

	State of Alaska Department of Corrections Policies and Procedures	Index #: 809.06	Page 1 of 4	
		Effective: 01/02/09	Reviewed:	
		Distribution:		Due for Rev:
Chapter:	Prisoner Rules and Discipline			
Subject:	Disciplinary Appeal			

I. Authority

In accordance with 22 AAC 05.155, the Department will maintain a manual comprised of policies and procedures established by the Commissioner to interpret and implement relevant sections of the Alaska Statutes and 22 AAC.

II. References

Alaska Statutes, AS 33.30.011

Alaska Administrative Code, 22AAC 05.480

Standards for Adult Correctional Institutions; 4th Edition 1990, 4-4248

Standards for Adult Local Detention Facilities; 3rd Edition 1991, 3ADLF-3C-21

III. Purpose

To establish uniform procedures for appeals to prisoner disciplinary decisions

IV. Application

To all Departmental Correctional Officers and Probation Officers

V. Definitions:

VI. Policy

A. The Department shall allow prisoners to appeal decisions of the Disciplinary / Committee Hearing Officer under this policy and 22 AAC 05.480. Prisoners may appeal all disciplinary decisions to the Superintendent. The Superintendent's review of an appeal for a minor, low moderate or high moderate infraction is the final level of appeal. Major infractions may be appealed to the Director of Institutions if denied by the Superintendent in whole or in part.

B. Prisoners who are incarcerated in contract correctional facilities are entitled to appeal all adverse disciplinary decisions. High-Moderate, Low Moderate or Minor category infractions will be sent to the Deputy Director of Institutions and "Major" category infractions will be sent to the Director of Institutions for final disposition.

Procedures

A. Notice of Intention to Appeal Disciplinary Decision:

A prisoner must notify the Disciplinary Committee/Hearing Officer of his or her intent to appeal a disciplinary decision promptly at the conclusion of a disciplinary hearing by checking the appropriate box on the Summary Finding form (809.04B). 22 AAC 05.480(a). Upon request, staff shall promptly give the prisoner an Appeal of Disciplinary Action form (809.06A)

- At the conclusion of a disciplinary hearing, the Disciplinary Committee/Hearing Officer shall give the prisoner a Summary Finding (form 809.04B) that contains the Committee/Hearing Officer's handwritten findings and the imposed sanctions. The prisoner must indicate his or her intention to appeal on the form and is subject to the notice on the form that the Department may impose the penalty immediately if the prisoner waives the right to appeal. See policy #809.04, Disciplinary Committee/Hearing Officer and Basic Operation.22 AAC 05.480(a). The Committee

Chairperson/Hearing Officer shall inform the prisoner of the appeal procedures in section B (I) below and as follows:

- a. If a prisoner wishes to appeal a disciplinary decision the prisoner must indicate an intention to do so at this time, or waive the right to appeal;
 - b. The prisoner may request access to the recording of the disciplinary hearing to help prepare his or her appeal. 22 AAC 05.480(b); 22 AAC 05.260(g). The institution may not give the prisoner any portion of the recording containing an informant's testimony, but must summarize it in as much detail as possible without placing the informant in danger, and make available the transcribed summary to the prisoner. 22 AAC 05.260(g); 22 AAC 05.480(b)
- B. Appeal of Disciplinary Decision to the Superintendent A prisoner may appeal the Disciplinary Committee/Hearing Officer's decision to the Superintendent, of the facility where the hearing was held, on an Appeal of Disciplinary Action form (809.06A). The prisoner must give the completed form to a designated staff member within three working days of the prisoner's receipt of the Report of Disciplinary Action (form 809.04C); 22 AAC 05.480(b)
1. The Superintendent may not review the adjudicative or dispositive decisions of the Disciplinary Committee/Hearing Officer until the prisoner has had an opportunity to appeal those decisions or waives the right to appeal. 22 AAC 05.480(n)
 2. When reviewing an appeal, the Superintendent shall consider the disciplinary report, the Disciplinary Committee/Hearing Officer's Report of Disciplinary Decision (form 809.04C), related documents, and the prisoner's written Appeal of Disciplinary Action (form 809.06A). The Superintendent shall consider whether the Committee/Hearing Officer's findings justify the adjudication or the imposed penalty. The Superintendent may take one the following actions, or any combination of the following actions:
 - a. Return appeals that contain profane or abusive language may be returned without reconsideration to the prisoner for revision. The prisoner will upon receipt of the returned appeal be allowed one working day to appropriately revise the appeal and resubmit for disposition;
 - b. Affirm, reverse, or modify, in whole or in part, the disciplinary decision;
 - c. Reverse and/or remand the disciplinary decision for rehearing, findings, or clarification of findings;
 - d. Reduce the infraction to a lesser-included infraction if supported by the evidence; and;
 - e. Reduce or suspend the penalty imposed, in whole or in part.
 3. The Superintendents decision (other than Major infractions) should indicate that his or her decision is final and that the prisoner has 30 days in which to appeal the decision to the superior court. See form 809.06B.
 4. The Superintendent shall enter his or her decision, date, and sign the Appeal of Disciplinary Action form.
 5. A designated staff person shall give the prisoner the Superintendent's decision within ten working days after the Superintendent receives the prisoner's appeal, unless the expedited time frames under section D below apply. 22 AAC 05.480(d).
- C. Appeal of the Superintendent's decision:
-

The prisoner must complete an Appeal of Disciplinary Action form (809.06A) and attach it to the appeal documentation submitted under section B above to the Director of Institutions . If the prisoner is housed in a contract institution, such appeals must be submitted to the Deputy Director of Institutions . All major infraction appeals must be submitted to the Director of Institutions.

1. The prisoner must give the appeal to the designated staff member within two working days after the prisoner receives the Superintendent's decision. 22 AAC 05.480(g).
2. The staff member shall prepare the documents below and forward the packet to the Director of Institutions within three working days after receiving the prisoner's appeal:
 - a. Cover memorandum that summarizes the appeal process to date;
 - b. The prisoner's appeal (form 809.06A);
 - c. A copy of the Superintendent's decision on or attached to the prisoner's initial appeal;
 - d. A copy of the Disciplinary Committee/Hearing Officer's written Report of Disciplinary
 - e. A copy of the Summary Finding (form 809.04B);
 - f. A copy of the Disciplinary Hearing Notice(s) (form 809.04A);
 - g. A copy of the Disciplinary Report(s) (form 809.03a); and
 - h. The recording of the disciplinary hearing.
3. The Director of Institutions has the same powers on appeal as does the superintendent under (B)(2) above.
4. The Director of Institutions decision should indicate that his or her decision is final and that the prisoner has 30 days in which to appeal the decision to the superior court. See form 809.06B.
5. The Director of Institutions should render a decision within 15 working days , unless the expedited time frames apply under section D below. 22 AAC 05.480(h). A designated staff member shall give the prisoner the original document containing the Director's decision and provide a copy to the Superintendent, and file a copy in the prisoner's case record.

D. Expedited Time Frames for Decisions:

The prisoner's punishment must begin immediately after the disciplinary hearing if the prisoner is scheduled to be released from incarceration before the expiration of the normal administrative appeal time. In such a case, the expedited time frames for the appeal are: 22 AAC 05.480(i).

1. The Disciplinary Committee/Hearing Officer has one working day to issue its written Report of Disciplinary Decision; 22 AAC 05.480(1)(1)
 2. The Superintendent has one working day to inform the prisoner of his or her decision on an appeal; and 22 AAC 05.480(1)(2)
 3. When applicable, the Director of Institutions has three working days to inform the prisoner of his or her decision on an appeal of the Superintendent's decision. 22 AAC 05.480(1)(3)
-

- E. Confinement in Administrative Segregation The institution may not confine a prisoner in administrative segregation pending a disciplinary appeal unless it segregates the prisoner under 22 AAC 05.485 and policy #804.01, Administrative Segregation. 22 AAC 05.480(o)
- F. If the department's response is not returned within established time frames to the prisoner, the appeal will be considered denied. However, a late response granting an appeal is valid. 22 AAC05.480 (k). A staff member's failure to adhere to the time limits or other procedural requirements of the disciplinary process under this policy will not invalidate a decision absent a showing of prejudice by the prisoner. See 22 AAC 05.610.
- G. By request of the prisoner or on the official's own motion, the superintendent, director of institutions, or the deputy commissioner may reconsider a final decision or order on appeal issued by the respective official at any time to correct an error.

VII. Implementation

This policy and procedure is effective as of the date signed by the Commissioner. Each Manager shall incorporate the contents of this document into local policy and procedure. All local policies and procedures must conform to the contents of this document; any deviation from the contents of this document must be approved in writing by the Division Director.

Date

1/2/09



Joseph Schmidt, Commissioner
Department of Corrections

Applicable forms:

- 809.04 (A)
- 809.04 (B)
- 809.06 (A)
- 809.06 (B)