, of the opportunity to appeal and a notice of intention to appeal must be noted on the *Report of Disciplinary Decision* (Attachment E). If the prisoner intends to appeal they must be provided with an *Appeal of Disciplinary Action Form* (Attachment G).

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4. Sanctions:

- a. Only a Disciplinary Tribunal may impose punishment for an infraction. The Disciplinary Tribunal shall impose one (1) or more of the following sanctions if the prisoner is found guilty of an infraction by completing an *Imposition of Sanctions* Form (Attachment H):
 - i. A reprimand: written or verbal;
 - ii. A suspension of participation in activities described in, and except as limited in (b.) below for a period up to 20 days for a minor infraction, up to 40 days for a low-moderate infraction, up to 60 days for a high-moderate infraction, and up to 90 days for a major infraction;
 - iii. Confinement in punitive segregation for periods not to exceed 20 days for a low-moderate infraction, 40 days for a high-moderate infraction, or 60 days for a major infraction;
 - iv. Confinement to quarters, or weekend or holiday lock-ups for periods not to exceed 20 days for a low-moderate, 40 days for a high-moderate, or 60 days for a major infraction;
 - v. Restitution for: the amount of property damage, theft, or for the amount of medical care and related costs; for costs incurred from a violation of 22 AAC 05.400 (d) (19); or requiring the prisoner to work without benefit of compensation. If the amount of restitution is unknown at the time of the hearing, a separate restitution hearing must be held to establish the amount of restitution. The normal procedures for a disciplinary hearing shall be followed for a restitution hearing.
 - vi. Except as provided in 22 AAC 05.473, forfeiture of up to 90 days statutory good time for a low-moderate infraction, up to 180 days statutory good time for a high-moderate infraction and up to 365 days statutory good time for a major infraction.
- b. Participation in the activities listed below is automatically suspended during the prisoner's placement in punitive segregation. Additionally, the Disciplinary Tribunal may suspend any of the listed activities as an independent disciplinary sanction, except that the activities listed in (i. to iv.) below may not be suspended outside of punitive segregation for more than 15 days, unless the infraction directly relates to that particular activity:
 - i. Participation in education programs or group religious services;
 - ii. Contact visiting;
 - iii. Secure visitation other than with immediate family members (i.e., spouse, parents, children, or siblings);
 - iv. Telephone calls except those to an attorney;

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- v. Use of radio, tape recorder, phonograph, television, or games
- vi. Recreation, except for one hour of exercise per day;
- vii. Reading material, except for religious or legal matter, or educational materials if the prisoner is enrolled in a course;
- viii. Eating in a community dining area; and
- ix. Use of commissary.

c. Sanctions may be suspended for a period not to exceed one (1) year contingent on the prisoner complying with reasonable conditions established by the Disciplinary Tribunal. If, during the period of suspension, the prisoner violates any of the conditions upon which the suspension was based, the Disciplinary Tribunal may, impose the penalties suspended from a prior case as part of the dispositive phase of the hearing.

d. If the prisoner is released from custody prior to serving punitive segregation sanctions and returns to custody, the punitive segregation can be imposed at any time during the succeeding incarceration.

e. If the prisoner is found guilty of committing more than one (1) infraction arising out of a single occurrence, sanctions imposed must run concurrently unless the Disciplinary Tribunal finds that separate and distinct correctional interests exist. These findings must be made on the record at the hearing and in writing on the *Report of Disciplinary Decision* (Attachment E).

5. Written Decision of the Disciplinary Tribunal:

a. If a prisoner is found guilty of an infraction, the Disciplinary Tribunal shall issue a typed, written decision on the *Report of Disciplinary Decision* (Attachment E) and give the prisoner a copy within five (5) working days.

b. The decision must be typewritten and include the following:

- i. A summary of the statement of the accused prisoner;
- ii. A summary of the testimony of witnesses;
- iii. A detailed, complete and thorough statement of the Disciplinary Tribunal's adjudicative and dispositive decisions, the reasons for those decisions, including a statement of the evidence relied upon and the specific facts found to support the Disciplinary Tribunal's decision;
- iv. A listing of all persons the prisoner requested to appear but was not called to testify, or other evidence sought to be introduced but which was not admitted, and the reasons why they were disallowed. The institution should not give a copy of these lists to the prisoner if it would create a risk of reprisal or a threat to security; and

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- v. A copy of the written decision *Summary Findings* (Attachment I) must be furnished to the prisoner. When applicable, confidential informant reports must be attached.

6. Disposition of Reports and Evidence:

- a. If the Disciplinary Tribunal finds the prisoner not guilty of the infraction or if a finding of guilt is reversed on appeal, the paper disciplinary report(s) must be removed from the prisoner's institutional file and the electronic references to the disciplinary decisions must be removed from the Department's offender management system. However, if the Disciplinary Tribunal finds that the report contains information that may affect the security or orderly administration of an institution, the Disciplinary Tribunal may convert the disciplinary report to an Information Report and file it in the prisoner's institutional file for purposes of program assessment. The reasons for converting the disciplinary report to an informational report must be stated in writing on the *Report of Disciplinary Decision* (Attachment E).
- b. If the Disciplinary Tribunal finds the prisoner guilty of the infraction, the disciplinary report, findings and decision, administrative appeals, and supporting reports must be placed in the prisoner's institutional file and entered electronically in the Department's offender management system.
- c. No punitive action beyond that permitted in Procedures section II, H. (4.) above may be taken against a prisoner because of the presence of an informational report in the prisoner's institutional file or in the Department's offender management system. However, verified acts of misbehavior may be considered in the dispositive phase of a disciplinary action.
- d. Upon completion of the disciplinary hearing, the *Evidence Disposition Form* (Attachment J) shall be completed by the Disciplinary Tribunal and forwarded to the Superintendent for review. After the Superintendent's decision is made the *Evidence Disposition Form* (Attachment J) shall be forwarded to the security department for further processing and disposal of the evidence.
- e. All audio and video evidence that the Disciplinary Tribunal used in the adjudicative phase of the hearing must be preserved and secured as part of the record. All recordings, paper records and all evidence related to the hearing must be retained for a period of three (3) years. If it is determined that evidence cannot be stored (for example it is perishable), pictures of the evidence shall be taken and preserved instead.

III. Appeals:

- A. If the Disciplinary Tribunal finds that the prisoner committed an infraction, at the conclusion of the hearing, the Disciplinary Tribunal shall provide the prisoner with a copy of the *Summary Findings* (Attachment I). If the prisoner wishes to appeal the decision, the prisoner must so indicate, and sign the bottom of the *Summary Findings* (Attachment I).

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- B. In addition to submitting the notice of appeal under A. above, the prisoner must submit their written appeal to the Superintendent of the institution where the disciplinary infraction was heard within three (3) working days after receipt of the Disciplinary Tribunal's written decision.
- C. Upon written request, the prisoner may have access to the recording of the hearing, except for the portion of a record that contains the testimony of a confidential informant(s); that portion must be summarized by the Disciplinary Tribunal in as much detail as possible so as not to place the informant in danger, and the summary must be made available to the prisoner.
- D. An appeal that contains profane or abusive language, that was not quoting testimony offered at the hearing, may be returned without action by the Superintendent or the Director of Institutions to the prisoner for revision. The prisoner will, upon receipt of the returned appeal, be allowed one (1) working day to appropriately revise the appeal and resubmit it for disposition.
- E. Except as provided in I. below, the Superintendent shall act on an appeal, and the prisoner must be informed of the Superintendent's decision, within ten (10) working days after the Superintendent's receipt of the appeal.
- F. When acting on an appeal, the Superintendent shall review the *Superintendent's Appeal Checklist* (Attachment K) and:
1. Address each appeal point made in the appeal;
 2. Verify the *Report Of Disciplinary Decision* (Attachment E) is completely filled out and thoroughly explains the findings and the facts upon which the adjudicative decision was based;
 3. The Disciplinary Tribunal's written decision, whether the Disciplinary Tribunal's findings justify the adjudication or the penalty imposed and the reasons submitted by the prisoner in support of appeal;
 4. Prior furlough application and / or eligibility for furlough; and
 5. Ensure that the *Report of Disciplinary Decision* (Attachment E) is typewritten.
- G. The Superintendent may take one (1), or any combination of the following actions:
1. Affirm, reverse or modify, in whole or in part, the disciplinary decision;
 2. Reverse and / or remand the disciplinary decision for rehearing, findings, or clarification of findings;
 3. Reduce the infraction to a lesser included infraction if supported by the evidence presented at the hearing;
 4. Reduce or suspend the sanction(s) imposed, in whole or in part; and
 5. Vacate the Disciplinary Report and convert it to an Informational Report.
- H. The Superintendent's decision, other than for major infractions, is final and the prisoner has 30 days in which to appeal the decision to the Superior Court.
- I. Disciplinary action for a major infraction may be appealed to the Director of Institutions if the Superintendent denies the appeal, in whole or in part. A prisoner who wishes to appeal the Superintendent's decision, to the Director of Institutions, shall submit their appeal in writing within two

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(2) working days after notice of the Superintendent's decision. The Director of Institutions has the same powers on appeal as does the Superintendent under E., F. and G. above.

- J. The Superintendent or Director of Institutions may reconsider a final decision or order on appeal at any time and take any action in set forth in G. above.
- K. If a Superintendent's decision on a major infraction is appealed the Disciplinary Hearing Officer shall prepare the documents listed below and forward the packet to the Deputy Director of Institutions within three (3) working days after receiving the prisoner's appeal:
1. A cover memorandum that summarizes the appeal process to date;
 2. The prisoner's *Appeal of Disciplinary Action Form* (Attachment G);
 3. The Superintendent's decision on or attached to the prisoner's initial appeal;
 4. The Disciplinary Tribunal's written *Report Of Disciplinary Decision* (Attachment E);
 5. The *Summary Findings* (Attachment I);
 6. The *Disciplinary Hearing Notice* (Attachment B);
 7. The audio recording of the hearing;
 8. The *Imposition Of Sanctions Form* (Attachment H); and
 9. The *Disciplinary Hearing Advisor Packet* (Attachment D).
- L. The prisoner must be informed of the Director of Institution's decision within 15 working days after receipt of the appeal.
- M. The imposition of any sanctions / discipline must be stayed pending an appeal within the Department, unless the prisoner is scheduled to be released from incarceration before the expiration of the time periods allowed for appeal under this section. If the imposition of any sanctions / discipline is not stayed pending appeal, time frames for action on disciplinary appeals are expedited as follows:
1. One (1) working day for issuance of the Disciplinary Tribunal's decision;
 2. One (1) working day to inform the prisoner of the Superintendent's decision; and
 3. Three (3) working days to inform the prisoner of the Director of Institution's decision.
- N. A prisoner may not be confined to administrative segregation pending a disciplinary appeal, except in accordance with 22 AAC 05.485, Administrative Segregation.
- O. Failure of the appropriate official to respond within the time limits set out in this section is considered a denial of the appeal; however, a late response to an appeal is valid.
- P. A decision on the Director's appeal is the final decision and order of the Department.
- Q. If the prisoner appeals to the court, the audio recording and evidence must be kept until all judicial proceedings are complete. The Superintendent shall contact the Attorney General's office to confirm the status of the appeal prior to evidence being destroyed.

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IV. Miscellaneous:

Expedited Time:

Any time period specified within this policy may be expedited if the Superintendent finds good cause to do so under the circumstances. Reasons for a finding of good cause include, but are not limited to, the impending release of the prisoner or a material witness. The Superintendent must explain the finding of good cause in a memorandum, which will be entered into the disciplinary record. Notwithstanding the above, the Superintendent may not expedite a time period if it would prejudice the accused prisoner in the disciplinary proceedings, and the time period may not be reduced any further than necessary under the circumstances.

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