

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Corrections
Umbrella-Unit: 03-201
Statutory authority: 34-A MRS §§ 1402, 1403, 3032
Chapter number/title: Ch. 10, Policy and Procedures Manual – Adult:
Subsection 20.1, Prisoner Discipline
Filing number: 2019-178
Effective date: 11/6/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A citizens' petition (*Citizen Petition for Rulemaking to Require the Maine Department of Corrections to Amend Department of Corrections Rule: Chapter 10, Subsection 20.1, Prisoner Discipline*) was received on 1/14/2019 for the Department to initiate rulemaking pursuant to 5 M.R.S. § 8055. The Petition was verified and certified as required by Maine law. Therefore, pursuant to 5 MRS §8055, the Department initiated rulemaking on DOC Rule, Ch. 10 Subsection 20.1: Prisoner Discipline.

In addition, the Department proposed to amend the rule to improve the prisoner discipline process by providing clarifications, increasing efficiency in the prisoner discipline process, re-aligning appropriate dispositions to violations, and enhancing the informal resolution process for applicable violations.

Basis statement:

This adopted rule amends the prisoner discipline process and the amendments to the rule are listed below:

1. A list of definitions has been included.
2. The informal resolution process is clarified and may only be used on Class B and C violations and only if the prisoner is not a repeat violator.
3. The imposition of restrictions or privileges that may be imposed as a result of an informal resolution have been defined to include restrictions on recreation, canteen/commissary, electronic entertainment items, and on musical instruments. The imposition of restrictions has been reduced from 7 days to 5 days. Monetary sanctions have been eliminated as an informal resolution.
4. A disciplinary report shall be submitted on a Class A rule violation.
5. The description of what needs to be included in a disciplinary report is expanded.
6. The responsibilities of security supervisors are further elaborated on for formal resolutions.
7. A requirement that when staff complete a report that relied on an audio or video recording to substantiate the conduct, the description of the incident shall include that fact.
8. When the charge involves alcohol, inhalant, marijuana, or drug testing, the description of the incident shall include the reason for the test (e.g., random, reasonable suspicion, condition of program, etc.) and, the prisoner's admission form, a printout, photocopy, or photograph of the test results, or a copy of the report of an independent test, whichever is applicable, shall be attached to and become part of the disciplinary report
9. If the violation is "Test, Positive Alcohol, Inhalant, Marijuana, or Drug Test," "Test, Negative Drug Test," or "Test, Tampering with Alcohol, Inhalant, Marijuana, or Drug Test" (due to dilution), the time frame for the submission of the disciplinary report

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- begins after the observation by facility staff of the facility test result or, if applicable, the receipt by facility staff of the confirmation test result, whichever is later.
10. Multiple violations have been clarified.
 11. The management of information from a confidential informant is described and clarified.
 12. A violation is considered reported when the disciplinary report is reviewed and approved in CORIS by the receiving Shift Commander, Unit Manager, or other security supervisor designated by the Chief Administrative Officer.
 13. The time frame for initiating the investigation begins when the violation is reported (i.e., when the disciplinary report is reviewed and approved by the receiving security supervisor).
 14. A requirement that the disciplinary hearing officer shall be impartial has been added.
 15. A requirement has been added that the disciplinary hearing officer shall document the reason(s) in the written summary if a prisoner requests a continuance and the request is denied.
 16. A requirement that if the prisoner is requesting a foreign language interpreter or sign language interpreter or other disability accommodation, the prisoner shall inform the staff person providing the notification of his or her request at the time the notification is provided. The staff person shall ensure the request is documented on the notification.
 17. A requirement that if the prisoner wishes to present exhibits, the prisoner shall inform the staff person providing the notification of the exhibits at the time the notification is provided. The staff person shall ensure this is documented on the notification.
 18. If an exhibit is to be permitted to be presented, the disciplinary hearing officer shall take all reasonable steps to ensure the exhibit is presented at the hearing. Whenever permission has been granted to present an exhibit and the exhibit is not presented, the disciplinary hearing officer shall document the reason(s) in the written summary.
 19. If a staff counsel substitute examines, listens to or views an exhibit because it cannot be reviewed by a prisoner for security or safety reasons, the staff counsel substitute shall write a summary of what he or she observed or listened to, without revealing any information that would create a risk to security or safety, and this summary shall be provided to the prisoner prior to or at the hearing.
 20. A prisoner, or his or her counsel substitute, may present his or her verbal and/or written arguments regarding the charge(s) at the closing of the hearing. A prisoner, or his or her counsel substitute, may also submit written arguments regarding the charge(s) to the disciplinary hearing officer prior to the hearing.
 21. In the case of a charge for which trafficking is an element, trafficking may be inferred by the amount of an item or by the number of items a prisoner possesses or by any other circumstances that indicates the item(s) are not likely to be for personal use only.
 22. The grounds for dismissal of a disciplinary report are clarified.
 23. In a case in which restitution is a recommended disposition, evidence of the actual cost of property damage or medical care, as applicable, shall be presented at the hearing, whether through witness testimony or an exhibit. If the actual cost is unknown at the time of the hearing, the disciplinary hearing officer may recommend an amount of restitution based on the minimum cost that will be incurred as shown by witness testimony or an exhibit, e.g., an exhibit showing that a minimum ambulance cost is \$500.00.
 24. The handling of appeals by violation class is described.

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25. The specific restrictions imposed on a prisoner given disciplinary restriction are described.
26. There are now 3 classes of violations (Class A, B & C) Violations. All prior Class D violations have been made into Class C violations and some of the other violations have been changed to different classes.
27. Acts Prohibited (Procedure F) has been revised in that new acts have been added and some acts have been redefined.
28. Dispositions have been revised, mostly to reduce the dispositions, but in the case of certain especially serious violations, those dispositions have been increased.
29. A mandatory minimum monetary sanction of \$5.00 shall be imposed upon a finding of guilt of any disciplinary violation, regardless of any other sanctions imposed, to help defray the cost of holding disciplinary hearings. This disposition may not be suspended.
30. In the case of a prisoner who has been given a disciplinary disposition that would result in the prisoner being on continuous disciplinary segregation status for more than thirty (30) days, there is a requirement that the Chief Administrative Officer, or designee, shall review and determine whether to approve the continuation on disciplinary segregation status beyond the thirty (30) days or modify or suspend the disposition.

Fiscal impact of rule:

None.