

# **ALASKA PRISONERS' RIGHTS GUIDE**

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## **Basic Rights at a Glance**

### **Rehabilitation**

Under the Alaska state constitution, prisoners must have access to rehabilitative programs, such as sex offender treatment, substance abuse treatment, and mental health treatment. DOC must also provide programs that help create or improve occupational skills, provide life skills training, and improve educational qualifications.

### **Medical Care**

Prison officials must provide prisoners with adequate medical care, including dental care and mental health care. Adequate medical care means that prison officials are not deliberately indifferent to an inmate's serious medical needs. Medical needs are usually serious when they cause pain, discomfort, or threat to good health.

To win a case regarding medical care, an inmate must show that officials knew of and did not pay attention to a substantial risk of serious harm to your health.

### **Access to Legal Materials**

Every prison in Alaska is required to provide every prisoner with access to a law library, library assistance/law librarian, and supplies for preparing legal pleadings.

Prisoners in administrative segregation or classified as maximum custody have the same right of access as other prisoners unless prison officials determine that a prisoner's use of the law library presents a threat to the security of the facility or the prisoner is in punitive segregation. In those cases, the prisoner is entitled to have four law books in his or her cell at one time and secure access to the law librarian.

### **Freedom of Religion**

Prisoners must be given a reasonable opportunity to exercise their religious beliefs without fear of penalty or retaliation. Religious practices can only be limited due to legitimate prison interests and so long as the limitations do not favor one religion over another.

### **The Right to Send and Receive Mail**

Except in the case of a prisoner's business activities, prison officials cannot limit the amount of incoming or outgoing mail. Restrictions on access to mail are only allowed if the restrictions benefit the security of the institution.

Privileged mail includes mail to and from the courts, attorneys, or paralegals and cannot be read by prison officials. Officials may open such mail only in the presence of the inmate to search for contraband. All privileged mail must be marked.

Prison staff may read and censor non-privileged mail if they are inspecting it for contraband, censoring it to maintain security or discipline, preventing criminal activity, or promoting the goal of rehabilitation.

### **Prison Transfers**

If an in-state transfer causes a prisoner to lose program opportunities or if it interferes with visiting opportunities, prisoners should receive a classification hearing.

Before a prisoner may be transferred to a contract prison outside Alaska, the prisoner must get a classification hearing. Prisoners cannot be transferred out-of-state if rehabilitation or treatment would be substantially impaired by the transfer or if the transfer decision was made in retaliation for filing a grievance or lawsuit or for exercising other constitutional rights.

### **Disciplinary Sanctions**

Punishments that involve physical abuse or dangerous conditions of confinement are unconstitutional. Prisoners are only entitled to hearings (or other due process procedures) for punishments that impose an atypical and significant hardship, which will require more than normal segregation.

### **Excessive Force by Prison Officials**

Even if a prisoner does not suffer serious injury, prison officials may not maliciously and sadistically use force to cause harm. This means that officials cannot be evil, vicious, or want to hurt a prisoner when they use force.

Whether force is excessive depends on the need for force, the relationship between the need and the amount of force used, the extent of injury suffered by the inmate, the extent of the threat to safety of staff and inmates, and efforts made to lessen the need for the amount of force used.

### **Assault by Other Inmates**

Prison officials cannot act with deliberate indifference toward a prisoner's safety. Before an official can be held liable for an assault, an inmate must show that the official actually knew about a substantial risk of serious harm and failed to respond reasonably.

Officials have a responsibility to take reasonable measures to protect obvious victims they are aware of and to separate known predators who pose a risk to the safety of other inmates from the rest of the population.

### **Humane Conditions of Confinement**

Prisoners are entitled to adequate food, clothing, shelter, and medical care. Prison officials must act reasonably if they know that a prisoner is being denied a basic human need.

Basic human needs include, but are not limited to, adequate toilet and shower facilities, basic hygiene items, sanitary food preparation and service, working plumbing, protection from infestation by insects, rodents, and other vermin, clothing and bedding, protection from extreme temperatures, clean air, clean water, lighting, protection from excessive noise, exercise, sleep, and adequate living space.

### **Classification**

Classification is the process by which DOC determines a prisoner's custody and security levels. The classification process is complicated and confusing. In some instances, a prisoner is entitled to a classification hearing before his or her classification changes.

# The Grievance Process

**Note:** You may *not* file a grievance concerning classification or disciplinary decisions, transfers, Alaska Parole Board procedures or decisions, or court procedures or decisions. These matters may only be raised through an appeal of a classification or disciplinary action, or a court action.

## Basic Information

- A grievance must be filed within 30 days of the date the incident occurred or from the date you had knowledge of the incident. Filing a form for informal resolution does not satisfy this requirement.
- If you can, make copies of all grievance forms you file and keep a detailed record of when you filed the grievance.
- To file grievances and grievance appeals, you must give the appropriate forms to the Grievance Coordinator (“GC”) or place the forms in the locked box located in the housing unit.
- An emergency grievance may be made by notifying the GC, the superintendent, or the Shift Supervisor orally or in writing. Emergency grievances involve issues that threaten life or the security of the facility or may cause harm to any individual.
- There are four (4) steps to the grievance process. All four must be completed before you can take any action in court.

## Step-by-Step

### 1. INFORMAL RESOLUTION

You must first try to resolve the grievance informally by filling out and filing a Request for Interview Form (Form 808.11A). Go to step two if you are not satisfied with the results of this informal resolution.

**Note:** A grievance must be filed within 30 days of the date the incident occurred or from the date you had knowledge of the incident. Filing a form for informal resolution does not satisfy this requirement.

### 2. FILING A GRIEVANCE

Fill out a Prisoner Grievance Form (Form 808.03C), attach it to the response to your Request for Interview Form and file it in the locked box. You must file this form within 30 days from the date of the action you are complaining about or the date when you have knowledge of the action.

The Grievance Coordinator (“GC”) will decide if your grievance should be screened (denied because of a technicality such as the form not being filled out clearly or because the complaint is about something that cannot be resolved through filing a grievance), resolved easily, or assigned to an investigator. Go to step three if the GC assigns an investigator. Otherwise, see below:

- a. **Screened:** If your grievance is screened, you will receive a Grievance Screening Form (Form 808.03A). If you can correct the deficiency that caused the screening, you may appeal the decision and re-submit the grievance within 2 working days of receiving the screening form. To appeal the screening decision, you must fill out the Request For Interview Form (Form 808.11A) again and state on that form why the decision was wrong. Attach the new Request For Interview Form (Form 808.11A) to the Grievance Form (Form 808.03C) and the Screening Form (Form 808.03A) and resubmit them to the Grievance Coordinator.

**Note:** There is no set time frame for DOC to respond to your appeal. If you do not receive a response within ten (10) working days after you filed it, consider your appeal denied.

If you lose the appeal of the screening, there is no further step. If you win the appeal, go to step 3. If you believe your grievance was screened improperly, you can file a separate grievance about the screening process.

- b. **Easily Resolved:** If you and the Grievance Coordinator determine that your concerns can be easily resolved, you and the GC must fill out a Resolved Filed Grievance Form (Form 808.03B).

### 3. APPEAL OF A GRIEVANCE DECISION

You will receive a written decision concerning your grievance from the Superintendent or Deputy Director. You should receive this decision within fifteen (15) working days of filing your grievance. If you do not receive a response within this time frame, you should consider your appeal denied.

You may appeal the decision by filling out the Prisoner Grievance Appeal Statement Form (Form 808.03D) and the “Prisoner Response” section on page 2 of the Prisoner Grievance Form (Form 808.03C). You must file your appeal within 2 working days. If you file an appeal, go to step four.

### 4. GRIEVANCE AND COMPLIANCE ADMINISTRATOR REVIEW

You will receive another written decision from the Superintendent or Deputy Director within 15 working days. If you do not receive a response within this time frame, you should consider your appeal denied. If you disagree with this decision, you may appeal to the DOC Grievance and Compliance Administrator (“GCA”). There is no form to fill out; you may request review by writing a letter directly to the GSA within 30 days after you receive the decision on your appeal. The GCA will respond to your request within 30 days.

If you do not agree with the GCA’s decision, you may file a compliance motion in state court under the *Cleary* Final Settlement Agreement (FSA) or you may file a lawsuit in state or federal court. You may only file a compliance motion under the *Cleary* FSA if your grievance is an issue addressed in the *Cleary* FSA and it involves a violation of a state or federal right. A copy of the *Cleary* FSA must be made available in the prison’s law library. It is important to remember that you must first complete all 4 steps of the grievance process before filing a motion under *Cleary* or before filing a lawsuit.

## **PREFACE**

The purpose of this guide is to allow for a clear understanding of prisoners' rights law in Alaska and to provide a comprehensive resource for advocates or prisoners seeking to challenge conditions of confinement or enforce constitutional rights.

This guide is divided into three parts. Part I examines the current state of prisoners' rights law in Alaska, focusing on ten prominent constitutional rights. Part II summarizes the Federal Prison Litigation Reform Act and the Alaska Prison Litigation Reform Act. Part III provides an overview of some of the major Alaska Department of Corrections policies and procedures that implicate prisoners' rights, such as the classification system, grievance process, and prisoner discipline system.

**The Alaska Prisoners' Rights Guide is an informational guide to the complicated field of prison law in Alaska. The guide was developed for educational purposes. This guide is only updated periodically and may not reflect recent changes in the law.**

**This guide does not cover every area of law that might be needed to prosecute a claim. Every legal claim is different, so no guide can substitute for the expertise of a knowledgeable attorney. If you believe you may have a claim, consult an attorney. It is important to understand that you may lose your right to pursue a claim if you do not file a lawsuit or administrative complaint before certain deadlines. Therefore, it is important that you seek advice from a lawyer licensed to practice in the State of Alaska if you have any questions about filing deadlines or about your legal circumstances generally. You may also wish to contact the following organizations to see if one of them they may be able to assist you with your individual complaint: the Alaska Bar Association Lawyer Referral Service (800-770-9999); Alaska Pro Bono Program (907-529-1360); or Alaska State Ombudsman (907-269-5290).**

*Note: The ACLU of Alaska Foundation last updated The Alaska Prisoners' Rights Guide in October 2010. Since then, the existing case law may have changed, and the Alaska Department of Corrections (DOC) may have revised some of its policies and procedures. You should review any revised policies/procedures and follow them to the extent they differ from what is included in this Guide. Links to these revisions are available in the document: "Alaska Prisoners' Rights Guide Addendum – Miscellaneous Forms and Protocols of the Alaska Department of Corrections," also available on the ACLU of Alaska website.*



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## PART I: PRISONERS' RIGHTS

### A. Introduction

The term “prisoners’ rights” is a broad reference to the powers and protections that the law gives to prisoners.<sup>1</sup> This term encompasses an array of privileges for inmates including substantial protections such as the right to necessary medical care and the right to access the courts. It also covers prison officials’ duties to maintain the health and safety of inmates and to provide certain basic amenities like personal hygiene items and exercise areas.

Both the United States Constitution and the Alaska Constitution provide protections for the rights of prisoners. Perhaps the most well known prisoners’ right is the protection against “cruel and unusual punishment” found in the Eighth Amendment to the U.S. Constitution. The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>2</sup> The “cruel and unusual” clause protects inmates from excessive force by prison officials, mandates safe conditions of confinement, and is the source of an inmate’s right to adequate medical care.

The First Amendment also provides significant safeguards for inmates, including the right of access to the courts and protection from retaliation from prison officials for reporting complaints and grievances. Additionally, the Fifth and Fourteenth Amendments both require government officials to provide due process of law before depriving any inmate of “life, liberty, or property.”<sup>3</sup>

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<sup>1</sup> The word “prisoner” does not accurately describe all individuals who are imprisoned. For instance, it does not technically cover pretrial detainees (people who have been charged with crimes and are awaiting trial but have not yet been convicted), people who have been civilly committed, immigration detainees, and juvenile detainees. The term “inmate” is more often used to refer to all people imprisoned in jails, prisons, and other detention centers.

The State of Alaska defines a “prisoner” as a “person held under authority of state law in official detention.” AS 33.30.901(12). “Official detention” means “custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release.” AS 11.81.900(40). Accordingly, the terms prisoner and inmate will be used interchangeably in this memorandum to refer to all people imprisoned in jails, prisons, detention centers, work camps, and other correctional centers. There are, however, some important differences between the rights of detainees and those of incarcerated persons serving criminal sentences. While the terms inmate and prisoner will be used to discuss the law as it applies to both detainees and convicted inmates, where relevant, important distinctions will be noted.

<sup>2</sup> U.S. CONST. amend. VIII.

<sup>3</sup> The Fifth Amendment applies to the Federal Government while the Fourteenth Amendment applies to state and local governments. The Fourteenth Amendment has “incorporated” the majority of the first ten amendments to the Constitution, meaning these amendments now apply to state and local governments as well as the federal government. See Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992) (holding “the Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the states”).

The portions of the Bill of Rights that have been incorporated against states and municipalities include the following: the First Amendment rights to free speech and freedom of the press, Gitlow v. New York, 268 U.S. 652, 666 (1925), the right to peaceably assemble, De Jonge v. Oregon, 299 U.S. 353, 364 (1937), the right of association, Shelton v. Tucker, 364 U.S. 479 (1960), the right to petition for the redress of grievances, Edwards v. South Carolina, 372 U.S. 229, 235 (1963), and the right to religious freedom, Cantwell v. Connecticut, 310 U.S. 296 (1940) (Free Exercise Clause), and Everson v. Bd. of Ed. of Ewing, 330 U.S. 1, 15 (1947) (Establishment Clause); the Second Amendment right to keep and bear arms, McDonald v. Chicago, 130 S.Ct. 3020, 3025 (2010); the Fourth Amendment right to be free from unreasonable searches and seizures, and to suppress illegally seized evidence from

The Alaska Constitution provides the same protections for prisoners as its federal counterpart, including a prohibition against cruel and unusual punishment and provisions for due process of law and the right to necessary medical care.<sup>4</sup> It also provides that criminal administration in Alaska values the principle of rehabilitation so prisoners will make a crime-free return to society.<sup>5</sup> Thus, inmates in Alaska are afforded an additional level of privileges, as the Alaska Supreme Court has repeatedly held that inmates in Alaska have a constitutional right to reformation and rehabilitation.<sup>6</sup> This also signifies that the state views incarceration not merely as a means of punishment but also as a mechanism for effectively reintroducing an inmate to society.

Mentioning “prisoners’ rights” often stirs up debate. The public at large is generally uninformed with respect to prison issues. Many believe prisoners should have very few, very limited rights, and believe that the rights inmates do have extend too far. One common argument is that prison is not so bad: inmates are served food every day, they can earn a GED or receive other educational and vocational training, and, in some instances, they can watch television or listen to the radio. This view is completely without merit. Granted, for a very small percentage of convicted inmates, a prison term *might* represent a lifestyle improvement. What the public fails to consider, however, is that the United States Constitution does not get checked at the jailhouse door. When an inmate hands over his personal possessions before he begins serving time, he does not hand over the Bill of Rights also.

This is not to say that prisoners should have all of the rights afforded the rest of society. Prisoners found guilty of a crime should be punished and may be deprived of certain liberties. Prison is not meant to be pleasant, although unsentenced inmates, such as pretrial detainees, not found guilty of an offense cannot be subject to conditions intended as punishment. However, prisoners should still be able to observe religious practices, get exercise, send and receive letters, and have access to adequate medical care. Additionally, in a state with such a diverse cultural population, Native traditions and customs should not be stifled through incarceration. Most importantly, the guarantees afforded to the rest of society that prevent unfair treatment by the government—guarantees such as equal protection and due process—should unequivocally apply to individuals who live every moment of their lives under government watch.

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being admissible at trial, Mapp v. State of Ohio, 367 U.S. 643, 654-55 (1961), and the right to certain warrant requirements before a search, Aguilar v. Texas, 378 U.S. 108, 110 (1964), *abrogated on other grounds by Illinois v. Gates*, 462 U.S. 213 (1983); the Fifth Amendment rights to compensation for property taken by the state, Chicago, B. & Q.R. Co. v. City of Chicago, 166 U.S. 226 (1897), to privilege against self-incrimination, Mallory v. Hogan, 387 U.S. 1 (1964), and to double jeopardy prohibition, Benton v. Maryland, 395 U.S. 784, 794 (1969); the Sixth Amendment rights to counsel, Gideon v. Wainwright, 372 U.S. 335, 342 (1963), to a speedy trial, Klopfer v. State of North Carolina, 386 U.S. 213, 223 (1967), to a public trial, In re Oliver, 333 U.S. 257, 278 (1948), to confront opposing witnesses at trial, Pointer v. State of Texas, 380 U.S. 400 (1965), to compulsory process for obtaining witnesses, Washington v. Texas, 388 U.S. 14 (1967), and to a jury in a criminal trial, Duncan v. Louisiana, 391 U.S. 145 (1968); and the Eighth Amendment right to freedom from “cruel and unusual punishment,” Robinson v. California, 370 U.S. 660, 666 (1962), and prohibition against excessive bail, Schilb v. Kuebel, 404 U.S. 357, 365 (1971).

<sup>4</sup> ALASKA CONST. Art. I, §12.

<sup>5</sup> Id.

<sup>6</sup> Brandon v. State, 938 P.2d 1029, 1032 (Alaska 1997); Abraham v. State, 585 P.2d 526, 530-33 (Alaska 1978).

As with other controversial issues within the ACLU's scope, prisoners' rights advocacy focuses on the constitutional principles at stake, not necessarily on the individuals asserting those rights. However, there are plenty of egregious cases on record where it is nearly impossible not to consider the affected individual. Again, the goal of prisoners' rights advocacy is not to achieve cushy sentences for convicted criminals. Rather, the goal is to enforce the rights to which all prisoners are entitled under the laws of this country, and to ensure those rights are enforced equally, regardless of an inmate's race, sex, religion, or any other classification.

The specific prisoners' rights covered in this guide include:

1. the right to rehabilitation;
2. the right to receive adequate medical care;
3. the right of access to the courts;
4. the right to be free from retaliation from prison officials for the voicing of complaints or grievances;
5. the right to one's traditional civil liberties;
6. the right to equal protection;
7. the right to due process;
8. the right to be free from excessive force by prison officials;
9. the right to be free from assault by other inmates; and
10. the right to humane conditions of confinement.

## **B. Prisoners' Rights in Alaska**

### **1. Right to Rehabilitation**

Prisoners in Alaska have a fundamental right to rehabilitation under the Alaska state constitution.<sup>7</sup> The Alaska Constitution states, in pertinent part, "Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution of the offender, and the principle of reformation."<sup>8</sup> "Reformation" means doing something "to rehabilitate the offender into a non-criminal member of society."<sup>9</sup>

The Alaska Supreme Court has affirmed that rehabilitation is an enforceable constitutional interest designed to rehabilitate the inmate with the end-goal of that inmate's crime-free return to society.<sup>10</sup> Inmates, therefore, have a liberty interest in rehabilitation programs and any denial of

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<sup>7</sup> Brandon, 938 P.2d at 1032 (citing Abraham, 585 P.2d at 530-33).

<sup>8</sup> ALASKA CONST. Art. I, §12.

<sup>9</sup> Abraham, 585 P.2d at 531.

<sup>10</sup> In Brandon, the plaintiff asserted the Department of Corrections erred in determining that his rehabilitation would not be substantially impaired by transferring him to a private prison in Arizona. 938 P.2d at 1032. The Alaska Statutes and the Alaska Administrative Code both reiterate that a prisoner may only be transferred out of state upon a determination that "rehabilitation of the prisoner will not be substantially impaired." AS 33.30.061(b); 22 AAC 05.252(a). The Brandon court recognized that visitation is important to rehabilitation and, specifically, "[n]o single factor has been proven to be more directly correlated with the objective of a crime-free return to society than visiting." 938 P.2d at 1032. While the court did acknowledge visitation privileges are a component of the constitutional right to rehabilitation, the Court did not define their required scope or the permissible limits on their

access to such programs must meet due process requirements.<sup>11</sup> Note that the means of enforcing this right generally will be in the form of a civil rights suit against the Department of Corrections, rather than as a direct appeal of a sentencing order.<sup>12</sup>

The Alaska Department of Corrections (DOC) has enacted a comprehensive policy governing the removal of a prisoner from a rehabilitation program.<sup>13</sup> This policy includes guidelines that satisfy the requirements of due process before a prisoner is removed from a rehabilitative program. DOC will provide notice to a prisoner of its intent to remove the prisoner from a program covered by this policy and will give the prisoner an opportunity to present objections to the proposed removal before the removal occurs.<sup>14</sup> However, not all programs and prisoner projects are clearly rehabilitative in such a way that the loss of the privilege invokes constitutional protection.<sup>15</sup>

In accordance with its constitutional mandate, the Alaska legislature has instructed DOC to offer programs for prisoners that are designed to create or improve occupational skills, enhance educational qualifications, and otherwise provide for the rehabilitation and reformation of prisoners, thereby facilitating their reintegration into society.<sup>16</sup>

- **Prisoner Work Programs.** Prisoner employment involves routine maintenance and support services for a facility's operation; industrial and agricultural services; public service projects such as forest fire prevention and control, and forest and watershed

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exercise. Id. A subsequent decision indicated the Court would permit reasonable restrictions on visitations, including limits on contact visits for maximum security prisoners. Larson v. Cooper, 90 P.3d 125, 133-34 (Alaska 2004). However, in 2007, the Court reaffirmed the importance of visitation within the broader right to rehabilitation. Clark v. State, Dep't of Corr., 156 P.3d 384, 387-88 (Alaska 2007). The Clark court held "prison officials and administrators must ensure that their operating policies and procedures and prison visitation rules take into account the unique challenges Alaska families regularly encounter when attempting to visit family members who are incarcerated" outside the state. Id. at 388 n.14.

<sup>11</sup> See infra Part I.B.7.

<sup>12</sup> Dep't of Corr. v. Lundy, 188 P.3d 692, 696 (Alaska Ct. App. 2008).

<sup>13</sup> DOC Policy # 808.04, Removal From Rehabilitation Programs.

<sup>14</sup> The policy is based on the requirements of Ferguson v. State, 816 P.2d 134 (Alaska 1991) (holding an inmate employed by the prison industries program had a right to a due process hearing prior to dismissal from his position).

<sup>15</sup> Moody v. Dep't of Corr., No. S-12303, 2007 WL 3197938, at \*2 (Alaska Oct. 31, 2007) (finding the loss of the right to keep crafts in one's cell and to hold a prison laundry job involving no specialized training or rehabilitative aim did not violate the right to rehabilitation); Hays v. State, 830 P.2d 783 (Alaska 1992) (holding inmate did not have an enforceable constitutional interest in continued employment as a prison librarian because he merely moved jobs and was not denied the opportunity to work).

<sup>16</sup> The full text AS 33.30.011(3) states:

Under Alaska Statutory law, the Commissioner of the Department of Corrections ("Commissioner") is required to establish programs for prisoners in state correctional facilities that are designed to:

- A. protect the public and the victims of crimes committed by prisoners;
- B. maintain health;
- C. create or improve occupational skills;
- D. enhance educational qualifications;
- E. support court-ordered restitution; and
- F. otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society.

AS 33.30.011(3)(A)-(F).



enhancement; recreational area development and cleanup, construction and maintenance of trails and campsites, fish and game enhancement projects, highway cleanup, and litter collection; renovation, repair, or alteration of existing correctional facilities; and other work within Alaska Correctional Industries.<sup>17</sup>

- Academic and Vocational Programs. These programs include Adult Basic Education (ABE); General Equivalency Degree (GED); and Post-Secondary Education.<sup>18</sup>
- Life Skills Programs including Health and Safety (programs such as anger and stress management, CPR/First Aid, personal hygiene, and decision making); Communications (programs in interpersonal relationships, parenting, assertiveness, and values clarification); Cultural Activities (programs in cross-cultural communications, Native languages, and cultural awareness events and activities); and Pre-Release/Pre-Employment Preparation (programs in career planning, budgeting and money management, consumer education, job-seeking skills, and resume writing).<sup>19</sup>
- Court-ordered treatment programs including sex offender treatment, substance abuse treatment, mental health treatment, anger management, and batterers' treatment programs.<sup>20</sup>

## **2. Medical Care**

### **a. Introduction**

The Eighth Amendment to the United States Constitution obligates prison officials to provide prisoners with adequate medical care.<sup>21</sup> Many people wonder why this is so. Why do inmates have a constitutional right to medical care when others do not have the right to health care free of charge? The answer is that when an individual is imprisoned, that person cannot, on his or her own, go to a doctor, medical clinic, or hospital, buy medicine at a pharmacy, or do anything else needed to avoid getting sick in the first place, like eating well and exercising.<sup>22</sup> Thus, because inmates lose the ability to obtain their own medical care, the Supreme Court has recognized that prison officials have a duty to provide medical care: "It is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself."<sup>23</sup>

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<sup>17</sup> DOC Policy # 812.01, Prisoner Employment.

<sup>18</sup> DOC Policy # 813.01, Academic and Vocational Education.

<sup>19</sup> Id.

<sup>20</sup> DOC Policy # 811.16, Court-Ordered Treatment.

<sup>21</sup> Estelle v. Gamble, 428 U.S. 97, 103 (1976). The Due Process Clause gives this right to adequate medical care to pretrial detainees. Courts generally treat medical care claims the same whether they are brought by convicted inmates and pretrial detainees. Brown v. Harris, 240 F.3d 383, 388 n.6 (4th Cir. 2001). This principle applies to both government employees and private medical staff under contract with the government. Richardson v. McKnight, 521 U.S. 399 (1997); West v. Atkins, 487 U.S. 42, 57-58 (1988).

<sup>22</sup> Toone, Robert E., PROTECTING YOUR HEALTH AND SAFETY: A LITIGATION GUIDE FOR INMATES at 72 (2002) [hereinafter Toone].

<sup>23</sup> Estelle at 104. The Court further wrote that the "denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose." Id. at 97. Accordingly, medical care may not be denied as punishment or as a means of saving money.

Alaska adheres to this same principle. The Alaska Supreme Court has repeatedly recognized an inmate's constitutional right to medical care.<sup>24</sup> The state also owes inmates a duty to provide necessary medical care.<sup>25</sup> Alaska's legislature has determined that a prisoner has the right to receive necessary medical services, including psychiatric care, when confined.<sup>26</sup> Pursuant to statutory provisions, the DOC must provide necessary medical services for prisoners in correctional facilities or those committed by a court to the custody of the commissioner. This duty includes examinations for communicable and infectious diseases, as well as psychological or psychiatric treatment. Treatment will be administered if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated, and the potential for harm to the prisoner by reason of delay or denial of care is substantial.<sup>27</sup>

### **b. When the Right to Medical Care Applies**

The constitutional right to medical care does not mean that prisoners have unfettered, full-time access to medical care facilities or the ability to receive treatment for any and every ailment; inmates do not have a right of "unqualified access to health care."<sup>28</sup> Rather, the U.S. Constitution guarantees inmates a right to treatment only for medical needs that are *serious*,<sup>29</sup> and the Alaska Supreme Court has held that an inmate only has the right to receive *necessary* medical services while confined.<sup>30</sup>

These terms are not mutually exclusive; they can be used interchangeably. It can be argued that the only difference is a matter of semantics—a serious medical need identifies the need on the part of the inmate while a medically necessary service is what the state would provide in response to a serious medical need.

### **c. Serious Medical Needs**

Many medical conditions endanger a person's life and are clearly serious. Examples include AIDS, hepatitis B, hepatitis C, tuberculosis, cancer, broken bones, and open, infected wounds. But, a medical condition does not have to be life threatening to be considered "serious."<sup>31</sup> The U.S. Supreme Court has not yet defined the term "serious medical need," but several other courts have established definitions for the term:

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<sup>24</sup> Goodlataw v. State, Dep't of Health and Soc. Serv., 698 P.2d 1190, 1193 (Alaska 1985) ("Incarcerated prisoners clearly have a constitutional right to have their medical needs met."); State v. Hiser, 924 P.2d 1024, 1025 (Alaska App. 1996) (citing Rust v. State, 582 P.2d 134 (Alaska 1978) and LaBarbera v. State, 598 P.2d 947 (Alaska (1979)) ("clearly hold[ing] that...a prisoner has a constitutional right to medical care and to rehabilitative treatment."); Mathis v. Sauser, 942 P.2d 1117, 1126 (Alaska 1997) (acknowledging constitutional right to medical care under Estelle).

<sup>25</sup> Hinsberger v. State, 53 P.3d 568, 571 (Alaska 2002); AS 33.30.011 (2010).

<sup>26</sup> Rust, 582 P.2d at 134, *modified on other grounds by Rust v. State*, 584 P.2d 38 (Alaska 1978).

<sup>27</sup> AS 33.30.011.

<sup>28</sup> Hudson v. McMillan, 503 U.S. 1, 9 (1992).

<sup>29</sup> Estelle v. Gamble, 429 U.S. 97, 104 (1976).

<sup>30</sup> Rust, 582 P.2d at 143.

<sup>31</sup> Gutierrez v. Peters, 111 F.3d 1364, 1370 (7th Cir. 1997); Ellis v. Butler, 890 F.2d 1001, 1003 n.1 (8th Cir. 1989); Washington v. Dugger, 860 F.2d 1018, 1021 (11th Cir. 1988).

- “One that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor’s attention.”<sup>32</sup>
- “A ‘serious’ medical need exists if the failure to treat the need could result in further significant injury or unnecessary and wanton infliction of pain.”<sup>33</sup>
- Medical conditions that fall well short of life-threatening can nevertheless constitute “serious medical needs,” if they result in pain or loss of function.<sup>34</sup>
- The Eighth Amendment can be violated when failure to treat a prisoner results in pain, even if it does not result in a worsening of the patient’s condition.<sup>35</sup>
- Factors that should guide the analysis include, but are not limited to, “(1) whether a reasonable doctor or patient would perceive the medical need in question as important and worthy of comment or treatment; (2) whether the medical condition significantly affects daily activities, and (3) the existence of chronic and substantial pain.”<sup>36</sup>

#### **d. Necessary Medical Services**

The Alaska Supreme Court has held that an inmate has the right to receive necessary medical services, including psychiatric care, while confined.<sup>37</sup> The court wrote that “[t]he essential test is one of medical necessity and not simply that which may be considered merely desirable.”<sup>38</sup> Pursuant to AS 33.30.011, a prisoner in DOC’s custody has the right to receive medical treatment if a health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty (1) the prisoner’s symptoms evidence a serious

<sup>32</sup> Hill v. DeKalb Reg’l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994) (internal quotation, citation omitted).

<sup>33</sup> Jett v. Penner, 439 F.3d 1091 (9th Cir. 2006) (internal quotation omitted); Carnell v. Grimm, 872 F. Supp. 746, 755 (D. Hawai’i 1994), *appeal dismissed in part, aff’d in part*, 74 F.3d 977 (9th Cir. 1996).

<sup>34</sup> Brock v. Wright, 315 F.3d 158, 163-64 (2nd Cir. 2003) (holding painful keloids constituted a “serious” medical need). The following is a list of courts and the various conditions they have found to be “serious” medical needs: Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002) (effects of pepper spray on bystanders); Ellis v. Butler, 890 F.2d 1001, 1003 (8th Cir. 1989) (swollen, painful knee); Pulliam v. Shelby County, 902 F. Supp. 797, 801-02 (W.D. Tenn. 1995) (denial of dilantin prescribed for seizure disorder); Chaney v. Chicago, 901 F. Supp. 266, 270 (N.D. Ill. 1995) (post-surgical care of foot); Bouchard v. Magnusson, 715 F. Supp. 1146, 1148 (D. Me. 1989) (persistent back pain); Smallwood v. Renfro, 708 F. Supp. 182, 187 (N.D. Ill. 1989) (cut lip); Henderson v. Harris, 672 F. Supp. 1054, 1059 (N.D. Ill. 1987) (hemorrhoids); Case v. Bixler, 518 F. Supp. 1277, 1280 (S.D. Ohio 1981) (boil).

<sup>35</sup> Boretti v. Wiscomb, 930 F.2d 1150, 1154 (6th Cir. 1991) (denial of dressing and pain medication for wound); Ellis, 890 F.2d at 1003 (nurse’s failure to deliver pain medication); Washington v. Dugger, 860 F.2d 1018, 1021 (11th Cir. 1988) (denial of treatments that could “eliminate pain and suffering at least temporarily”); H.C. v. Jarrard, 786 F.2d 1080, 1083, 1086 (11th Cir. 1986) (denial of medical care for injured shoulder was unconstitutional, although no permanent injury resulted).

<sup>36</sup> Brock, 315 F.3d at 162 (internal quotation omitted). The Ninth Circuit recently held that a prisoner who was scheduled for emergency dental surgery and was in undisputedly severe pain had raised a triable issue of fact as to whether the prison official who insisted on transferring the prisoner before surgery had acted with deliberate indifference to the prisoner’s serious medical needs. See Fews v. Perez, 219 F. App’x 676, 677 (9th Cir. 2007).

<sup>37</sup> Rust, 582 P.2d at 143.

<sup>38</sup> Id. at 142 (citing Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977)).

disease or injury; (2) such disease or injury is curable or may be substantially alleviated; and (3) the potential for harm to the prisoner by reason of delay or denial of care would be substantial.<sup>39</sup>

In its internal policies, the Alaska DOC does not use the term “serious medical need” but provides care for conditions deemed “medically necessary.” The DOC defines “medically necessary care” as care determined by a healthcare provider to be:

- consistent with the standards of care of the Department of Corrections,
- ordered by an authorized healthcare provider,
- required to prevent further deterioration in the inmate’s health resulting in permanent functional impairment if not rendered during the time of incarceration or necessary to relieve unmanageable pain,
- not considered experimental or adequately supported by medical evidence to demonstrate efficacy, and
- not administered solely for the convenience of the inmate or the health care practitioner.<sup>40</sup>

#### **e. Legal Standard for Proving a Violation of the Right to Medical Care**

Identifying a serious medical need or a medically necessary service is the first step. However, prison officials only violate the Constitution when they act with *deliberate indifference* to an inmate’s serious medical needs. “Deliberate indifference” is the intent or “state of mind” requirement that inmates must show any time they bring a claim for inadequate medical care.<sup>41</sup>

“Deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.”<sup>42</sup>

In Farmer v. Brennan, the Supreme Court held an official acts with deliberate indifference when he or she “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”<sup>43</sup> To be deliberately indifferent, an official must, therefore, both (1) *know* about a risk to an inmate and (2) *fail to respond reasonably* to that risk. If an official does not know about a risk, he has no constitutional duty to act. Alaska has adopted this same standard.<sup>44</sup>

In Farmer, the Court emphasized the deliberate indifference standard is subjective rather than objective.<sup>45</sup> Accordingly, it is not enough to show that an official “should have known” about a particular risk or that a “reasonable person” would have known about the risk. Instead, an

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<sup>39</sup> Id.

<sup>40</sup> These guidelines are explained in the Prisoner Health Plan, DOC Policy # 807.02, Attachment A: Prisoner Health Plan, § VI, Definitions of Medical Terminology and Provided Services.

<sup>41</sup> Deliberate indifference of prison officials is required for any Eighth Amendment health and safety claim. This includes failure-to-protect claims, claims challenging inhumane conditions of confinement, and claims challenging inadequate medical care.

<sup>42</sup> Estelle v. Gamble, 429 U.S. 97, 104 (1976).

<sup>43</sup> Farmer v. Brennan, 511 U.S. 825, 847 (1997).

<sup>44</sup> Goodlataw, 698 P.2d at 1193.

<sup>45</sup> Farmer, 511 U.S. at 838-39.

inmate must show that the official in question *actually knew* about the risk.<sup>46</sup> However, the fact that the lack of care or conditions were “longstanding, pervasive, well-documented, or expressly noted” by officials in the past can prove, by inference, the official in question actually knew about the risk.<sup>47</sup> Under the Farmer test, a prison official can argue that even though he knew about a particular problem at the facility, he still did not know that it had resulted in a substantial risk of serious harm to inmates. In other words, an official only acts with deliberate indifference if he makes the connection in his mind between a problematic condition and the resulting risk to inmates’ health or safety.<sup>48</sup> This is what the Court meant when it wrote that an official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”<sup>49</sup>

Once an official has actual knowledge of a substantial risk of serious harm, he or she must *respond reasonably* to it. In deciding whether an official’s response was reasonable, a court will likely look to whether the official made a good-faith effort to investigate the problem and then fix it.<sup>50</sup> In the medical care context, this means an inmate should be promptly examined by qualified medical personnel, prescribed or ordered the necessary treatment, administered the treatment properly, and then provided follow-up treatment as necessary.<sup>51</sup>

It is important to note that deliberate indifference does not require a showing that an official intended to hurt an inmate or make an inmate suffer, yet it does require more than a showing of mere negligence.<sup>52</sup> The deliberate indifference requirement “is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.”<sup>53</sup> An inmate “need not show that a prison official acted or failed to act believing that harm would actually befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.”<sup>54</sup> This is the difference between deliberate indifference and the malicious and sadistic intent requirement for excessive force claims.<sup>55</sup>

Negligence is not enough to satisfy a showing of deliberate indifference. The Supreme Court has clearly stated that deliberate indifference “entails something more than mere negligence.”<sup>56</sup> Moreover, in Estelle v. Gamble, the Court held that deliberate indifference to serious medical needs of prisoners does not result whenever a doctor negligently diagnoses or treats an inmate.<sup>57</sup>

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<sup>46</sup> Toone, supra note 29, at 44.

<sup>47</sup> Farmer, 511 U.S. at 842.

<sup>48</sup> Id. at 837.

<sup>49</sup> Id.

<sup>50</sup> Vance v. Peters, 97 F.3d 987, 993 (7th Cir. 1996).

<sup>51</sup> Toone, supra note 22, at 72. See Jett v. Penner, 439 F.3d 1091 (9th Cir. 2006) (finding deliberate indifference evidenced by staff recognition of the need to set inmate’s fractured thumb and failure to provide that treatment).

<sup>52</sup> Id. at 44.

<sup>53</sup> Farmer v. Brennan, 511 U.S. 825, 835 (1994).

<sup>54</sup> Id. at 842. See also Conn v. City of Reno, 572 F.3d 1047 (9th Cir. 2009), *amended and superseded on denial of rehearing en banc*, 591 F.3d 1081 (9th Cir. 2009) (holding knowledge of evidence of decedent’s suicidality, including verbal ideation and attempted hanging, showed deliberate indifference on behalf of police officers who witnessed the verbal and physical threats yet did not report them).

<sup>55</sup> See infra, Part I.B.9.

<sup>56</sup> Farmer, 511 U.S. at 836.

<sup>57</sup> Estelle, 429 U.S. at 106.

To summarize, “deliberate indifference” in the case of an inadequate medical care claim means prison officials knew of and disregarded a substantial risk of serious harm to the prisoner’s health.<sup>58</sup> This concept is the key to any medical care claim under the Eighth Amendment.

## **f. Special Medical Needs**

Inmates also have certain rights with respect to post-release treatment and special medical needs. “Special medical needs” encompasses (1) care for disabled inmates, (2) mental health services, (3) pregnancy, childbirth and abortion services, and (4) drug and alcohol withdrawal programs.

### **1. Disabled Inmates**

Inmates with physical disabilities are entitled to certain accommodations under both the Constitution and the Americans with Disabilities Act (ADA).<sup>59</sup> Living conditions that suffice for non-disabled inmates may be constitutionally inadequate for disabled inmates. The Eighth Amendment requires that inmates who cannot move around easily must be assisted and/or provided the means to use the toilet, take baths or showers, eat meals, and perform personal hygiene.<sup>60</sup> Similarly, inmates who are hearing-impaired (partly or wholly deaf) or vision-impaired (partly or wholly blind) have a right to aids or assistance for their disabilities.<sup>61</sup> The Eighth Amendment also prohibits prison officials from requiring an inmate to perform work that is beyond his strength, dangerous to his health, or unusually painful.<sup>62</sup>

Disabled inmates also have significant rights under the ADA. The Supreme Court has held that the ADA applies to jails and prisons and therefore prohibits prison officials from discriminating against inmates with disabilities.<sup>63</sup> Officials must provide disabled inmates with an equal opportunity to benefit from all prison activities, programs, and services, and must make “reasonable modifications” where necessary to avoid such discrimination, unless doing so would fundamentally change the activity, program, or service being provided.<sup>64</sup>

To state a prima facie claim under the ADA, a plaintiff must show: (1) that he is a person with a disability as defined by the statute; (2) he is otherwise qualified for the benefit in question; and

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<sup>58</sup> Farmer, 511 U.S. at 837.

<sup>59</sup> 42 U.S.C. §§ 12101-03 (2009).

<sup>60</sup> See, e.g., Pierce v. County of Orange, 526 F.3d 1190, 1224 (9th Cir. 2008) (failing to provide paraplegic with adequate supply of catheters resulting in bed sores and bladder infections stated Eighth Amendment claim); Frost v. Agnos, 152 F.3d 1124, 1129 (9th Cir. 1998) (confining an inmate on crutches in unit with slippery floors and inadequate shower facilities would violate the Constitution); Parrish v. Johnson, 800 F.2d 600, 605 (6th Cir. 1986) (finding a prison guard who forced paraplegic inmates to sit in their own waste for extended periods of time violated the Eighth Amendment); Cummings v. Roberts, 628 F.2d 1065, 1068 (8th Cir. 1980) (holding alleged refusal of prison officials to clean inmate or provide wheelchair when bedridden with back injury, forcing him to crawl across floor, stated Eighth Amendment claim).

<sup>61</sup> Ruiz v. Estelle, 503 F. Supp 1265, 1340 (S.D. Tex. 1980) (sight and hearing aids constitutionally required), *aff’d in part, vacated in part on other grounds*, 679 F.2d 1115 (5th Cir. 1982).

<sup>62</sup> Sanchez v. Taggart, 144 F.3d 1154, 1156 (8th Cir. 1998).

<sup>63</sup> Pennsylvania, Dep’t of Corr. v. Yeskey, 524 U.S. 206 (1998).

<sup>64</sup> Id.; Pierce, 526 F.3d at 1222 (affirming disabled prisoners must have substantially the same access to programs as all non-disabled prisoners within the system, and therefore, facilities with disabled access must offer similar programs as those without disabled access).

(3) he was excluded from the benefit due to discrimination.<sup>65</sup> Inmates can also file complaints with the U.S. Department of Justice, which is responsible for investigating alleged ADA violations by state and local governments.<sup>66</sup>

## 2. Drug and Alcohol Withdrawal

Some inmates are addicted to drugs or alcohol when they arrive at prison. And, despite the fact that drug abuse remains a major problem within the prison system, most drug-addicted inmates are immediately cut off and forced to go “cold turkey” when they begin their sentences. The resulting withdrawal can have serious, painful medical effects, such as *delirium tremens* (DTs).<sup>67</sup> Inmates have a constitutional right to be treated for the effects of drug and alcohol withdrawal as it amounts to a serious medical need.<sup>68</sup>

While the U.S. Constitution does not require prisons to provide rehabilitation programs for inmates recovering from drug and alcohol dependency,<sup>69</sup> the Alaska Supreme Court has held that “[p]risoners have an enforceable interest in continued participation in rehabilitation programs.”<sup>70</sup>

## 3. Pregnancy, Childbirth, and Abortion<sup>71</sup>

Pregnancy and childbirth are complicated matters and become even more so when a pregnant woman is incarcerated. As such, a number of serious medical needs arise when a female inmate is pregnant, including prenatal care, the need for an abortion, and the need for medical assistance during delivery.

Prenatal care should include regular visits to health care personnel trained in obstetrical care, and, because a woman typically gains anywhere from 25 to 40 pounds during pregnancy, jails and prisons should provide pregnant inmates with extra food and vitamins.<sup>72</sup> An inmate who is in labor should be allowed to have the delivery take place in a quiet, private area, and the woman should not be shackled.<sup>73</sup> Most jails and prisons, including those in Alaska, do not allow inmates to keep their babies with them after birth.

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<sup>65</sup> 42 U.S.C. § 12131-32 (2009).

<sup>66</sup> Complaints should be sent to Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. Complaints must be filed within 180 days of the alleged discrimination.

<sup>67</sup> Toone, *supra* note 22, at 90.

<sup>68</sup> *Lancaster v. Monroe County*, 116 F.3d 1419, 1425-26 (11th Cir. 1997) (suffering acute alcohol withdrawal syndrome as a chronic alcoholic is a serious medical need).

<sup>69</sup> *Smith v. Schneckloth*, 414 F.2d 680 (9th Cir. 1969).

<sup>70</sup> *Ferguson v. State, Dep't of Corr.*, 816 P.2d 134, 139 (Alaska 1991).

<sup>71</sup> This section uses information from the ACLU Reproductive Freedom Project. For more information on reproductive rights and freedoms, visit: <http://www.aclu.org/reproductive-freedom/about-aclu-reproductive-freedom-project>. To research this topic as it relates to female prisoners and detainees, visit: [http://www.aclu.org/prisoners-rights\\_reproductive-freedom\\_womens-rights/women-and-criminal-justice-system](http://www.aclu.org/prisoners-rights_reproductive-freedom_womens-rights/women-and-criminal-justice-system).

<sup>72</sup> Toone, *supra* note 22, at 98.

<sup>73</sup> *Id.*; *Nelson v. Corr. Med. Serv.*, 583 F.3d 522, 530-31 (9th Cir. 2009) (shackling a prisoner to her civilian hospital bed without any penological interest while she was giving birth gave rise to Eighth Amendment claim).

The Alaska DOC provides maternity care for pregnant inmates through access to comprehensive obstetrical care during incarceration.<sup>74</sup> Such care will be arranged with an obstetrician upon confirming pregnancy by a urine or blood test.<sup>75</sup> Prenatal visits are performed during the first 28 weeks of pregnancy, with more frequent visits between 28 weeks and delivery, as medically indicated.<sup>76</sup> Prenatal counseling and education will also be offered to all pregnant inmates.<sup>77</sup>

The DOC provides the following obstetrical care:

- pregnancy testing
- routine prenatal care
- high-risk prenatal care
- vaginal or cesarean delivery
- postpartum care and follow-up
- family planning and birth control counseling prior to parole or discharge.<sup>78</sup>

The following services are not provided by DOC:

- procedures intended solely for the determination of the sex of the fetus
- hospital and medical expenses of the newborn
- autopsy or funeral/burial expenses resulting from death of the fetus
- non-therapeutic sterilizations, including hysterectomies for sterilization purposes
- non-therapeutic abortions.<sup>79</sup>

While the inmate is hospitalized after delivery, physical contact with the newborn may be restricted, in whole or in part.<sup>80</sup> Upon discharge from the hospital, inmates will not be permitted to bring their baby back to the correctional facility. Prior to delivery, each inmate is required, with staff assistance, to arrange for custody of the child.

Visitation with the newborn child will be in accordance with DOC Policy # 808.06, Requirements Relating to Female Prisoners:

A prisoner whose child is under 12 months of age may, at the Superintendent's discretion and contingent upon the factors listed below, visit with her child for up to eight hours per day. This visitation is a privilege and the Superintendent or designee may terminate some or all of it. Visitation must comply with the following:

- a. The prisoner's sentence, classification, custody level and conduct must support visitation. Ordinarily, the visitation is limited to program facilities and does not apply to pretrial facilities.

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<sup>74</sup> DOC Policy # 807.02, Attachment A, § VII(I), Maternity Services.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> DOC Policy # 807.02, Attachment A, § VII(I), Maternity Services.



- b. An adult family member, foster parent, or guardian must bring the child to the facility.
- c. The infant and accompanying child care paraphernalia must pass through an incoming and outgoing security screening approved by the Superintendent.
- d. The facility's visiting area must be able to accommodate parent-supervised child care.
- e. The visit must take place in the contact visiting area, but an adult family member or guardian need not be present.
- f. An adult family member, foster parent, or guardian must return the child to care outside the institution after the visit.<sup>81</sup>

A woman has a constitutional right to terminate her pregnancy in its early stages. Being in prison or jail does not mean an inmate loses her right to obtain a safe and legal abortion. It is therefore unconstitutional for prison officials to deny an inmate appropriate abortion services.<sup>82</sup>

An inmate's constitutional rights are being violated if she is told that she must get a court order before getting an abortion, pay for the abortion out of her own pocket, or pay for the costs of the jail transporting her to a clinic or hospital to have an abortion, or if she is otherwise told she cannot obtain an abortion while incarcerated.

If an inmate is experiencing any of the above, she should:

1. determine if one particular nurse or guard is giving her a hard time. If this is so, then she should ask other medical staff or officials to help out;
2. document her requests, both by making them in writing and by keeping a list of the people she has spoken to when, what responses they've given, and when and to whom she has made written requests;
3. file an "administrative grievance" as well as a written request for medical assistance. If officials refuse to give her the forms she needs to do this, she should write letters making the requests (even if they don't seem to get her anywhere) and again, keep track of them.

If an inmate is thinking of having an abortion, the prison or jail should help get her counselling so she understands all of her options. If a woman has already decided to have an abortion, it is important to act quickly. While abortions are extremely safe medical procedures, the costs and risks associated with the procedure increase with time. In addition, the longer a woman waits, the harder it may be to find a doctor in her area able to provide the service.

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<sup>81</sup> DOC Policy # 808.06(D)(1), Requirements Relating to Female Prisoners.

<sup>82</sup> Roe v. Crawford, 514 F.3d 789, 795-98 (8th Cir. 2008) (holding policy against transporting inmates seeking elective abortions violated the Fourteenth Amendment by placing undue burden on plaintiff); Monmouth County Corr. Inst. v. Lanzaro, 834 F.2d 326, 346-49 (3rd Cir. 1987) (denying required care would likely result in tangible harm to inmate who wished to terminate her pregnancy, thus triggering an Eighth Amendment claim); see generally Planned Parenthood v. Casey, 505 U.S. 833 (1992) (indicating how and when the government may regulate abortion).

#### **4. Mental Health**

Alaska provides mental health and psychiatric services at any time during incarceration.<sup>83</sup> Upon admission to the correctional system, each inmate will receive an initial mental health screening to determine the presence of any mental health condition. Placement at a facility may depend on the inmate's need for further evaluation or treatment, the severity of the illness, and the level of care required.<sup>84</sup> Mental health care may include group or individualized counseling, psychiatric consultation, prescribing of psychotropic medications, individualized behavior therapy, and case management and support services (*i.e.*, job, housing, and discharge planning).<sup>85</sup> Additionally, the Due Process Clause of the Fourteenth Amendment requires states to provide civilly committed persons with access to mental health treatment that provides them a realistic opportunity to be cured and released.<sup>86</sup> Deliberate indifference to serious mental health needs also violates the Constitution. Courts use the same standards discussed above to determine whether a mental health need is "serious" or not.

#### **5. Administration of Medication without Consent**

The Due Process Clause protects the "right to bodily integrity," that is, the general right not to have government officials interfere with your body without good reason.<sup>87</sup> Officials therefore may not force an inmate to take a drug that is not medically appropriate (*e.g.*, use an inmate to test an experimental drug without consent).<sup>88</sup> However, the Supreme Court has held that a prison may forcibly treat a seriously mentally ill patient with anti-psychotropic drugs "if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest."<sup>89</sup>

#### **6. Post-Release Treatment**

Prison officials have a limited duty to provide inmates with care after the inmate has been released from incarceration. The Constitution gives inmates a right to medical care because inmates have been stripped of their ability to care for themselves; inmates do not automatically regain this ability immediately upon release. "A parolee just having been released after a stay in prison is often in no position to immediately find the alternative medical attention that he needs."<sup>90</sup> For this reason, the Ninth Circuit has held that prison officials "must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply."<sup>91</sup> This ruling is especially important for inmates who are receiving treatment for chronic conditions.

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<sup>83</sup> AS 33.30.011(4)(B); DOC Policy # 807.02: Attachment A, § VII(B), Mental Health & Psychiatric Services.

<sup>84</sup> DOC Policy # 807.02: Attachment A, § VII(B).

<sup>85</sup> *Id.*

<sup>86</sup> Toone, *supra* note 22, at 100 (citing *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000)).

<sup>87</sup> *Albright v. Oliver*, 510 U.S. 266, 272 (1994).

<sup>88</sup> Toone, *supra* note 22, at 102 (citing *Johnson v. Meltzer*, 134 F.3d 1393, 1397-98 (9th Cir. 1998)).

<sup>89</sup> *Id.* (citing *Washington v. Harper*, 494 U.S. 210, 227 (1990)).

<sup>90</sup> *Lugo v. Senkowski*, 114 F. Supp. 2d 111, 114-15 (N.D.N.Y. 2000).

<sup>91</sup> *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir. 1999).

## **g. Prison Medical Care Litigation**

### **1. Introduction**

Some medical problems are simply too minor to be the basis of a lawsuit. As one judge has explained,

A prison's medical staff that refuses to dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild headache or minor fatigue — the sorts of ailments for which many people who are not in prison do not seek medical attention — does not by its refusal violate the Constitution.<sup>92</sup>

However, medical problems vary in seriousness from person to person. For instance, in most situations, the common cold does not cause significant injury. One court has ruled explicitly that the common cold does not normally present a “serious medical need.”<sup>93</sup> But, this ruling would not apply to someone who has limited resistance to infection because of an immunodeficiency disease. For such a person, a case of the common cold might severely affect her health and would likely amount to a serious medical need.

Additionally, courts have recognized that prisons must have health care systems in place that can address prison health issues as they arise and have established some elements of an adequate prison health care system:

The Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care. Prison officials show deliberate indifference to serious medical needs if prisoners are unable to make their medical problems known to the medical staff. Access to the medical staff has no meaning if the medical staff is not competent to deal with the prisoners' problems. The medical staff must be competent to examine prisoners and diagnose illnesses. It must be able to treat medical problems or to refer prisoners to others who can. Such referrals may be to other physicians within the prison, or to physicians or facilities outside the prison if there is reasonably speedy access to these other physicians or facilities. In keeping with these requirements, the prison must provide an adequate system for responding to emergencies. If outside facilities are too remote or too inaccessible to handle emergencies promptly and adequately, then the prison must provide adequate facilities and staff to handle emergencies within the prison. These requirements apply to physical, dental and mental health.<sup>94</sup>

The Alaska DOC has (on paper) established a comprehensive health care system for inmates that satisfies constitutional requirements. The DOC provides for initial medical screening of inmates, provides regular sick calls, has a medical records system in place, and employs infectious disease control parameters.

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<sup>92</sup> Toone, *supra* note 22, at 72 (citing *Cooper v. Casey*, 97 F.3d 914, 916 (7th Cir. 1996)).

<sup>93</sup> *Gibson v. McKevers*, 631 F.2d 95, 98 (7th Cir. 1980).

<sup>94</sup> *Hoptowit v. Ray*, 682 F.2d 1237, 1252-53 (9th Cir. 1982) (citation omitted).

## 2. Establishing Deliberate Indifference

When considering whether or not to litigate a prison medical care issue, it is important to remember only “deliberate indifference to serious medical needs” violates the Eighth Amendment.<sup>95</sup> This is a difficult standard to meet, and mere medical malpractice does not suffice.<sup>96</sup> Additionally, the Supreme Court held that an official acts with deliberate indifference when he or she “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”<sup>97</sup> To be deliberately indifferent, an official must therefore both (1) *know* about a risk to an inmate and (2) *fail to respond reasonably* to that risk. If an official does not know about a risk, he has no constitutional duty to act. Alaska has adopted this same standard.<sup>98</sup>

There are four elements an inmate must show to prove deliberate indifference and succeed on an inadequate medical care claim:

1. existence of a serious medical need;
2. prison official’s knowledge of need;
3. prison official’s failure to provide treatment; and
4. causation and injury.

### A. Serious Medical Need

What are “serious medical needs?” As explained above, the Supreme Court has not yet specifically defined the term “serious medical need,” but the Court has proclaimed that the Eighth Amendment prohibits the “unnecessary and wanton infliction of pain.”<sup>99</sup> The definitions established by various lower courts can be grouped together in two differing definitions:

The first definition, embraced by the First, Third, Eighth, Tenth, and Eleventh Circuits, states that a medical need is serious when it “has been diagnosed by a physician as mandating treatment or...is so obvious that even a layperson would easily recognize the necessity for a doctor’s attention.”<sup>100</sup>

The second definition, shared by the Second and Ninth Circuits, states that a serious medical need exists when “the failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain.”<sup>101</sup> These courts consider the following factors, among others, in applying this test:

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<sup>95</sup> Estelle v. Gamble, 429 U.S. 97, 104 (1976).

<sup>96</sup> Id. at 106.

<sup>97</sup> Farmer v. Brennan, 511 U.S. 825 (1994).

<sup>98</sup> Goodlatay, 698 P.2d at 1193.

<sup>99</sup> Estelle, 429 U.S. at 104.

<sup>100</sup> Toone, supra note 22, at 72 (citing Mahan v. Plymouth County House of Corr., 64 F.3d 14, 18 (1st Cir. 1995); Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3rd Cir. 1987); Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997); Sheldon v. Pezley, 49 F.3d 1312, 1316 (8th Cir. 1995); Sealock v. Colorado, 218 F.3d 1205, 1209 (10th Cir. 2000); Hill v. DeKalb Reg’l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994)).

<sup>101</sup> Toone, supra note 22, at 73 (citing Harrison v. Blakely, 219 F.3d 132, 136 (2nd Cir. 2000) and McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992)).

- the existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment;
- the presence of a medical condition that significantly affects an individual's daily activities; or
- the existence of a chronic and substantial pain.<sup>102</sup>

The following are examples of medical needs that courts have found to be “serious”:

- degenerative hip condition, which caused inmate great pain and difficulty walking<sup>103</sup>
- painfully swollen and obviously broken arm<sup>104</sup>
- stomach pain and abdominal distress caused by bleeding ulcer<sup>105</sup>
- appendix that is inflamed or on the verge of rupturing<sup>106</sup>
- dislocated shoulder<sup>107</sup>
- painful mouth and throat blisters caused by cancer treatment<sup>108</sup>
- pain, purulent draining infection, and fever in excess of 100 degrees, caused by infected cyst<sup>109</sup>
- cuts, severe muscular pain, and burning sensation in eyes and skin, caused by being maced by guards<sup>110</sup>
- head injury from falling in the shower<sup>111</sup>
- painful fungal skin infection<sup>112</sup>
- severe chest pain which inmate (correctly) believed was caused by heart attack<sup>113</sup>

Medical needs deemed “not serious” by the courts include:

- sliver of glass in inmate's palm that did not require stitches or painkiller<sup>114</sup>
- pain inmate experienced when doctor removed partially torn-off toenail without anesthetic<sup>115</sup>
- nausea, shakes, headache, and diminished appetite caused by family situational stress<sup>116</sup>
- pseudofolliculitis barbae or “shaving bumps”<sup>117</sup>

<sup>102</sup> McGuckin, 974 F.2d at 1059-60.

<sup>103</sup> Hathaway v. Coughlin, 37 F.3d 63, 67 (2nd Cir. 1994).

<sup>104</sup> Loe v. Armistead, 582 F.2d 1291, 1296 (4th Cir. 1978).

<sup>105</sup> Weslake v. Lucas, 537 F.2d 857, 860-61 (6th Cir. 1976).

<sup>106</sup> Sherrod v. Lingle, 223 F.3d 605, 610-611 (7th Cir. 2000).

<sup>107</sup> Higgins v. Corr. Med. Serv., 178 F.3d 508, 511 (7th Cir. 1999).

<sup>108</sup> Ralston v. McGovern, 167 F.3d 1160, 1162 ((7th Cir. 1999).

<sup>109</sup> Gutierrez, 111 F.3d at 1373-74.

<sup>110</sup> Cooper v. Casey, 97 F.3d 914, 916 (7th Cir. 1996)

<sup>111</sup> Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) (“Any injury to the head unless obviously superficial should ordinarily be considered serious and merits attention until properly diagnosed as to severity.”)

<sup>112</sup> Logan v. Clarke, 119 F.3d 647, 649 (8th Cir. 1997).

<sup>113</sup> Sealock v. Colorado, 218 F.3d 1205, 1210 (10th Cir. 2000).

<sup>114</sup> Martin v. Gentile, 849 F.2d 863, 871 (4th Cir. 1998).

<sup>115</sup> Snipes v. DeTella, 95 F.3d 586, 591-92 (7th Cir. 1996).

<sup>116</sup> Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).

## B. Prison Official's Knowledge of Need

There is no right to medical treatment if prison officials are not aware of an inmate's medical problem.<sup>118</sup> Inmates therefore must do everything they can to inform officials about their medical conditions. There are a number of ways to do this. Inmates can fill out a medical request form, grievance form, or sick call slip or write a letter describing the problem to prison officials. Inmates can also inform prison staff and officials of the problem verbally. It is also important for inmates to communicate with the proper officials – the guards who can contact a doctor on a prisoner's behalf and the medical staff who will provide treatment.<sup>119</sup> It may not be enough to write only the Director of Institutions or the medical director of the prison system if that individual is not directly responsible for that particular inmate's medical care.<sup>120</sup> However, if an inmate believes there are system-wide problems that have prevented him from receiving adequate medical care, he should write to the appropriate higher-level officials in addition to the guards, nurses, and doctors who deal with the problem directly.

## C. Prison Official's Failure to Provide Treatment

Once officials are aware of an inmate's serious medical need, they must respond reasonably. Ideally, an inmate should be promptly examined by qualified medical personnel, prescribed or ordered the necessary treatment, administered the treatment properly, and then provided follow-up treatment as necessary.<sup>121</sup> But life in prison is often far from ideal. According to the Supreme Court, prison officials violate the Constitution only when they intentionally *deny* or *delay* access to medical care, provide *grossly inadequate* treatment, or intentionally *interfere with prescribed treatment*.<sup>122</sup>

### 1. Denial of Medical Attention

The strongest type of medical care claim is when an inmate with a serious problem repeatedly asks for medical care, receives no care, and then suffers a serious injury.<sup>123</sup> After learning about an inmate's serious medical need, officials may not simply do nothing.<sup>124</sup> Officials may not

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<sup>117</sup> Shabazz v. Barnauskas, 790 F.2d 1536, 1538 (11th Cir. 1986).

<sup>118</sup> See, e.g., Grayson v. Peed, 195 F.3d 692, 695 (4th Cir. 1999); Durham v. Nu'man, 97 F.3d 862, 869 (6th Cir. 1996).

<sup>119</sup> Toone, supra note 22, at 77.

<sup>120</sup> Farmer v. Moritsugu, 163 F.3d 610, 615-16 (D.C. Cir. 1998).

<sup>121</sup> Toone, supra note 22, at 77.

<sup>122</sup> Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).

<sup>123</sup> Hudson v. McHugh, 148 F.3d 859, 864 (7th Cir. 1998) (finding case in which officials knew inmate was not getting his medicine for epilepsy was a "prototypical case of deliberate indifference").

<sup>124</sup> See, e.g., Kersh v. Derozier, 851 F.2d 1509, 1510 (5th Cir. 1988) (inmate went blind after officials refused to allow him to wash object out of his eye); Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) (rather than having inmate with head injury treated by doctor, guards told him to "stop being a baby" and live with the pain); Hughes v. Joliet Corr. Ctr., 931 F.2d 425, 428 (7th Cir. 1991) (inmate with spinal injury told by medical staff he was "full of bullshit"); Estate of Rosenberg by Rosenberg v. Crandell, 56 F.3d 35, 37 (8th Cir. 1995) (rather than arranging visit to doctor, physician's assistants required seriously ill inmate to work and walk to mess hall and refused to give him liquid food); Sealock v. Colorado, 218 F.3d 1205, 1207 (10th Cir. 2000) (after being informed that inmate might be having heart attack, sergeant refused to drive inmate to hospital and said, "Just don't die on my shift. It's too much

deny needed medical care because it is expensive or because the inmate cannot pay for it.<sup>125</sup> But, courts have held that the Constitution allows jails and prisons to charge inmates co-payments, or small fees, for medical attention.<sup>126</sup> As a general rule, jails and prisons should not charge inmates fees for treatment for chronic conditions (lifelong illnesses like cancer or AIDS), emergency conditions, or communicable diseases (because failure to treat a communicable disease like tuberculosis endangers the health of many others).<sup>127</sup> Moreover, indigent inmates should not have to pay anything before receiving medical attention. Officials may not deny medical care as a form of punishment<sup>128</sup> nor may they deny medical care by forcing an inmate to do something unreasonable first.<sup>129</sup>

Guards and other “non-doctors” often play the role of “gatekeeper” in deciding which inmates receive medical attention and which do not. Untrained officials are not qualified to make medical decisions and thus should not make them.<sup>130</sup> Because a nurse or doctor should be able to identify certain serious medical needs that a typical prison guard cannot, courts will consider whether the official in question had medical training when deciding whether an official was deliberately indifferent.<sup>131</sup> Similarly, a medical official without specialized training should not make decisions about conditions that require a specialist’s training, as denial of access to appropriately qualified health care staff could constitute deliberate indifference on the part of an unspecialized medical official.<sup>132</sup>

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paper work.”); Ancata v. Prison Health Serv., 769 F.2d 700, 702 (11th Cir. 1985) (inmate died of leukemia four months after complaining of various serious medical problems; jail officials made no arrangements for doctor’s examination until forced by two court orders).

<sup>125</sup> Chance v. Armstrong, 143 F.3d 698, 704 (2nd Cir. 1998) (holding doctors acted with deliberate indifference if they recommended extraction of teeth and rejected less invasive course of treatment “because of monetary incentives”); Lanzaro, 834 F.2d at 347 (stating officials may not condition provision of needed medical services on inmate’s ability or willingness to pay); Ancata, 769 F.2d at 704 (finding it unconstitutional for officials to refuse to send seriously ill inmate to specialist unless he agreed to pay for evaluation).

<sup>126</sup> See, e.g., Reynolds v. Wagner, 128 F.3d 166, 174-75 (3rd Cir. 1997). The Alaska DOC charges a co-payment fee of \$4.00 per visit to institutional medical staff, with some exceptions. See *infra*, Part III.A.11.

<sup>127</sup> Reynolds, 128 F.3d at 174 n.6.

<sup>128</sup> Archer v. Dutcher, 733 F.2d 14, 17 (2nd Cir. 1984).

<sup>129</sup> See Harrison v. Barkley, 219 F.3d 132, 136-38 (2nd Cir. 2000) (requiring inmate to consent to unwanted extraction of one diseased tooth before receiving treatment for cavity in another is unconstitutional); but see Beck v. Skon, 253 F.3d 330, 334 (8th Cir. 2001) (conditioning provision of necessary medical procedure on inmate’s decision to sign a liability waiver is constitutional).

<sup>130</sup> Mitchell v. Alusi, 872 F.2d 577, 581 (4th Cir. 1989) (finding alleged practice of having untrained staff screen inmates for medical problems stated constitutional violation); Williams v. Edwards, 547 F.2d 1206, 1216-18 (5th Cir. 1977) (holding it unconstitutional for unlicensed doctors, untrained inmates, and untrained pharmacist to administer medical care system).

<sup>131</sup> Collignon v. Milwaukee County, 163 F.3d 982, 989 (7th Cir. 1998) (stating that what might not be obvious to a lay person might be obvious to medical professional acting within area of expertise).

<sup>132</sup> Toussaint v. McCarthy, 801 F.2d 1080, 1112 (9th Cir. 1986) (rendering of medical services by unqualified personnel is deliberate indifference); Hemmings v. Gorczyk, 134 F.3d 104, 109 (2nd Cir. 1998) (denying inmates’ repeated requests for referral to orthopedic specialist could constitute deliberate indifference where inmate had “classic” symptoms of ruptured Achilles tendon); Jones v. Simek, 193 F.3d 485, 490 (7th Cir. 1999) (failing to arrange for inmate with ruptured Achilles tendon to be examined by a neurologist for six months amounted to deliberate indifference if prison doctor knew inmate may have suffered nerve damage); LeMarbe v. Wisneski, 266 F.3d 429 (6th Cir. 2001) (failure of surgeon to send patient with bile leak in abdomen to a specialist raised Eighth Amendment claim); Mandel v. Doe, 888 F.2d 783, 789-90 (11th Cir. 1989) (declaring physician’s assistant’s failure to diagnose broken hip, refusal to order x-ray or allow prisoner from seeing a doctor constituted “precisely the deliberate indifference not tolerated by the Constitution”); Washington v. Dugger, 860 F.2d 1018, 1021 (11th Cir.

## 2. Delay in Providing Medical Attention

A prison official's delay in providing needed medical care or access to medical personnel may also violate the Constitution.<sup>133</sup> In assessing the constitutionality of a particular delay, courts will consider both the reason for the delay and the nature of the medical need.<sup>134</sup> If the medical need is urgent, even a short delay can result in extreme pain or death and can therefore amount to deliberate indifference.<sup>135</sup> As a general rule, a delay violates the Constitution if it is (1) medically unjustified and (2) clearly likely to make the inmate's medical problem worse or result in a lifelong handicap or a permanent loss.<sup>136</sup> Several circuits also require inmates to prove they suffered pain or their health worsened as a result of delay in treatment, though the Ninth Circuit has no such requirement.<sup>137</sup>

## 3. Inadequate Medical Treatment

A prison official may also be deliberately indifferent if the medical care he or she provides is "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness."<sup>138</sup> This is difficult to prove. Furthermore, inmates do not have the right to choose a specific course of medical treatment.<sup>139</sup> Courts will rarely second-guess the choices

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1988) (failing to return prisoner to VA hospital for treatment of Agent Orange exposure showed "more than sufficient evidence" of deliberate indifference by prison officials).

<sup>133</sup> Estelle v. Gamble, 429 U.S. 97, 105-06 (1976); see also Lancaster v. Monroe County, 116 F.3d 1419, 1425 (11th Cir. 1997) ("[A]n official acts with deliberate indifference when he intentionally delays providing an inmate with access to medical treatment, knowing that the inmate has a life-threatening condition or an urgent medical condition that would be exacerbated by delay."); Weyant v. Okst, 101 F.3d 845, 856-57 (2nd Cir. 1996) (delay of hours in getting medical attention for diabetic in insulin shock); Natale v. Camden County Corr. Facility, 318 F.3d 575 (3rd Cir. 2003) (delay of 21 hours in providing insulin to diabetic); Wallin v. Norman, 317 F.3d 558 (6th Cir. 2003) (delay of one week in treating urinary tract infection and one day in treating leg injury); Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) (two-month delay in getting prisoner with head injury to a doctor).

<sup>134</sup> McElligott v. Foley, 182 F.3d 1248, 1255 (11th Cir. 1999).

<sup>135</sup> Bass by Lewis v. Wallenstein, 769 F.2d 1173, 1183 (7th Cir. 1985) (finding 10-15 minute delay in responding to inmate having heart attack showed deliberate indifference).

<sup>136</sup> Harrison v. Barkley, 219 F.3d 132, 138 (2nd Cir. 2000) (one-year delay in treating a tooth cavity can amount to deliberate indifference); H.C. by Hewitt v. Jarrard, 786 F.2d 1080, 1086-87 (11th Cir. 1986) (three-day delay of treatment for shoulder injury was deliberate indifference). But see Kane v. Hargis, 987 F.2d 1005, 1009 (4th Cir. 1993) (four-hour delay in medical attention for cracked teeth, cut nose, and bruised face was not deliberate indifference because there was "no indication these injuries required immediate medical treatment."); Gutierrez, 111 F.3d at 1374-75 (six-day wait to see doctor was not unreasonably long delay" for treatment of a cyst, where doctor had seen inmate "for the exact same complaint one week earlier"; "[T]hese occasional delays were simply isolated instances of neglect which taken alone or collectively cannot support a finding of deliberate indifference.").

<sup>137</sup> The First, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits all have this requirement. See e.g., Gadreault v. Salem, 923 F.2d 203, 208 (1st Cir. 1990) (requiring medical evidence to verify harm was caused by delay in provision of medical care).

<sup>138</sup> Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986).

<sup>139</sup> Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) ("[W]here [an official] has based his actions on a medical judgment that either of the two alternative courses of treatment would be medically acceptable under the circumstances, [the inmate] has failed to show deliberate indifference, as a matter of law."); Forbes v. Edgar, 112 F.3d 262, 267 (7th Cir. 1997) ("Under the Eighth Amendment, [an inmate] is not entitled to demand specific care. She is not entitled to the best care possible. She is entitled to reasonable measures to meet a substantial risk of serious harm to her.").



that doctors, nurses, and other medical officials make in treating inmates — even if the choices they make violate the standards of their professions.<sup>140</sup> One court has held that “deliberate indifference may be inferred...only when the medical professional’s decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment.”<sup>141</sup>

It is important to note deliberate indifference is not satisfied by a showing of *negligence*.<sup>142</sup> In other words, medical malpractice in prison does not by itself violate the Constitution; something more must be shown.<sup>143</sup> It is not enough to show a missed diagnosis or a bad result, although a doctor’s willful disregard for an obvious medical problem may be deliberately indifferent.<sup>144</sup> It is also not enough to show that another doctor may have ordered a different course of treatment.<sup>145</sup> Mere differences of medical judgment are not actionable.<sup>146</sup> But, in certain instances, the decisions of prisoner doctors can be attacked.<sup>147</sup> In these situations, the prisoner must show a legitimate medical judgment is not at issue.

However, if the care that a medical official provides is *grossly* inadequate, that is, glaringly or inexcusably bad, or if he or she intentionally decides to take an easier or cheaper, but much less effective, course of treatment, the official may be deliberately indifferent.<sup>148</sup> Deliberate indifference may also exist if the official continues with a course of treatment “in the face of resultant pain and risk of permanent injury,”<sup>149</sup> if medical officials fail to inquire into facts necessary to make a professional judgment,<sup>150</sup> or if they allow non-medical factors to interfere with medical judgment.<sup>151</sup> Also, if judgment is so egregiously bad it isn’t really medical, or if treatment is “so cursory as to amount to no treatment at all,” it may violate the Constitution.<sup>152</sup>

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<sup>140</sup> Taylor v. Adams, 221 F.3d 1254, 1259 (11th Cir. 2000).

<sup>141</sup> Estate of Cole v. Fromm, 94 F.3d 254, 261-62 (7th Cir. 1996).

<sup>142</sup> Farmer v. Brennan, 511 U.S. 825, 835 (1994); Estelle v. Gamble, 429 U.S. 97, 105-06 (1976).

<sup>143</sup> Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).

<sup>144</sup> Hemmings v. Gorczyk, 134 F.3d 104, 109 (2nd Cir. 1998); see also Steele v. Choi, 82 F.3d 175, 179 (7th Cir. 1996) (“If the symptoms plainly called for a particular medical treatment—the leg is broken, so it must be set; the person is not breathing, so CPR must be administered—a doctor’s deliberate decision not to furnish the treatment might be actionable . . .”).

<sup>145</sup> Barron v. Keohane, 216 F.3d 692, 693 (8th Cir. 2000) (ruling officials did not act with deliberate indifference in treating inmate’s kidney disease with dialysis rather than providing him access to a kidney transplant).

<sup>146</sup> Stewart v. Murphy, 174 F.3d 530, 535 (5th Cir. 1999).

<sup>147</sup> See, e.g., Hunt v. Uphoff, 199 F.3d 1220, 1223-24 (10th Cir. 1999) (one doctor denied insulin prescribed by another doctor); Miller v. Schoenen, 75 F.3d 1305 (8th Cir. 1996) (recommendations from outside hospitals not followed).

<sup>148</sup> Williams v. Vincent, 508 F.2d 541, 544 (2nd Cir. 1974) (finding alleged decision by prison doctors simply to close wound rather than reattach severed ear could constitute deliberate indifference).

<sup>149</sup> White v. Napoleon, 897 F.2d 103, 109-11 (3rd Cir. 1990).

<sup>150</sup> See, e.g., Liscio v. Warren, 901 F.2d 274, 276-77 (2nd Cir. 1990) (physician failed to inquire into the cause of arrestee’s delirium and thus failed to diagnose alcohol withdrawal); Miltier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990) (doctor failed to perform tests for cardiac disease in patient with symptoms that called for testing); Inmates of Occoquan v. Barry, 717 F. Supp. 854, 867-68 (D.D.C. 1989) (failure to perform adequate health screening on intake).

<sup>151</sup> See, e.g., Boswell v. Sherburne County, 849 F.2d 1117, 1123 (8th Cir. 1988) (budgetary restrictions); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986) (budgetary restrictions); Ancata v. Prison Health Serv., Inc., 769 F.2d 700, 704-05 (11th Cir. 1985) (refusal to provide specialty consultations without a court order).

<sup>152</sup> See, e.g., McElligott v. Foley, 182 F.3d 1248, 1257 (11th Cir. 1999) (jury could find that treatment of Tylenol, Pepto-bismol, and anti-gas medication for inmate with severe stomach pains, later diagnosed as colon cancer, was

#### 4. Interference with Prescribed Treatment

Prison officials may not interfere with or fail to carry out treatment that a doctor or other medical official has prescribed or ordered for an inmate.<sup>153</sup> Officials also may not substitute their judgment for a medical professional's prescription or order. Such conduct constitutes deliberate indifference.<sup>154</sup>

##### d. Causation and Injury

Lastly, to win a medical care claim, an inmate must show that the officials' deliberate indifference caused, or is likely to cause, an injury. If an inmate claims that he was denied medical care for a serious medical need, he must show how that denial caused an injury, *i.e.*, that it caused pain, made a preexisting condition worse, or caused new medical problems.<sup>155</sup> If the claim is that an official improperly delayed treatment, courts require that an inmate show that the delay caused pain or decreased health.

#### 3. Mental Health Care Claims

The same Eighth Amendment principles apply to mental health care.<sup>156</sup> In other words, "deliberate indifference to an inmate's serious mental health needs violates the Eighth Amendment"<sup>157</sup> and "[t]reatment of the mental disorders of mentally disturbed inmates is a serious medical need."<sup>158</sup>

A "severe" mental illness is one "that has caused significant disruption in an inmate's everyday life and which prevents his functioning in the general population without disturbing or endangering others or himself."<sup>159</sup>

A prison must be equipped to provide mental health services. Elements of an adequate mental health system include:

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"so cursory as to amount to no care at all"); Adams v. Poag, 61 F.3d 1537, 1543-44 (11th Cir. 1995) (medical treatment that is "so grossly incompetent, inadequate, or excessive as to shock the conscience" constitutes deliberate indifference); Hughes v. Joliet Corr. Ctr., 931 F.2d 425, 428 (7th Cir. 1991) (evidence that medical staff treated the plaintiff "not as a patient, but as a nuisance").

<sup>153</sup> See Estelle v. Gamble, 429 U.S. 97, 105 (1976) (intentionally interfering with treatment once prescribed); see also Lawson v. Dallas County, 286 F.3d 257 (5th Cir. 2002) (failure to follow medical orders for care of paraplegic prisoner); Walker v. Benjamin, 293 F.3d 1030 (7th Cir. 2002) (refusal to provide prescribed pain medication); Koehl v. Dalsheim, 85 F.3d 86, 88 (2nd Cir. 1996) (denial of prescription eyeglasses); Erickson v. Holloway, 77 F.3d 1078, 1080 (8th Cir. 1996) (officer's refusal of emergency room doctor's request to admit the prisoner and take x-rays); Boretti v. Wiscomb, 930 F.2d 1150, 1156 (6th Cir. 1991) (nurse's failure to perform prescribed dressing changes).

<sup>154</sup> Hamilton v. Endell, 981 F.2d 1062, 1066-67 (1992), *undermined on other grounds by* Saucier v. Katz, 533 U.S. 194 (2001).

<sup>155</sup> Toone, *supra* note 22, at 86.

<sup>156</sup> Brown v. Zavaras, 63 F.3d 967, 970 (10th Cir. 1995).

<sup>157</sup> Torraco v. Maloney, 923 F.2d 231, 234 (1st Cir. 1991)

<sup>158</sup> Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983); see also Hoptowit, 682 F.2d at 1253; Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977).

<sup>159</sup> Tillery v. Owens, 719 F. Supp. 1256, 1286 (W.D. Pa. 1989), *aff'd*, 907 F.2d 418 (3d Cir. 1990).

- (a) a systematic program for screening and evaluating inmates in order to identify those who require mental health treatment;
- (b) treatment must entail more than segregation and close supervision of the inmate patients;
- (c) treatment requires the participation of trained mental health professionals, who must be employed in sufficient numbers to identify and treat in an individualized manner those treatable inmates suffering from serious mental disorders;
- (d) accurate, complete, and confidential records of the mental health treatment process must be maintained;
- (e) prescription and administration of behavior-altering medications in dangerous amounts, by dangerous methods, or without appropriate supervision and periodic evaluation is an unacceptable method of treatment;
- (f) a basic program for the identification, treatment and supervision of inmates with suicidal tendencies is a necessary component of any mental health treatment program.<sup>160</sup>

Examples of deficiencies in prison mental health care programs that have been found to violate the Eighth Amendment include the following:

- lack of mental health screening on intake;<sup>161</sup>
- failure to follow up on prisoners with known or suspected mental health disorders;<sup>162</sup>
- failure to provide adequate numbers of qualified mental health staff;<sup>163</sup>
- housing mentally ill prisoners in segregation or “supermax” units;<sup>164</sup>

<sup>160</sup> Ruiz v. Estelle, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980) (citations omitted), *amended in part and vacated in part* by 688 F.2d 266 (5<sup>th</sup> Cir. 1982); *see also* Balla v. Idaho State Bd. of Corr., 595 F. Supp. 1558, 1577 (D. Idaho 1984); Coleman v. Wilson, 912 F. Supp. 1282, 1298 n. 10 (E.D. Cal. 1995).

<sup>161</sup> Gibson v. County of Washoe, 290 F.3d 1175, 1189 (9<sup>th</sup> Cir. 2002); Inmates of Occoquan v. Barry, 717 F. Supp. 854, 868 (D.D.C. 1989); Inmates of the Allegheny County Jail v. Pierce, 487 F. Supp. 638, 642, 644 (W.D. Pa. 1980).

<sup>162</sup> Comstock v. McCrary, 273 F.3d 693 (6<sup>th</sup> Cir. 2001); Sanville v. McCaughtrey, 266 F.3d 724, 738 (7<sup>th</sup> Cir. 2001); Waldrop v. Evans, 871 F.2d 1030, 1036 (11<sup>th</sup> Cir. 1989); Arnold v. Lewis, 803 F. Supp. 246, 257-58 (D. Ariz. 1992).

<sup>163</sup> Cabralles v. County of Los Angeles, 864 F.2d 1454, 1461 (9<sup>th</sup> Cir. 1988), *vacated*, 490 U.S. 1087 (1989), *reinstated*, 886 F.2d 235 (9<sup>th</sup> Cir. 1989); Waldrop v. Evans, 871 F.2d 1030, 1036 (11<sup>th</sup> Cir. 1989) (non-psychiatrist was not qualified to evaluate significance of prisoner’s suicidal gesture); Wellman v. Faulkner, 715 F.2d 269, 272-73 (7<sup>th</sup> Cir. 1983) (“a psychiatrist is needed to supervise long term maintenance” on psychotropic medication); *see also* Ramos v. Lamm, 639 F.2d 559, 577-78 (10<sup>th</sup> Cir. 1980).

<sup>164</sup> Jones’El v. Berge, 164 F.Supp.2d 1096 (W.D. Wis. 2001); Ruiz v. Johnson, 37 F.Supp.2d 855, 913-15 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5<sup>th</sup> Cir. 2001), *adhered to on remand*, 154 F.Supp.2d 975 (S.D. Tex. 2001); Coleman v. Wilson, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); Madrid v. Gomez, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); Casey v. Lewis, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); Finney v. Mabry, 534 F. Supp. 1026, 1036-37 (E.D. Ark. 1982).

Indeed, the U.S. Supreme Court has acknowledged the devastating effects of prolonged isolation even on “normal” prisoners. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them. Others became violently insane, and others still committed suicide. Those who withstood the ordeal better were not generally reformed and, in most cases, did not recover sufficient mental activity to be of any subsequent service to the community. *In re Medley*, 134 U.S. 160, 168 (1890) (describing effects of solitary confinement as practiced in the early days of the United States). *See also* Chambers v. Florida, 309 U.S. 227, 237-38 (1940) (referring to “solitary confinement” as one of the techniques of

- failure to transfer seriously mentally ill prisoners to more appropriate facilities;<sup>165</sup>
- improper use of restraints;<sup>166</sup>
- excessive use of force against mentally ill prisoners;<sup>167</sup>
- lack of training of custody staff in mental health issues;<sup>168</sup>
- failure to adequately supervise or report a prisoner who has demonstrated suicidal tendencies.<sup>169</sup>

#### 4. Dental Care

Inmates are entitled to necessary dental care. In fact, courts have recognized that dental care is one of the most important medical needs facing inmates.<sup>170</sup> Similar to delays in medical care, delays in dental care can also violate the Eighth Amendment, particularly if the prisoner is suffering pain in the interim.<sup>171</sup> There are, however, standards that apply specifically to dental care. For instance, “care” that consists of pulling teeth that can be saved is constitutionally inadequate<sup>172</sup> and one court has held that some minimal level of prophylactic dental care is constitutionally required.<sup>173</sup>

#### 5. Conclusion

Providing medical care to inmates is a necessary task, though by no means an easy one. To begin with, many inmates come from poorer backgrounds. As a result, as a group they tend to have more medical problems than other Americans. For many inmates, the medical care they receive in prison is the first medical attention they have received in years. Moreover, staffing and budgetary concerns complicate a prison’s ability to provide medical care. Medical care can be very expensive, and few qualified doctors and nurses want to work in jails or prisons. Security issues also arise when violent or dangerous inmates require medical attention. Considering all of these factors, it is obvious why even the best-intentioned prison officials can get frustrated when it comes to taking care of inmates’ medical needs.

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“physical and mental torture” that have been used by governments to coerce confessions); Grassian, Psychopathological Effects of Solitary Confinement, 140 Am. J. Psychiatry 1450 (1983); Kupers, Prison Madness (1999).

<sup>165</sup> Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151, 209, 211 (D.P.R. 1998); Madrid, 889 F. Supp. at 1220; Coleman, 912 F. Supp. at 1309; Arnold v. Lewis, 803 F. Supp. 247, 257 (D. Ariz. 1992).

<sup>166</sup> Wells v. Franzen, 777 F.2d 1258, 1261-62 (7th Cir. 1985); Campbell v. McGruder, 580 F.2d 521, 551 (D.C. Cir. 1978).

<sup>167</sup> Coleman, 912 F. Supp. at 1321-23; Kendrick v. Bland, 541 F. Supp. 21, 25-26 (W.D. Ky. 1981).

<sup>168</sup> Olsen v. Layton Hills Mall, 312 F.3d 1304, 1319-20 (10th Cir. 2002).

<sup>169</sup> Conn v. City of Reno, 591 F.3d 1081, 1091 (9th Cir. 2010).

<sup>170</sup> Wynn v. Southward, 251 F.3d 588, 593 (7th Cir. 2001); Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir. 1989); Ramos v. Lamm, 639 F.2d 559, 576 (10th Cir. 1980).

<sup>171</sup> Meeks v. Allison, 290 F. App’x 4 (9th Cir. 2008) (approximately six months of visits without treatment for pain); Canell v. Bradshaw, 840 F. Supp. 1382, 1387, 1393 (D. Or. 1993), *aff’d*, 97 F.3d 1458 (9th Cir. 1996) (several days); Farrow v. West, 320 F.3d 1235 (11th Cir. 2003) (fifteen-month delay in providing dentures); Fields v. Gander, 734 F.2d 1313, 1315 (8th Cir. 1984) (three weeks).

<sup>172</sup> See, e.g., Chance v. Armstrong, 143 F.3d 698, 700-02 (2nd Cir. 1998); Dean v. Coughlin, 623 F. Supp. 392, 405 (S.D.N.Y. 1985); Heitman v. Gabriel, 524 F. Supp. 622, 627 (W.D. Mo. 1981).

<sup>173</sup> Barnes v. Gov’t of Virgin Islands, 415 F. Supp. 1218, 1235 (D.V.I. 1976).

Despite the hardships that accompany providing medical care in prisons, lack of medical care can cause even greater problems. Denying prisoners medical care can endanger their lives, cause unnecessary pain, and make it difficult for them to perform basic functions like eating or sleeping. Additionally, if untreated, an inmate's serious medical condition could endanger the health of other inmates, guards, and possibly the prison population as a whole.

For these reasons, it is important that prisoners be able to utilize the courts to enforce their right to receive needed medical attention. Most inmate medical care lawsuits involve claims against lower-level officials like guards, doctors, and nurses for failing to provide care, providing inadequate care, or interfering with prescribed treatment. These types of cases are resource- and fact-intensive: while they will address the concerns raised by an individual inmate, they will not spur system-wide change.

Supervising officials and municipal governments may also be held liable in civil rights lawsuits. To win a claim against a government agency like the Alaska DOC, an inmate must show the agency established or tolerated a deliberately indifferent policy or custom that resulted in a constitutional violation.<sup>174</sup> Such a lawsuit is typically a class action, and represents the type of litigation that should be pursued in order to effect systemic change in prisoner medical care.

Whether an inmate has a constitutional right to medical care depends on the specifics of the problem the inmate has. It is therefore very important for inmates to describe their problems — to guards, nurses, doctors, and to a court if necessary — in as much detail as possible.<sup>175</sup> Providing prison officials with specific information about a medical condition will increase the likelihood the inmate will receive the necessary care. Inmates should tell officials as much as they can about the following:

- symptoms: the signs or effects of the condition (*e.g.*, vomiting, passing out, fever, blurred vision, dull or throbbing pain), regardless of whether the symptoms can be observed by others;
- how long the condition has lasted;
- how the condition has affected the inmate's ability to perform basic functions (*e.g.*, sleep, walk, sit, eat, work); and
- any previous medical advice or treatment received for this condition.<sup>176</sup>

Prisoners should also be sure to keep a copy of their request forms or any other documents listing this information. Medical request forms often get “lost or misplaced,” so if it is not possible to keep a copy of the grievance form, it is important for the inmate to write this information down in a journal, together with the names of the people to whom he or she has complained and all relevant dates and times.

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<sup>174</sup> In order to show “deliberate indifference” in class action litigation, the plaintiff inmates must produce evidence showing “repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff,” or that “there are such systemic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care.” *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir.1980) (internal citation omitted); *see also* *Todaro v. Ward*, 565 F.2d 48, 52 (2nd Cir.1977). Plaintiffs can also meet this burden by showing serious deficiencies in staffing, facilities or procedures.

<sup>175</sup> Toone, *supra* note 22, at 75.

<sup>176</sup> *Id.*

### 3. Access to the Courts

The First Amendment guarantees the right to “petition the government for a redress of grievances.”<sup>177</sup> Prisoners have a specific constitutional right to file criminal appeals, including post-conviction appeals, habeas corpus petitions, and civil rights lawsuits.<sup>178</sup> This is commonly referred to as the “right of access to the courts.”<sup>179</sup> To further this right, prison officials must provide the tools prisoners need “to attack their sentences, directly or collaterally[ ] . . . in order to attack their conditions of confinement.”<sup>180</sup> However, the Supreme Court has explained this is not a “freestanding right to a law library or legal assistance.”<sup>181</sup> Thus, prison officials have some latitude in how they enable prisoners to file criminal petitions and civil rights lawsuits, and officials are not obligated to provide a law library *per se*.<sup>182</sup>

To establish a violation of the right of access to the courts as a result of a sub-par law library, a prisoner must show that he/she has suffered an “actual injury” as a result of the denial:

[T]he alleged shortcomings in the library or legal assistance program [must have] hindered his efforts to pursue a legal claim. . . for example, that a complaint he prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison’s legal assistance facilities, he could not have known. Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.<sup>183</sup>

“Actual injury” is difficult to prove, and most such claims fail.

A prisoner in Alaska has a right to reasonable access to the courts which cannot be limited unless the state’s interests in security and rehabilitation of prisoners cannot be protected by less restrictive means.<sup>184</sup> This appears to be a less onerous burden than the actual injury requirement under the U.S. Constitution. In fact, in Mathis v. Sauser, the Alaska Supreme Court declined to impose the “actual injury” requirement on an inmate who sued to challenge a Spring Creek Correctional Center policy that prohibited inmates from having computer printers in their cells.<sup>185</sup> The court, in reversing summary judgment against Mathis, held Mathis only needed to show the alleged policy was motivated by intent to curtail access to the courts.<sup>186</sup> Mathis was not alleging that that Spring Creek was providing inmates with insufficient tools to ensure meaningful access to the courts; rather, he alleged a claim of intentional administrative

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<sup>177</sup> U.S. CONST. amend. I.

<sup>178</sup> Lewis v. Casey, 518 U.S. 343, 355 (1996).

<sup>179</sup> Hudson v. Palmer, 468 U.S. 517, 523 (1984) (“Prisoners have the constitutional right to petition the Government for redress of their grievances, which includes a reasonable right of access to the courts.”).

<sup>180</sup> Lewis, 518 U.S. at 355.

<sup>181</sup> Id. at 352.

<sup>182</sup> Id. at 350-53.

<sup>183</sup> Id. at 351.

<sup>184</sup> Midgett v. Cook Inlet Pre-Trial Facility, 53 P.3d 1105, 1112 (Alaska 2002).

<sup>185</sup> 942 P.2d 1117, 1123 (Alaska 1997).

<sup>186</sup> Id.

obstruction aimed at interfering with individual inmates' presentation of claims to the courts.<sup>187</sup> Additionally, the administration admitted the purpose of the policy was to reduce frivolous litigation and paperwork.<sup>188</sup>

Under Alaska law, prisoners must have access to and use of legal reference materials or legal assistance "in order to gain meaningful access to a court for the purpose of challenging (A) the prisoner's conviction or sentence; or (B) the conditions of the prisoner's confinement."<sup>189</sup> In following this statutory mandate, the Alaska Department of Corrections requires that each institution provide every prisoner with access to a law library, library assistance, and supplies for preparing legal pleadings.<sup>190</sup> Prisoners also must be given timely access to legal materials that the law library does not carry.<sup>191</sup> This policy also states that each law library shall include *at a minimum* up-to-date constitutional, statutory, and case law materials, applicable court rules, and practice treatises and pleadings in Cleary v. Smith.<sup>192</sup>

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<sup>187</sup> Id.

<sup>188</sup> Id. at 1122.

<sup>189</sup> AS 33.30.193

<sup>190</sup> DOC Policy # 814.02, Law Library, provides:

Superintendents shall provide prisoners access to typing paper, carbon paper, or a typing service, and at least one properly functioning typewriter for every 100 prisoners based on the maximum capacities of each institution. These shall be provided to indigent prisoners at no charge. If a Superintendent decides to limit a prisoner's access to a typewriter because of a safety or security risk, the Superintendent shall give the prisoner a pen with black ink or pencil and paper to prepare legal pleadings or correspondence.

<sup>191</sup> Id.

<sup>192</sup> This list, found in DOC Policy # 814.02, Law Library: Attachment A and in the Cleary Final Order, 3AN-81-5274 CIV, Sept. 1990, §V(G)(6), provides an extensive list of materials that the law library at each facility must contain. The list includes the following titles:

- Alaska Attorney Directory, Todd Communications
- Alaska Statutes, Michie
- Alaska Reporter, West
- Advance Opinions of the Alaska Supreme Court and Court of Appeals
- Alaska Rules of Court
- Alaska Digest, West
- Alaska Administrative Code, Book Publishing Co.
- Alaska Case Notes, Pleiades Research Group
- Alaska Criminal Code Manual, Alaska Department of Law – Criminal Division
- Black's Law Dictionary, Black, Henry C. West
- Complete Manual of Criminal Forms, Federal and State, Bailey, F. Lee and Henry B. Rothblatt, 2d Ed., Lawyer's Co-op./Bancroft-Whitney, 1974.
- Constitutional Rights of the Accused: Post-trial Rights, Cook, Joseph G., Lawyers Co-op., 1976.
- Constitutional Rights of the Accused: Pre-trial Rights, Lawyers Co-op., 1972.
- Constitutional Rights of the Accused: Trial Rights, Rochester, New York; Lawyer's Cooperative, 1974.
- Criminal Law Defenses, Robinson, Paul H., West, 1984.
- Current volumes of the Decennial Digest beginning with the Ninth Decennial Digest, Part II, regarding constitutional law, prisons and civil rules.
- Criminal Procedure, LaFave, Wayne R. (West 1984) or Wharten's Criminal Procedure.
- A Layperson's Legal Dictionary
- Fortune News, The Fortune Society, 39 West 19<sup>th</sup> Street, New York, NY, 10011.
- Fundamentals of Criminal Advocacy, Bailey, F.L. and Henry B. Rothblatt, Lawyer's Co-op, Bancroft-Whitney, 1974.
- Legal Research in a Nutshell, West Publishing Co.

According to DOC policy, the superintendent at each facility will also provide an experienced or trained law librarian or assistant law librarian to help prisoners in using the library.<sup>193</sup> The law librarian may be a prisoner. The librarian must:

- a. know the resources available in the central and institutional law library;
- b. be able to perform basic legal research;
- c. understand the basic differences between the state and federal judicial systems; and
- d. be able to locate and reference the Court Rules of Procedure.

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- McCormick, Handbook on the Law of Evidence, West Publishing
  - (Applicable) Municipal Code or Ordinances
  - Handbook on Criminal Law, LaFave & Scott, West Publishing Co.
  - Rights of Prisoners, Gobert, James J. and Neil P. Cohen, Shepard's/McGraw-Hill.
  - Shepard's Alaska Citations, Shepard's/McGraw-Hill
  - Handbook of Appellate Advocacy, University of California, Los Angeles, Moot Court Honors Program, Rev.Ed., West, 1980.
  - Handbook of the Law of Torts, Prosser, William, 5<sup>th</sup> Ed., West 1984.
  - How to File Bankruptcy
  - The Law of Contracts, Calamari, John D. and Joseph M. Perillo, 2d. Ed., West, 1977.
  - Law of Probation and Parole, Gobert, James J. and Neil P. Cohen, Shepards/McGraw-Hill.
  - Manual for Prison Law Libraries, Werner, O. James, Rothman.
  - Police Misconduct: Law and Litigation, Avery, Michael, 2d Ed., New York: Clark Boardman, 1980.
  - Prisoner's Self-Help Litigation Manual, Manville & Borstein, Oceana Publication, Dobbs Ferry, N.Y.
  - Prosecution and Defense of Sex Crimes, Morosco, B. Anthony, Matthew Bender, 1978.

Pleadings in Cleary v. Smith required to be held in each facility law library include:

- Plaintiffs' Complaint and Amended Complaints; Defendants' Answers;
- Order Regarding Class Certification;
- Partial Settlement Agreement and Order Regarding Subclasses A and B;
- Settlement Agreement and Order Regarding Subclass C;
- Each Motion for Contempt (excluding exhibits), Opposition thereto, Reply and written Decision and Order by the Court or Master, a Transcript of Oral Decision by the Court or Master;
- The Memorandum Decision, Findings of Fact, Conclusions of Law and Order dated March 1, 1985;
- Order Regarding Post Trial Motions;
- Orders Regarding Classification Procedures;
- Order Regarding Urinalysis Testing; Orders Appointing and Continuing Appointment of Standing Compliance Monitor;
- 1998 Draft Status Report of Standing Compliance Monitor;
- Memorandum of Compliance Monitor regarding Disputed Issues;
- November 1988 Order Regarding Disputed Issues Presented by Compliance Monitor, and Order of Clarification January 31, 1989;
- Notices of Appeal and Cross-Appeal; and Final Settlement Agreement and Related Orders.

In addition, any facility holding more than 500 prisoners will have the following materials available in the law library: (a) Federal Supplement and Federal Supplement 2d; (b) Federal 2d Reporter and Federal 3d Reporter; (c) United States Supreme Court Reporter; and (d) Shepard's Citations for these reporters all beginning with the year 1960. The Department's Central Law Library must also contain a manual on immigration law and procedure and applicable volumes of the Code of Federal Regulations (CFR) on immigration. DOC Policy #814.02, Law Library.

<sup>193</sup> DOC Policy # 814.02, Law Library.



A prisoner may receive assistance from another prisoner (only within the same facility) when using the law library, conducting legal research, or preparing legal pleadings, but a prisoner has no right to assistance from a specific prisoner.<sup>194</sup> Additionally, a prisoner must secure the superintendent or designee's approval before receiving assistance from any person other than the law librarian. The superintendent may withhold approval only for legitimate reasons that relate to the security or orderly administration of the institution. The superintendent may also limit or deny assistance to or from a prisoner in segregation or maximum custody housing for security reasons, except for services provided by the law librarian.<sup>195</sup>

Prisoners in administrative segregation or classified maximum custody must be provided the same access to the law library as the general population, unless the superintendent makes an individualized determination that the prisoner's use of the law library presents a substantial threat to the facility's security or order. If the superintendent makes such a finding, or the prisoner is in punitive segregation, the prisoner is not entitled to physical access to the law library but may have at least four law books in his or her cell at any one time.<sup>196</sup> Staff shall arrange for secure visits between the prisoner and the librarian so that the prisoner may have the assistance of the law librarian in locating, researching, and obtaining legal materials.

A prisoner may obtain legal material that is not available in the institution's law library from the Department's centralized law library. "Legal materials" include research materials that attorneys commonly rely on to prepare legal pleadings, documents, and briefs (excluding computers or computer assisted research).<sup>197</sup> The Department will not honor requests for (1) an entire issue of a law review (prisoners may request particular law review articles) or (2) more than ten cases at one time (after the first ten are delivered, a prisoner may request up to ten additional cases).<sup>198</sup>

#### **4. Retaliation by Prison Officials**

The First Amendment forbids jail and prison officials from retaliating against inmates who report complaints, file grievances, or file lawsuits.<sup>199</sup> This is important because prison officials can retaliate against inmates in a number of different ways. Some are very subtle and, without knowledge of a prisoner's prior complaints, would not seem like retaliation. These tactics include (1) refusing to provide hygiene materials; (2) reading or interfering with a prisoner's legal papers; (3) placing an inmate in segregated or poor living conditions; (4) transferring an inmate to a different cell or prison; and (5) threatening or assaulting an inmate.<sup>200</sup> Note that "government actions, which standing alone may not violate the Constitution, may nonetheless be

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<sup>194</sup> Id.

<sup>195</sup> Id.

<sup>196</sup> Id.

<sup>197</sup> DOC Policy # 814.02, Law Library.

<sup>198</sup> Id.

<sup>199</sup> Toone, supra note 22, at 17 (citing Allah v. Seiverling, 229 F.3d 220, 224 (3rd Cir. 2000)); see also Crawford-El v. Britton, 523 U.S. 574, 588 n.10 (1998) ("[T]he reason why...retaliation offends the Constitution is that it threatens to inhibit exercise of the protected right").

<sup>200</sup> Toone, supra note 22, at 17.

constitutional torts if motivated by a desire to punish an individual for exercise of a constitutional right.”<sup>201</sup>

## 5. Civil Liberties

Civil liberties are rights shared by all people in the United States that limit the government’s ability to interfere with what individuals say, think, and do.<sup>202</sup> Constitutionally-protected civil liberties do extend to prisoners, but prison officials may limit civil liberties to advance such prison needs as maintaining security or promoting rehabilitation.

Restrictions on civil liberties and First Amendment rights are governed by the test set forth by the Supreme Court in Turner v. Safley.<sup>203</sup> The Turner test requires that any restriction on civil liberties must be “reasonably related to legitimate penological interests.”<sup>204</sup> Four factors are examined when the test is applied:

1. whether there is a “valid, rational connection” between the restriction and the government’s justification for it;
2. whether there are alternative means of exercising the civil liberty that remain open to inmates;
3. the effect that accommodating the asserted civil liberty will have on prison operations, the guards, and other inmates; and
4. whether there are ready alternatives to the restriction.<sup>205</sup>

The Turner standard is deferential but “not toothless.”<sup>206</sup> Prison officials may not “pil[e] conjecture upon conjecture” to justify their policies;<sup>207</sup> lower courts, though, have a tendency to apply the test in a way that favors prison officials.<sup>208</sup> Therefore, the following points should be emphasized in any prisoner lawsuit challenging a limitation on civil liberties:

1. “Reasonableness” under Turner requires the court to balance the interests of the officials and the constitutional rights of inmates.
2. While it is appropriate for courts to defer to the well-supported judgments of jail and prison officials, “deference does not mean abdication”—a court should not defer to

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<sup>201</sup> Id. (citing Thaddeus-X v. Blatter, 175 F.3d 378, 386 (6th Cir. 1999) (en banc)); Austin v. Terhune, 367 F.3d 1167, 1170-71 (9th Cir. 2004) (plaintiff sufficiently raised retaliation claim stemming from the First Amendment-protected grievance he had filed against the defendant); Hines v. Gomez, 108 F.3d 265, 269 (9th Cir. 1997) (alleged retaliatory punishment of 10-day confinement in segregation unit and loss of television privileges; “prisoners may still base retaliatory claims on harms that would not raise due process concerns”); Pratt v. Rowland, 65 F.3d 802, 806-07 (9th Cir. 1995) (“To succeed on his retaliation claim, [the inmate] need not establish an independent constitutional interest in either assignment to a given prison or placement in a single cell . . .”).

<sup>202</sup> Toone, supra note 22, at 18.

<sup>203</sup> 482 U.S. 78, 89 (1987).

<sup>204</sup> Id.

<sup>205</sup> Id. at 89-91.

<sup>206</sup> Thornburgh v. Abbott, 490 U.S. 401, 414 (1989).

<sup>207</sup> Reed v. Faulkner, 842 F.2d 960, 963-64 (7th Cir. 1988); see also Miller-El v. Cockrell, 537 U.S. 322, 340 (2003) (“deference does not imply abandonment or abdication of judicial review.”); Armstrong v. Davis, 275 F.3d 849, 874 (9th Cir. 2001) (prison officials cannot avoid scrutiny under Turner “by reflexive, rote assertions”).

<sup>208</sup> Toone, supra note 22, at 18.

the officials' judgment in the absence of meaningful evidence in support of upholding the prison policies in question.

3. Officials must support their policies with facts, not conjecture or conclusory assertions.<sup>209</sup>

The remainder of Part I enumerates and discusses specific civil liberties as they apply to prisoners.

### **a. Freedom of Religion**

All sincerely held religious beliefs are protected by the First Amendment, which prohibits the government from interfering with the "free exercise of religion."<sup>210</sup> The test is not whether the belief comprises a "central tenet" of the prisoner's faith, but rather, whether the prisoner sincerely believes the practice in question to be a part of his faith.<sup>211</sup> Accordingly, prison officials must abide by these guidelines, and inmates must be given a reasonable opportunity to exercise their religious beliefs without fear of penalty or retaliation.<sup>212</sup> Alaska adheres to this constitutional requirement and provides prisoners with "access to clergymen, religious advisors, publications and related services which allow prisoners to adhere to legitimate religious practices."<sup>213</sup>

Prison officials do, however, have wide discretion to limit religious freedom, so long as the limitations are "reasonably related to legitimate penological interests,"<sup>214</sup> and do not favor certain religions over others.<sup>215</sup> Under the Turner standard, the following restrictions on religious exercise have been found to violate the First Amendment: restricting an inmate's ability to attend religious services;<sup>216</sup> requiring an inmate to act in violation of the Sabbath;<sup>217</sup> and failing to accommodate a religion's dietary rules.<sup>218</sup> Under Turner, challenges to grooming

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<sup>209</sup> Id. at 19 (citing Reed v. Faulkner, 842 F.2d 960, 962 (7th Cir. 1988) for point (1); Walker v. Sumner, 917 F.2d 382, 385 (9th Cir. 1990) for point (2); and Shimer v. Washington, 100 F.3d 506, 509-10 (7th Cir. 1996) for point (3)).

<sup>210</sup> U.S. CONST. amend. I.

<sup>211</sup> Shakur v. Schriro, 514 F.3d 878, 885 (9th Cir. 2008) (citing Employment Div., Dep't of Human Res. v. Smith, 494 U.S. 872 (1990)).

<sup>212</sup> Cruz v. Beto, 405 U.S. 319, 322 n.2 (1972).

<sup>213</sup> DOC Policy # 808.05(A)(9), Environmental and Programmatic Rights of Prisoners.

<sup>214</sup> Toone, supra note 22, at 19 (quoting O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987)).

<sup>215</sup> Cruz, 405 U.S. at 322.

<sup>216</sup> Mayweathers v. Newland, 258 F.3d 930, 938 (9th Cir. 2001) (upholding injunction against disciplining Muslim prisoners for missing work to attend Friday services); Youngbear v. Thalacker, 174 F. Supp. 2d 902 (N.D. Iowa 2001) (one year delay in providing sweat lodge for Native American religious activities violates First Amendment).

<sup>217</sup> Murphy v. Carroll, 202 F. Supp. 2d 421 (D.Md. 2002) (prison officials' designation of Saturday as cell-cleaning day violated Free Exercise rights of Orthodox Jewish prisoner).

<sup>218</sup> Shakur, 514 F.3d at 878 (additional cost of Kosher meal not adequate reason to deny meal to Muslim man who suffered from digestive problems as a result of the vegetarian diet with which he was being provided); Lomholt v. Holder, 287 F.3d 683 (8th Cir. 2002) (punishing plaintiff for religious fasting); Beerheide v. Suthers, 286 F.3d 1179, 1192 (10th Cir. 2002) (requiring co-pay from prisoners requesting Kosher meals); Makin v. Colorado Dep't of Corr., 183 F.3d 1205 (10th Cir. 1999) (failure to accommodate Muslim prisoner's fasting requirements during Ramadan); Ashelman v. Wawrzaszek, 111 F.3d 674, 478 (9th Cir. 1997) (failure to provide Kosher meals); see also Leviton v. Ashcroft, 281 F.3d 1313 (D.C. Cir. 2002) (reversing summary judgment for defendants in Catholic prisoners' challenge to denial of communion wine).

requirements and bans on religious objects have generally been unsuccessful. But, such rules may be vulnerable if they are not enforced equally against all religions.<sup>219</sup>

There are also two exceptions when applying Turner:

- (1) The Religious Freedom Restoration Act (RFRA),<sup>220</sup> declared unconstitutional as to the states, still applies to the claims of federal prisoners and those imprisoned in the District of Columbia.<sup>221</sup>
- (2) As to the states, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),<sup>222</sup> re-establishes the compelling state interest/least restrictive means test that existed under RFRA for the religious claims of prisoners.<sup>223</sup>

Claims that may not be successful under the Eighth Amendment may be successful under RLUIPA.<sup>224</sup> Under this Act, the state must present a compelling governmental interest for the restriction, rather than the legitimate penological interest dictated by Turner, and that interest must be furthered by the least restrictive means.<sup>225</sup> The Supreme Court has not read RLUIPA to elevate accommodation of religion observances over an institution's need to maintain order and safety, which is clearly a compelling interest.<sup>226</sup> However, prison officials still must show that they "actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice."<sup>227</sup>

In Warsoldier v. Woodford, the Ninth Circuit found that the department of corrections grooming policy which required that all male prisoners maintain their hair no longer than three inches violated a Native American prisoner's free exercise rights under RLUIPA.<sup>228</sup> The prisoner held

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<sup>219</sup> Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999) (First Amendment violated where prison banned the wearing of Protestant crosses but allowed Catholic rosaries); Swift v. Lewis, 901 F.2d 730, 731-32 (9th Cir. 1990) (where prison permitted long hair and beards for some religions but not others, it must present evidence justifying this unequal treatment).

<sup>220</sup> 42 U.S.C. § 2000bb *et seq* (2009).

<sup>221</sup> Gartrell v. Ashcroft, 191 F. Supp. 2d 23 (D.D.C. 2002) (prison grooming policies requiring Muslim and Rastafarian prisoners to shave their beards and cut their hair subject to scrutiny under RFRA).

<sup>222</sup> 42 U.S.C. § 2000cc *et seq* (2009).

<sup>223</sup> See Cutter v. Wilkinson, 544 U.S. 709, 721 (2005) (upholding the Constitutionality of RLUIPA). See, e.g., Hovenaar v. Lazaroff, 276 F. Supp. 2d 811 (S.D. Ohio 2003), *rev'd by* 2004 WL 1664043 (6th Cir. 2004), *pet. for cert. filed*, No. 04-534 (October 21, 2004) (granting preliminary injunction under RLUIPA barring enforcement of hair-length regulation against Native American prisoner).

<sup>224</sup> See Henderson v. Terhune, 379 F.3d 709 (9th Cir. 2004)

<sup>225</sup> In pertinent part, RLUIPA reads:

(a) General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C.S. § 2000cc-1 (2009).

<sup>226</sup> Cutter, 544 U.S. at 722-23.

<sup>227</sup> Greene v. Solano County Jail, 513 F.3d 982, 989 (9th Cir. 2008) (citation omitted).

<sup>228</sup> Warsoldier v. Woodford, 418 F.3d 989, 991 (9th Cir. 2005)

a sincere religious belief that he could cut his hair only upon the death of a loved one.<sup>229</sup> He was heavily sanctioned for refusing to cut his hair.<sup>230</sup> Though the department argued the policy advanced interests in safety, easy identification of inmates and general health, the court found none of these compelling, nor was it convinced the department's policy was the least restrictive one possible, especially given the prisoner's confinement in a minimum security facility.<sup>231</sup>

### **b. Right to Peaceably Assemble and to Associate with Others for the Advancement of Beliefs and Ideas**

The First Amendment also provides the right to peaceably assemble and to associate with others for the advancement of beliefs and ideas.<sup>232</sup> Freedom of association is “among the rights least compatible with incarceration,” and thus, “some curtailment of that freedom must be expected in the prison context.”<sup>233</sup> Like the right to religious freedom under the First Amendment, this right is subject to the discretion of prison officials.<sup>234</sup> Therefore, prison officials may, in accordance with Turner, ban any group activity they reasonably believe poses a threat to security. The Supreme Court has specifically ruled that a prison may prohibit inmates from taking part in a union organized for the purpose of criticizing prison policies.<sup>235</sup>

### **c. Family relationships**

Prisoners are without the freedoms “to be with family and friends and to form the other enduring attachments of normal life.”<sup>236</sup> However, inmates have a constitutional right to get married, so limitations on that right must pass the Turner test. Alaska prisoners may be permitted to marry while incarcerated.<sup>237</sup> An inmate must submit an application, and permission shall be granted on an individual basis.<sup>238</sup> The DOC will consider the nature and requirements of incarceration and the institutional environment involved when reaching a decision.<sup>239</sup>

Inmates do not have a constitutional right to conjugal visits.<sup>240</sup> Women do not have a constitutional right to keep their children with them in prison.<sup>241</sup> Pregnant inmates do have a right to proper prenatal care and medical assistance, and they have a right to an abortion early in their pregnancy.<sup>242</sup>

Divorce, child custody, parental rights, spousal support, and inheritance are governed by applicable Alaska state laws.

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<sup>229</sup> Id. at 992.

<sup>230</sup> Id. at 996.

<sup>231</sup> Id. at 997, 999.

<sup>232</sup> U.S. CONST. amend. I.

<sup>233</sup> Overton v. Bazzetta, 539 U.S. 126, 131 (2003).

<sup>234</sup> Toone, supra note 22, at 19.

<sup>235</sup> Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 129-35 (1977).

<sup>236</sup> Morrissey v. Brewer, 408 U.S. 471, 482 (1972).

<sup>237</sup> DOC Policy # 808.10, Prisoner Marriages.

<sup>238</sup> Id.

<sup>239</sup> Id.

<sup>240</sup> McGinnis v. Stevens, 543 P.2d 1221, 1237-38 (Alaska 1975).

<sup>241</sup> See infra Part III.A.

<sup>242</sup> Id.

#### **d. Searches and Seizures**

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures.<sup>243</sup> But, this amendment only applies where a person has a “reasonable expectation of privacy,” and inmates do not have a reasonable expectation of privacy in their living quarters.<sup>244</sup> Officials may therefore conduct cell searches and “shakedowns” as they see fit. Such searches only violate the Constitution if they amount to “calculated harassment unrelated to prison needs.”<sup>245</sup>

Prisoners have greater protections when it comes to bodily searches.<sup>246</sup> Strip searches and body-cavity searches violate the Constitution when prison officials unreasonably expose an inmate’s genitals to people of the opposite sex.<sup>247</sup> A body search may also be unconstitutional if the pain and humiliation caused by the search outweigh any penological need for it.<sup>248</sup>

#### **e. Communication with the Outside World**

The First Amendment prohibits the government from “abridging the freedom of speech or of the press.”<sup>249</sup> However, jail and prison officials may legitimately infringe upon the right of free speech by limiting an inmate’s ability to communicate with the outside world.

##### **1. Mail**

Alaska correctional institutions may not place limits on the volume of a prisoner’s incoming or outgoing mail, except that limits may be placed on mail used by a prisoner to conduct business activities.<sup>250</sup> Restrictions on prisoners’ mail are governed by the Turner standard. Prison officials may read and censor non-privileged incoming mail as long as they are following policies or regulations that are reasonably related to legitimate penological interests.<sup>251</sup> Such interests include inspecting it for contraband, censoring it to maintain security or discipline, preventing criminal activity, or promoting the goal of rehabilitation (e.g., denying violent pornography to sex offenders).<sup>252</sup> Mail sent between inmates is also subject to the Turner standard. The Supreme Court recently held prisoners do not have a First Amendment right to provide legal assistance that enhances the protections otherwise available under Turner; in other words, correspondence between inmates which relates to a legal interest is not afforded more protection than correspondence regarding non-legal interests.<sup>253</sup>

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<sup>243</sup> U.S. CONST. amend. IV.

<sup>244</sup> Hudson v. Palmer, 468 US 517, 530 (1984).

<sup>245</sup> Id.

<sup>246</sup> Toone, supra note 22, at 21.

<sup>247</sup> Id. (citing Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir 1981); Cornwell v. Dahlberg, 963 F.2d 912, 916 (6th Cir. 1992); and Hayes v. Marriott, 70 F.3d 1144, 1146 (10th Cir. 1995)).

<sup>248</sup> Id. (citing Bell v. Wolfish, 441 U.S. 520, 559 (1979); Tribble v. Gardner, 860 F.2d 321, 325-27 (9th Cir. 1988)).

<sup>249</sup> U.S. CONST. amend. I.

<sup>250</sup> DOC Policy # 810.03, Prisoner Mail, Publications and Packages.

<sup>251</sup> Thornburgh v. Abbott, 490 U.S. 401, 409 (1989). See Prison Legal News v. Lehman, 397 F.3d 692, 696 (9th Cir. 2005) (reducing amount of mail and protecting against fire not legitimate penological interests in relation to limiting non-subscription bulk mail).

<sup>252</sup> Toone, supra note 22, at 22.

<sup>253</sup> Shaw v. Murphy, 532 U.S. 223, 228 (2001).

Prison officials may not read privileged mail (mail to and from the courts, attorneys or paralegals), but they may open such mail, *in the presence of the inmate*, to see whether it contains contraband.<sup>254</sup> All privileged mail must be clearly marked so prison officials will know not to read it or open it outside the inmate's presence. Additionally, prisons may not ban mail simply because it contains material downloaded from the internet.<sup>255</sup>

Restrictions on prisoners' outgoing correspondence must meet a more demanding standard. Limitations must be "no greater than is necessary or essential" to protect an "important or substantial" government interest (*e.g.*, to control mail that discusses escape plans, threats of blackmail, or other criminal activity).<sup>256</sup>

Officials may not censor either incoming or outgoing mail because it is critical of the courts, jail or prison policies, or of the officials themselves, because it contains profane, disrespectful or inaccurate statements, or because it expresses "inflammatory political, racial, religious, or other views."<sup>257</sup> For example, in Barrett v. Belleque, the Ninth Circuit determined the plaintiff "unequivocally pleaded facts alleging that the prison censored his outgoing mail and punished him for its contents" in violation of his First Amendment rights.<sup>258</sup> The plaintiff's letters contained "vulgar and offensive racist language" aimed at prison officials, who reacted by punishing the plaintiff and taking away his accrued good time.<sup>259</sup>

## 2. Publications

Restrictions on prisoners' access to books, publications, and other reading material are governed by Turner,<sup>260</sup> with several exceptions:

- Publications may be censored, subject to certain procedural safeguards, if they contain material harmful to prison security.<sup>261</sup>
- The Ninth Circuit has upheld a ban on sexually explicit publications on the ground that they encourage sexual harassment of female staff.<sup>262</sup>
- Both the sender and the intended recipient must receive notice of the censorship and an opportunity to appeal.<sup>263</sup>

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<sup>254</sup> Wolf v. McDonnell, 418 U.S. 539, 575-77 (1974); DOC Policy # 810.03.

<sup>255</sup> Clement v. California, Dep't of Corr., 364 F.3d 1148 (9th Cir. 2004)

<sup>256</sup> Procunier v. Martinez, 416 U.S. 396, 413-14 (1974).

<sup>257</sup> Toone, *supra* note 22, at 22 (citing Thornburgh, 490 U.S. at 416 n.14, and Procunier, 416 U.S. at 413, 415.)

<sup>258</sup> Barrett v. Belleque, 544 F.3d 1060, 1062 (9th Cir. 2008).

<sup>259</sup> Id. at 1061.

<sup>260</sup> This rule was recently affirmed in Beard v. Banks, 548 U.S. 521 (2006), in which a plurality of Supreme Court justices found a Pennsylvania prison policy that denied publications and photographs to a group of "specially dangerous and recalcitrant inmates" fell within the standard articulated in Turner and thus did not violate of the inmates' First Amendment rights. 548 U.S. at 524-25.

<sup>261</sup> Thornburgh, 490 U.S. at 414-19.

<sup>262</sup> Mauro v. Arpaio, 188 F.3d 1054 (9th Cir. 1999).

<sup>263</sup> Montcalm Publ'g Corp. v. Beck, 80 F.3d 105, 109-10 (4th Cir. 1996); *see also* Krug v. Lutz, 329 F.3d 692, 697-98 (9th Cir. 2003) (censorship decision must be reviewed by someone other than the original decision maker).

- “Publisher only” rules, requiring that books and other reading materials be sent directly from the publisher or an approved vendor, have generally been upheld. Other restrictions on prisoners’ ability to receive books and publications have been struck down.<sup>264</sup>

### 3. Press/Media communications

Prison officials may not prevent communications with the press or media because of the subject matter of what inmates want to say. Officials may decide how those communications will take place, however.<sup>265</sup> For instance, rather than allowing an in-person interview with a reporter, officials may require that the inmate write a letter.<sup>266</sup> Also, prisoners may not be punished for posting material on the internet with the assistance of non-incarcerated third parties.<sup>267</sup>

### 4. Telephones

The Supreme Court has not ruled on whether inmates have a constitutional right to use the telephone. Some lower courts have ruled arrestees and pretrial detainees have a right to call their attorneys,<sup>268</sup> and Alaska specifically provides the right to telephone or otherwise communicate with an attorney and any relative or friend immediately after arrest.<sup>269</sup> In addition, an officer may be criminally liable in Alaska for refusing or neglecting to allow the prisoner to use the telephone after arrest.<sup>270</sup>

However, officials may limit a prisoner’s right to call her friends or family because of security reasons. Alaska law provides that each prisoner, except those in punitive segregation, shall have reasonable access to a telephone.<sup>271</sup> Even prisoners in punitive segregation have the right to call their attorney, the Courts, or the Ombudsman’s Office, and in rare cases, the Superintendent may approve other calls “for compelling reasons.”<sup>272</sup>

### 5. Visitation

Inmates have a constitutional right to confidential contact visits with attorneys and their paralegals and law students.<sup>273</sup> In Alaska, attorneys and legal representatives may visit a prisoner at the institution between 8 a.m. and 10 p.m. daily or at any time during the initial 24

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<sup>264</sup> See, e.g., Prison Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005) (finding a ban on non-subscription bulk mail and catalogues had no rational relation to a legitimate penological interest and thus was unconstitutional); Sorrels v. McKee, 290 F.3d 965 (9th Cir. 2002) (prison may not ban gift publications for which prisoner has not paid); Morrison v. Hall, 261 F.3d 896 (9th Cir. 2001) (prison may not ban receipt of subscription publications sent by bulk, third, or fourth class mail); Askher v. California, Dep’t of Corr., 224 F. Supp. 2d 1253 (N.D. Cal. 2002) (prison may not require that special shipping label be affixed to books ordered from approved vendors).

<sup>265</sup> Pell v. Procunier, 417 US 817, 822-28 (1974); DOC Policy # 808.02, Prisoner/Media Contact.

<sup>266</sup> Pell, 417 U.S. at 822.

<sup>267</sup> Canadian Coal. Against the Death Penalty v. Ryan, 269 F. Supp. 2d 1199 (D. Ariz. 2003).

<sup>268</sup> Toone, *supra* note 22, at 23 (citing Tucker v. Randall, 948 F.2d 388, 390-91 (7th Cir. 1991)).

<sup>269</sup> AS 12.25.150(b) (2009).

<sup>270</sup> AS 12.25.150(c) (2009).

<sup>271</sup> AS 33.30.231(a) (2009); see also DOC Policy # 810.01, Prisoner Access to Telephone.

<sup>272</sup> DOC Policy # 810.01.

<sup>273</sup> Procunier v. Martinez, 416 US 396, 419-22 (1974); Barnetti v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994).



hours of a client's incarceration, except during meal times or while the institution conducts a population count.<sup>274</sup> Each institution will also provide private and secure attorney-client interview space with adequate seating and a writing table or desk.<sup>275</sup>

The Supreme Court has not directly addressed whether inmates have a right to visit with family and friends, but it has said that inmates do not have a right to “unfettered visitation”<sup>276</sup> or contact visits.<sup>277</sup> The Alaska Supreme Court has not gone so far as to say that prisoners have an unabridged right to visitation. The court acknowledged that visitation is important to rehabilitation and that visitation privileges are a component of the constitutional right to rehabilitation.<sup>278</sup> The court did not, however, define the required scope of visitation or the permissible limits on its exercise, though it has suggested that a pattern of denying visitation could constitute a violation of the right to rehabilitation.<sup>279</sup> The Alaska DOC adopts this view of visitation and encourages visitation because “strong family and community ties increase the likelihood of a prisoner’s success after release.”<sup>280</sup> The DOC may, however, limit visitation as necessary to “protect persons and maintain order and security in the institution.”<sup>281</sup>

The U.S. Supreme Court has taken a much harder-line stance on visitation than the Alaska courts. The Court has not gone so far as to hold that prisoners have no rights of association, but it has upheld severe limitations on visits by children and ex-prisoners.<sup>282</sup> The Court has also allowed an indefinite denial of all non-legal-related visiting for prisoners convicted of infractions relating to substance abuse.<sup>283</sup>

## 6. Equal Protection

The Fourteenth Amendment prohibits the government from intentionally denying any person, whether incarcerated or not, “the equal protection of the laws.” Although this amendment refers to the states, the Equal Protection Clause applies against the federal government through the Fifth Amendment.<sup>284</sup> As a general rule, the Equal Protection Clause requires government officials to treat “similarly situated” people alike.<sup>285</sup> The intent to discriminate is a necessary component of any equal protection claim; thus, merely showing a “disparate impact” resulting from the discrimination is not enough.<sup>286</sup>

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<sup>274</sup> DOC Policy # 808.01; 22 AAC 05.545(a).

<sup>275</sup> DOC Policy # 808.01.

<sup>276</sup> Kentucky, Dep’t of Corr. v. Thompson, 490 U.S. 454, 460-61 (1989).

<sup>277</sup> Block v. Rutherford, 468 U.S. 576, 586-88 (1984).

<sup>278</sup> Brandon v. State, 938 P.2d 1029 (Alaska 1997); see also Clark v. State, Dep’t of Corr., 156 P.3d 384 (Alaska 2007).

<sup>279</sup> Id.; Adkins v. Stansel, 204 P.3d 1031, 1035 (Alaska 2009).

<sup>280</sup> DOC Policy # 810.02, Visitation.

<sup>281</sup> Id.

<sup>282</sup> Overton v. Bazzetta, 539 U.S. 126 (2003).

<sup>283</sup> Id. at 137; see also Whitmire v. Arizona, 298 F.3d 1134 (9th Cir. 2002) (reversing dismissal of equal protection challenge to prison’s ban on same-sex kissing and hugging between prisoners and their visitors).

<sup>284</sup> Edmondson v. Leesville Concrete Co., 500 U.S. 614, 616 (1991).

<sup>285</sup> Toone, *supra* note 22, at 23.

<sup>286</sup> Washington v. Davis, 426 U.S. 229 (1976).

Generally, government officials need only a “rational” reason to treat people differently. For instance, one is unlikely to succeed on an equal protection claim that challenges the differences in the way prison officials treat inmates in segregation and inmates in the general population, or the different ways in which inmates and non-inmates are treated, because there are rational reasons to treat these groups differently (e.g., security, punishment).<sup>287</sup>

A stronger, more difficult standard applies to racial discrimination or discrimination based on national origin.<sup>288</sup> Such discrimination violates the Constitution unless it is necessary to serve a “compelling state interest by the least restrictive means available.” The Supreme Court has held that prison officials may not segregate inmates based on race unless it is necessary to maintain security and discipline.<sup>289</sup>

To meet the standard applied to gender discrimination, government officials must show that the discrimination “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”<sup>290</sup> When male and female inmates in the same facility are treated differently, a court will require officials to meet this standard and show an important need for the discrimination. However, when inmates challenge differences at separate men’s and women’s facilities, courts will often reject the challenge on the ground that the groups are not similarly situated.<sup>291</sup>

Discrimination based on sexual orientation receives only rational-basis review under the Equal Protection Clause. However, the Supreme Court has indicated that the government may not discriminate based solely on hostility to a person’s sexual orientation.<sup>292</sup>

## 7. Due Process

The Due Process Clause prohibits the government from depriving a person of liberty or property “without due process of law.”<sup>293</sup> Inmates have limited rights when it comes to deprivations of their liberty and property.<sup>294</sup>

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<sup>287</sup> Toone, *supra* note 22, at 24.

<sup>288</sup> Discrimination violates the prison employee code of ethical conduct. DOC Policy # 202.01a, Code of Ethical Professional Conduct. The DOC also states that “freedom from discrimination is a basic right extended to all prisoners.” DOC Policy # 808.05, Environmental and Programmatic Rights. Programs, activities, services or assignments shall not be denied or granted based on discrimination. *Id.* Discrimination is defined as: exercising a difference in action or process based upon a person’s race, religion, color, sex, age or national origin when such behavior may cause that person loss. *Id.*

<sup>289</sup> *Johnson v. California*, 543 U.S. 499 (2005) (requiring strict scrutiny for racial segregation of prisoners in reception cells); *Lee v. Washington*, 390 U.S. 333 (1968) (declaring unconstitutional certain state statutes which required racial segregation in prisons and jails).

<sup>290</sup> *United States v. Virginia*, 518 US 515, 533 (1996).

<sup>291</sup> Toone, *supra* note 22, at 24 (citing *Keenan v. Smith*, 100 F.3d 644, 648-50 (8th Cir. 1996) and *Klinge v. Dep’t of Corr.*, 31 F.3d 727, 733 (8th Cir. 1994)).

<sup>292</sup> *Romer v. Evans*, 517 US 630, 634-35 (1996); see also *In re Levenson*, 587 F.3d 925 (9th Cir. 2009) (finding no rational basis under Fifth Amendment for “denying [plaintiff]’s request that federal benefits be extended to his same-sex spouse”).

<sup>293</sup> The Due Process Clause of the Fifth Amendment applies to federal inmates, while the Due Process Clause of the Fourteenth Amendment applies to state and local inmates.

<sup>294</sup> Toone, *supra* note 22, at 25.

### **a. Loss of Property**

Inmates have circumscribed rights regarding deprivations of their property. Generally, inmates must rely on state law remedies or administrative remedies, such as grievances and appeals, when property is lost. Federal civil rights law is often not the appropriate vehicle for challenging loss of property.<sup>295</sup> For instance, if prison officials intentionally take or destroy an inmate's property, a federal civil rights claim can only be filed if the inmate does not have a "meaningful post-deprivation remedy," such as the opportunity to file a state-law tort action.<sup>296</sup> If property is lost as a result of an official's negligence, there is no due process claim at all, regardless of whether any meaningful remedies exist.<sup>297</sup>

In order to maintain security, sanitation, fire safety, and good order, jail and prison officials have wide discretion over the types and amounts of property inmates can keep in their cells.<sup>298</sup> Officials can even place reasonable limitations on the amount of legal papers and books an inmate can possess.<sup>299</sup>

### **b. Disciplinary Sanctions, Segregation, and Other Losses of Liberty**

"The touchstone of due process is protection of the individual against arbitrary action of the government."<sup>300</sup> The purpose of due process is not to keep the government from acting but to keep it from acting in an arbitrary and unfair manner.<sup>301</sup> When an inmate has a liberty interest that is protected by the Due Process Clause, prison officials must provide "fair treatment."<sup>302</sup> In other words, they must comply with their own mandatory regulations, provide notice of a proposed deprivation of the liberty interest, and provide a reasonable opportunity for inmates to present their views on the matter.<sup>303</sup>

In order to bring a due process claim, an inmate must have a protected liberty interest. Liberty interests arise from two sources. First, an inmate's liberty interest may arise directly from the Due Process Clause "of its own course."<sup>304</sup> Some deprivations of liberty are "so severe in kind or degree (or so removed from the original terms of confinement) that they require due process regardless of state law."<sup>305</sup> For instance, the Supreme Court has held inmates have a liberty interest in avoiding unwanted administration of psychotropic drugs<sup>306</sup> and in avoiding an involuntary transfer to a mental hospital.<sup>307</sup> However, the existence of a liberty interest does not preclude prison officials from acting contrary to that interest; rather, if an official takes such an action, the official must treat the inmate in a fair, non-arbitrary manner.

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<sup>295</sup> Id.

<sup>296</sup> Hudson v. Palmer, 468 US 517, 530-534 (1984).

<sup>297</sup> Daniels v. Williams, 474 US 327, 331-32 (1986).

<sup>298</sup> Toone, supra note 22, at 25.

<sup>299</sup> Id.

<sup>300</sup> Wolf v. McDonnell, 418 U.S. 539, 558 (1974).

<sup>301</sup> Toone, supra note 22, at 25.

<sup>302</sup> Id.

<sup>303</sup> Id.

<sup>304</sup> Sandin v. Conner, 515 U.S. 472, 484 (1995).

<sup>305</sup> Id. at 497 (Breyer, J. dissenting).

<sup>306</sup> Washington v. Harper, 494 U.S. 210, 220 (1990).

<sup>307</sup> Vitek v. Jones, 445 U.S. 480, 493 (1980).

Second, a liberty interest may also arise from a statute, rule, or regulation.<sup>308</sup> It is important to note that under Sandin v. Conner, prison regulations do not give rise to protected due process liberty interests unless they place “atypical and significant hardships” on a prisoner.<sup>309</sup> For example, take a prison regulation written using mandatory language (e.g., shall, will, must) that provides for certain procedures before inmates are placed in administrative or punitive segregation.<sup>310</sup> An inmate would have a liberty interest *only* if the segregated confinement “imposes *atypical and significant* hardship on the inmate in relation to the ordinary incidents of prison life.”<sup>311</sup>

While there is no universal definition for “atypical and significant hardship,” it is clear that it is something significantly worse than “the most restrictive conditions that prison officials, exercising their administrative authority to ensure institutional safety and good order, routinely impose on inmates serving similar sentences.”<sup>312</sup> Under this standard, if officials at a prison routinely place inmates in an administrative or punitive segregation unit for various reasons, an inmate must be subjected to conditions significantly worse than the conditions in that unit to have a liberty interest.<sup>313</sup>

U.S. circuit courts are split on how to interpret “the ordinary incidents of prison life” standard articulated in Sandin. The Fourth and Ninth Circuits look at the conditions in the general prison population.<sup>314</sup> The Second and Third Circuits look at typical conditions of administrative segregation.<sup>315</sup> The Seventh Circuit looks at the conditions of non-disciplinary segregation in a state’s most restrictive prison.<sup>316</sup> Alaska state courts have not addressed this issue, though the Alaska Supreme Court has concluded “temporarily suspending contact visitation, while continuing to allow secure visitation, is not so atypical and significant a hardship beyond ordinary prison life that it implicates a protected liberty interest.”<sup>317</sup>

In Sandin, the Supreme Court held that, because the placement of a Hawaiian inmate in disciplinary segregation for 30 days did not amount to an “atypical and significant hardship,” he did not have a liberty interest under the Due Process Clause.<sup>318</sup> Post-Sandin, “the right to litigate disciplinary confinements has become vanishingly small.”<sup>319</sup> But, some courts have held that lengthy administrative or punitive segregation (i.e., six months or longer) can give rise to a liberty interest.<sup>320</sup> Also, placing an inmate with a particular disability in administrative

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<sup>308</sup> This is sometimes called a “state-created liberty interest,” but such a liberty interest may arise under federal law as well.

<sup>309</sup> 515 U.S. at 484.

<sup>310</sup> Hewitt v. Helms, 459 U.S. 460 (1983).

<sup>311</sup> Sandin, 515 U.S. at 483-84 (emphasis added).

<sup>312</sup> Toone, supra note 22, at 26 (citing Hatch v. District of Columbia, 184 F.3d 846, 847 (D.C. Cir. 1999)).

<sup>313</sup> Toone, supra note 22, at 26-27.

<sup>314</sup> Beverati v. Smith, 120 F.3d 500, 504 (4th Cir. 1997); Keenan v. Hall, 83 F.3d 1083, 1089 (9th Cir. 1996).

<sup>315</sup> Griffin v. Vaughn, 112 F.3d 703, 708 (3rd Cir. 1997); Brooks v. DiFasi, 112 F.3d 46, 49 (2nd Cir. 1997).

<sup>316</sup> Wagner v. Hanks, 128 F.3d 1173, 1175 (7th Cir. 1997).

<sup>317</sup> Larson v. Cooper, 90 P.3d 125, 135 (Alaska 2004).

<sup>318</sup> Sandin, 515 U.S. 472, 486 (1995).

<sup>319</sup> Wagner, 128 F.3d at 1175.

<sup>320</sup> Colon v. Howard, 215 F.3d 227, 231 (2nd Cir. 2000); Williams v. Fountain, 77 F.3d 372, 374 n.3 (11th Cir. 1996) (full year in solitary confinement was “atypical and significant hardship” entitling inmate to due process).

segregation may give rise to an atypical and significant hardship in relation to other inmates in administrative segregation.<sup>321</sup> Other forms of restraint, such as strapping an inmate down in four-point restraints, may also give rise to a liberty interest.<sup>322</sup> However, transferring an inmate from one prison to another, even to a prison with more restrictive conditions of confinement, usually does not.<sup>323</sup> In Alaska, because prisoners have a constitutional right to rehabilitation, an inmate *does* have an enforceable liberty interest when transfer is considered.<sup>324</sup>

It is important to note that despite Alaskan prisoners' constitutional right to rehabilitation, their liberty interests regarding transfer are somewhat limited. Decisions of prison authorities relating to classification of prisoners are completely administrative matters.<sup>325</sup> Therefore, an inmate has no due process rights beyond the expectation of fair and impartial allocation of the resources of the prison system to its charges.<sup>326</sup>

## **8. Right to Be Free from Excessive Force and Other Abuse by Prison Officials**

The U.S. Constitution protects all Americans from the use of excessive force by government officials, but different provisions of the Constitution apply depending on when the use of excessive force occurs.

### **a. Excessive Force against Pretrial Detainees**

The Due Process Clauses of the Fifth and Fourteenth Amendments prohibit excessive force against pretrial detainees, people who are held in jail awaiting trial on criminal charges.<sup>327</sup> Different standards for the use of force against pretrial detainees apply in different circuits. The Second, Fourth, Fifth, Tenth, and Eleventh Circuits have adopted the *malicious and sadistic* standard.<sup>328</sup> This is the same standard that applies to convicted inmates in all circuits, as described in Part I.B.8.b below.<sup>329</sup> The Eighth and Ninth Circuits employ the *objectively unreasonable* standard for the use of force against pretrial detainees, the same standard used in

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For Alaska prisoners in segregation, the classification committee shall hold review hearings within 30 days after the first hearing and every 30 days thereafter for as long as the prisoner remains in segregation. At this hearing, the institution must demonstrate that conditions still justify segregating the prisoner.

<sup>321</sup> Serrano v. Francis, 345 F.3d 1071, 1078-79 (9th Cir. 2003) (wheelchair-bound inmate in non-wheelchair accessible administrative segregation suffered atypical and significant hardship in having to drag self around).

<sup>322</sup> Williams v. Benjamin, 77 F.3d 756, 769 (4th Cir. 1996).

<sup>323</sup> Olim v. Wakinekona, 461 U.S. 238 (1983).

<sup>324</sup> Brandon v. State, 938 P.2d 1029, 1032 (Alaska 1997).

<sup>325</sup> Rust, 582 P.2d at 134.

<sup>326</sup> Id.

<sup>327</sup> The Fifth Amendment applies to federal pretrial detainees, while the Fourteenth Amendment pertains to state and local detainees.

<sup>328</sup> See Murray v. Johnson, No. 05-5338-pr, 2010 U.S. App. LEXIS 3499, at \*3-5 (2nd Cir. Feb. 22, 2010); Fennell v. Gilstrap, 559 F.3d 1212, 1217 (11th Cir. 2009) (force applied maliciously and sadistically to cause harm does "shock the conscience" and is excessive under the Fourteenth Amendment); Sawyer v. Green, 316 Fed. App'x 715, 717 (10th Cir. 2008); Iko v. Shreve, 535 F.3d 225, 239 (4th Cir. 2008); Valencia v. Wiggins, 981 F.2d 1440, 1446 (5th Cir. 1993).

<sup>329</sup> See Wilkins v. Gaddy, 130 S.Ct. 1175 (9th Cir. 2003).

police brutality cases.<sup>330</sup> The remaining circuits and the Alaska state courts have not yet enunciated the standard they employ.

### **b. Excessive Force against Convicted Inmates**

The Eighth Amendment, not the Due Process Clause, applies to excessive force claims filed by convicted inmates. Prison staff violate the Eighth Amendment when they “maliciously and sadistically use force to cause harm,” even if the prisoner does not suffer serious injury.<sup>331</sup> Prison officials are, however, permitted to use force “in a good-faith effort to maintain and restore discipline.”<sup>332</sup> “Malicious and sadistic” means evil, mean, vicious, or wanting to hurt another. If an inmate fails to show that the official who used force against him acted maliciously and sadistically, the claim will not succeed.

To show malicious and sadistic intent, inmates can offer the words and actions of prison officials. An official may reveal malicious and sadistic intent by saying certain things while using force. For example, the official might taunt the inmate or say something to indicate that he is enjoying what he is doing<sup>333</sup> or might say something that reveals an improper reason for the force (e.g., “This will teach you to file a grievance against me!”).<sup>334</sup> But prison officials rarely make such revealing statements, at least in front of the inmates against whom they are using force. Therefore, an inmate must point to an official’s actions as evidence of what he or she was thinking.<sup>335</sup>

An inmate must prove that the force used was not justified by any legitimate law enforcement or prison management need, or was completely out of proportion to that need.<sup>336</sup> These factors are used to determine whether an official used excessive force:

1. the need for force;
2. the relationship between the need for force and the amount of force used;
3. the extent of the injury suffered by the inmate;
4. the extent of the threat to the safety of staff and inmates; and
5. any efforts made to temper the severity of a forceful response.<sup>337</sup>

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<sup>330</sup> Lolli v. County of Orange, 351 F.3d 410, 415 (9th Cir. 2003); Andrews v. Neer, 253 F.3d 1052, 1060 (8th Cir. 2001) (citation omitted).

<sup>331</sup> Wilkins, 130 S.Ct. at 1179 (quoting Hudson v. McMillian, 503 U.S. 1, 9 (1992)); see also Treats v. Morgan, 308 F.3d 868, 872 (8th Cir. 2002) (rejecting the legality of using of pepper spray on prisoner who “had not jeopardized any person’s safety or threatened prison security”).

<sup>332</sup> Hudson, 503 U.S. at 7.

<sup>333</sup> See, e.g., Estate of Davis v. Delo, 115 F.3d 1388, 1392, 1394 (8th Cir. 1997).

<sup>334</sup> Toone, supra note 22, at 31.

<sup>335</sup> Valencia v. Wiggins, 981 F.2d 1440, 1446 (5th Cir. 1993).

<sup>336</sup> Whitley v. Albers, 475 U.S. 312, 320-21 (1986).

<sup>337</sup> Although the Supreme Court adopted several of these factors in Whitley (See 475 U.S. at 321), different circuits have enunciated the factors in slightly different ways. See, e.g., Santiago v. Wells, 599 F.3d 749, 757 (7th Cir. 2010) (relying on all five factors in its determination of excessive force); Cardenas v. Lewis, 66 F. App’x 86, 89 (9th Cir. 2003) (enumerating all five factors with the exclusion of “any efforts made to temper the severity of a forceful response”). Also, since the Supreme Court’s decision in Wilkins, the factor regarding the extent of the plaintiff’s injury must be interpreted according to the Court’s ruling.

The following are examples where courts have ruled that prison officials used excessive force:

- After a shackled inmate went over the time limit on a phone call, officials beat, choked, threatened and slammed him against a wall.<sup>338</sup>
- During a cell extraction, guards administered a severe beating to an inmate who had been incapacitated by the shock from an electric shield.<sup>339</sup>
- After an inmate disrupted a disciplinary hearing, guards wrapped a towel around his neck and choked him until he was nearly unconscious.<sup>340</sup>
- After an inmate made excessive noise, a guard entered the cell, grabbed the inmate's hair, bashed his head repeatedly against the cell bars, and then applied a chokehold that left the inmate unconscious.<sup>341</sup>

While the above examples are useful, it is important to note serious injury alone is not dispositive of an excessive force claim. The core judicial inquiry in an excessive force claim is not whether a certain quantum of injury was sustained, but rather whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.<sup>342</sup> In other words, while the extent of injury may “provide some indication of the amount of force applied,” an inmate who is beaten handily does not lose his ability to pursue an excessive force claim merely because he was lucky enough to escape without serious injury.<sup>343</sup>

#### **c. Failure to Stop Other Officials' Excessive Force**

Officials who watch excessive force take place have a duty to intervene and stop the excessive force from continuing.<sup>344</sup> If they fail to do this, they are liable for the injuries that result. The less strict *deliberate indifference* standard applies to such claims.

Higher-ranking officials who supervise officials known to regularly use excessive force may also be held liable for the violations if the higher-ranking officials were personally involved in the violation, established a policy that led to the violation, or were deliberately indifferent to the risk that the officials they supervised would commit such a violation.<sup>345</sup>

#### **d. Corporal Punishment**

Corporal punishment involves the intentional infliction of physical pain. Examples of corporal punishment include paddling, whipping, and spanking. The American Correctional Association

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<sup>338</sup> Toone, *supra* note 22, at 33 (citing *Brooks v. Kyler*, 204 F.3d 102, 104-106 (3rd Cir. 2000)).

<sup>339</sup> Toone, *supra* note 22, at 34 (citing *Skrtech v. Thornton*, 267 F.3d 1251, 1257-58 (11th Cir. 2001), *superseded by* 280 F.3d 1295 (11th Cir. 2002)).

<sup>340</sup> *Id.* (citing *Burgess v. Moore*, 39 F.3d 216, 217-18 (8th Cir. 1994)).

<sup>341</sup> *Id.* (citing *Valencia v. Wiggins*, 981 F.2d 1440, 1447 (5th Cir. 1993)).

<sup>342</sup> *Wilkins*, 130 S.Ct. at 1178.

<sup>343</sup> *Id.* at 1178-79.

<sup>344</sup> Toone, *supra* note 22, at 34 (citing *Durham v. Nu'Man*, 97 F.3d 862, 867 (6th Cir. 1996) and *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995)).

<sup>345</sup> *Id.* at 39 (citing *Blyden v. Mancusi*, 186 F.3d 252, 264 (2nd Cir. 1999) and *Vaughan v. Ricketts*, 859 F.2d 736, 741 (9th Cir. 1988)).

states, “In no event is physical force justifiable as punishment” in any correctional facility.<sup>346</sup> The Supreme Court has not condemned corporal punishment this roundly, but the Court has deemed many types of corporal punishment to “run afoul of the Eighth Amendment and offend contemporary concepts of decency, human dignity, and precepts of civilization which we profess to possess.”<sup>347</sup> The Court enumerated “handcuffing inmates to the fence and to cells for long periods of time, ... and forcing inmates to stand, sit or lie on crates, stumps, or otherwise maintain awkward positions for prolonged periods” as examples of impermissible corporal punishment.<sup>348</sup> Despite a lack of clarity from the courts on what does or does not constitute corporal punishment, prison officials may not use force against an inmate to punish them for earlier misconduct. Such after-the-fact force is considered troubling because often it is not “applied in a good faith effort to maintain or restore discipline.”<sup>349</sup>

#### e. Restraints

Restraints are physical devices that keep inmates from moving part of their bodies. Limited use of restraints (i.e., handcuffs and/or leg and belly chains upon arrest or when being transferred) is constitutional.<sup>350</sup> Constitutional use of more restrictive restraint devices (restraint chairs, four-point restraints) depends on the circumstances.<sup>351</sup> Use of these restraints can have serious physical and psychological effects.<sup>352</sup> Physical effects include loss of blood circulation, loss of oxygen, and cramping, while the inability to move around can injure the psyche over time, causing psychological effects.<sup>353</sup> Because of these potential effects, officials may apply restrictive restraints only when an inmate is out of control and poses an immediate danger to himself or others.<sup>354</sup> The restraints must be removed once the threat passes, and officials may not place inmates in restraints for the purpose of punishment or to inflict pain.

Inmates should rarely, if ever, be kept in restrictive restraints for more than a few hours. If they are, they should be constantly supervised by a doctor or other medical personnel. While restrained, inmates should receive necessary medical care and be allowed to use toilet facilities and perform basic hygiene.<sup>355</sup>

Pregnant inmates present a unique and complicated challenge for correctional institutions. This challenge is exacerbated when inmates go into labor. In a recent decision, the Eighth Circuit determined “an inmate in the final stages of labor cannot be shackled absent clear evidence that she is a security or flight risk.”<sup>356</sup> While this holding is very fact-specific, the rationale that shackling a woman during labor violates the Eighth Amendment, the basic concept of which is

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<sup>346</sup> AMERICAN CORR. ASS’N, STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS, 56, (4<sup>th</sup> ed. Victor Graphics 2003).

<sup>347</sup> Hope v. Pelzer, 536 U.S. 730, 742 (2002) (citation omitted).

<sup>348</sup> Id. (quoting Gates v. Collier, 501 F.2d 1291, 1306 (5<sup>th</sup> Cir. 1974)).

<sup>349</sup> Hudson v. McMillian, 503 U.S. 1, 7 (1992).

<sup>350</sup> Toone, supra note 22, at 41.

<sup>351</sup> Id.

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Id.

<sup>355</sup> Stewart v. Rhodes, 473 F. Supp. 1185, 1193 (1979).

<sup>356</sup> Nelson v. Corr. Med. Serv., 583 F.3d 522, 534 (8<sup>th</sup> Cir. 2009).



the dignity of woman, is noteworthy.<sup>357</sup> Alaska provides proper pre-natal and postnatal care for pregnant inmates and new mothers, but the state courts have not spoken on the issue of restraining inmates during labor.<sup>358</sup>

#### **f. Sexual Assault and Harassment**

Forcible sexual assault by a jail or prison official is excessive force. Prison officials are allowed to use a certain amount of force in order to restore or maintain security or discipline, but there is no “good faith effort to restore or maintain discipline” involved in a sexual assault.<sup>359</sup> An inmate “has a constitutional right to be secure in her bodily integrity and free from attack by prison guards,” especially when that attack is forcible sexual assault.<sup>360</sup>

It is also improper for officials to sexually harass inmates – to touch them improperly or make vulgar or sexually explicit comments.<sup>361</sup> However, courts generally do not treat verbal harassment by itself as a constitutional violation.<sup>362</sup> The American Correctional Association, meanwhile, has implemented policies and procedures that “protect inmates from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment”—a much more sweeping statement of protection than that endorsed by the courts.<sup>363</sup>

### **9. Right to Be Protected from Assault by Other Inmates**

The Eighth Amendment requires prison officials to protect prisoners from violence at the hands of other prisoners.<sup>364</sup> The Court based this ruling on the notion that, “because inmates are placed into dangerous environments and stripped...of virtually every means of self-protection and...access to outside aid, the government and its officials are not free to let the state of nature take its course.”<sup>365</sup> Additionally, according to the Supreme Court, “Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.”<sup>366</sup> Thus, prison officials have a duty to protect inmates from assault by other inmates. The Alaska Supreme Court has recognized that the state must exercise reasonable care for the

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<sup>357</sup> *Id.* (citing *Hope*, 536 U.S. at 738).

<sup>358</sup> DOC Policy # 808.06(c), Requirement Relating to Female Prisoners, Pregnant Prisoners.

<sup>359</sup> Toone, *supra* note 22, at 42.

<sup>360</sup> *Tafoya v. Salazar*, 516 F.3d 912, 916 (10th Cir. 2008) (quoting *Hovater v. Robinson*, 1 F.3d 1063, 1068 (10th Cir. 1993)).

<sup>361</sup> Toone, *supra* note 22, at 42; STANDARDS OF ADULT CORRECTIONAL INSTITUTIONS at 14 (written policy, procedure, and practice prohibit sexual harassment by employees or agents of correctional facility against inmates or other employees).

<sup>362</sup> *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004) (citations omitted).

<sup>363</sup> STANDARDS OF ADULT CORRECTIONAL INSTITUTIONS, at 77.

<sup>364</sup> *Nelson v. Shuffman*, 603 F.3d 439, 446 (8th Cir. 2010) (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)).

For convicted inmates, this right is based on the Eighth Amendment “cruel and unusual punishments” clause. For pretrial detainees, this right is based on the Due Process Clause of the Fifth Amendment for federal pretrial detainees and the Due Process Clause of the Fourteenth Amendment for state and local pretrial detainees.

<sup>365</sup> Toone, *supra* note 22, at 54 (quoting *Farmer*, 511 U.S. at 833) (internal quotations omitted).

<sup>366</sup> *Farmer*, 511 U.S. at 834 (internal quotations omitted).

protection of a prisoner's life and health and use the utmost care to protect a prisoner who is in danger.<sup>367</sup>

Prison officials violate the Constitution if they act with "deliberate indifference" toward a prisoner's safety, that is, if the official had a reasonable opportunity to prevent the assault from happening in the first place.<sup>368</sup> For example, prison officials may be liable if they knew that a prisoner was at substantial risk of serious harm but ignored that risk and failed to take reasonable steps in light of the risk.<sup>369</sup> This is essentially the same standard that applies to prisoner claims for inadequate medical care: all inmate cases based on the failure to provide for or protect health and safety require a prison official to act with deliberate indifference in order to be held liable.<sup>370</sup>

Courts have recognized a distinction between a "substantial risk of serious harm" and the everyday risk of harm that comes from being in prison.<sup>371</sup> Another way to look at this distinction is to consider the "strong likelihood of injury" stemming from a particular, identified danger versus the mere possibility of injury that arises from being incarcerated. Even if a prisoner is physically harmed by another inmate, prison officials will not be held liable if they knew there was a risk of injury and responded reasonably to that risk.<sup>372</sup> Courts have imposed liability on line correctional officers who observed an assault or knew of a risk to a prisoner but did nothing;<sup>373</sup> on higher-level supervisors who made or failed to make policies or failed to act on risks they knew about;<sup>374</sup> and on city or county governments when an assault resulted from a governmental policy.<sup>375</sup>

The rule concerning failure-to-protect from inmate on inmate assault is an inmate must prove that the officials being sued *actually knew* about a *substantial risk of serious harm*, and yet failed to *respond reasonably*.<sup>376</sup> This breaks down into the four elements needed to show deliberate indifference:

1. substantial risk of serious harm;
2. official's knowledge of the risk;
3. official's failure to respond reasonably; and

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<sup>367</sup> State v. Johnson, 2 P.3d 56, 59-60 (Alaska 2000) (quoting Wilson v. City of Kotzebue, 627 P.2d 623, 628 (Alaska 1981)); see also B.R. v. State, Dep't of Corr., 144 P.3d 431, 435 (Alaska 2009) (citing State v. Johnson, 2 P.3d at 59-60)).

<sup>368</sup> Farmer, 511 U.S. at 836-37.

<sup>369</sup> Id. at 847.

<sup>370</sup> See, e.g., Peate v. McCann, 294 F.3d 879 (7th Cir. 2002) (essentially rearming prisoner who attacked plaintiff, leading to a second attack, showed deliberate indifference); Cantu v. Jones, 293 F.3d 839 (5th Cir. 2002) (guards allowed prisoner out of his cell to attack another prisoner); Horton v. Cockrell, 70 F.3d 397 (5th Cir. 1995) (staff failed to protect prisoner from attack despite his grievances requesting protection); Skinner v. Uphoff, 234 F.Supp.2d 1208 (D. Wyo. 2002) (*de facto* policy of failing to investigate assaults constitutes deliberate indifference).

<sup>371</sup> See, e.g., Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990).

<sup>372</sup> Farmer, 511 U.S. at 844-45.

<sup>373</sup> See, e.g., Ayala Serrano v. Lebron Gonzales, 909 F.2d 8, 14 (1st Cir. 1990).

<sup>374</sup> See, e.g., Redman v. County of San Diego, 942 F.2d 1435, 1447-48 (9th Cir. 1991); see also, Durrell v. Cook, 71 F. App'x 718, 719 (9th Cir. 2003) (Eighth Amendment violation is established if prison officials "know[ ] of and disregard[ ] an excessive risk to inmate health or safety," and incarcerate him under conditions posing such a risk, such as rape by a cellmate).

<sup>375</sup> See, e.g., Berry v. City of Muskogee, 900 F.2d 1489, 1497-99 (10th Cir. 1990).

<sup>376</sup> Toone, *supra* note 22, at 55.

#### 4. causation and injury.

Failure-to-protect claims usually arise in two contexts, which sometimes overlap. The first involves a prison official's failure to respond or act reasonably in light of a particular threat to an individual prisoner, such as when an attacker clearly threatens a victim, when an official encourages an attack, or when an official witnesses an attack but fails to stop it. The second concerns prison conditions or practices that create a dangerous situation for prisoners, such as failure to control tools and weapons within the facility, overcrowding, and understaffing.

It is also important to realize sometimes a victim is unusually vulnerable or an attacker is unusually dangerous. Some inmates are obvious targets or "prey" for assault by others: known informants or "snitches," the mentally ill, inmates with slight or youthful physical builds, or gay or transsexual inmates.<sup>377</sup> Prison officials must take reasonable measures to protect such inmates, but courts may not find officials deliberately indifferent unless the inmate personally put them on notice of their particular vulnerability and asked for protection before the assault occurred.<sup>378</sup>

Prison officials should respond to a legitimate request by placing the inmate in protective custody (administrative segregation). Additionally, as a general matter, prison officials have a duty to initially classify inmates based on, among other things, the likelihood that they will commit violence or be the victim of violence.

Just as some inmates are prey, others are "predators."<sup>379</sup> Prisons are full of dangerous, violent people, and prison officials do not have to isolate every inmate that has the capacity for violence. However, officials may not ignore an inmate's history of violence behind bars. They may not place a known predator in a position where he can continue to prey on other inmates.<sup>380</sup> Such action would constitute deliberate indifference if harm occurred. Also, as stated above, the prison's classification system should separate violent or dangerous offenders who pose a risk to the safety of other inmates from the rest of the prison population.<sup>381</sup>

### 10. Right to Humane Conditions of Confinement

Under the Constitution, prison conditions may be "restrictive and even harsh," and they do not have to be "comfortable."<sup>382</sup> But, prisoners are constitutionally entitled to environmental conditions that do not pose serious risks to health and safety. Conditions, therefore, must meet a certain standard. Pretrial detainees and convicted inmates have a constitutional right to "humane conditions of confinement."<sup>383</sup>

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<sup>377</sup> *Id.* at 62-63.

<sup>378</sup> *Id.* at 63.

<sup>379</sup> Toone, *supra* note 22, at 62.

<sup>380</sup> *Id.* (citing *Frett v. Virgin Islands*, 839 F.2d 968, 978-79 (3rd Cir. 1988) (other citations omitted)).

<sup>381</sup> *Jones v. Diamond*, 636 F.2d 1364, 1374 (5th Cir. 1981).

<sup>382</sup> *Rhodes v. Chapman*, U.S. 337, 347, 349 (1981); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Isby v. Clark*, 100 F.3d 502, 505 (7th Cir. 1996) ("Prisons, of course, are not Hilton hotels. And disciplinary segregation units within prisons are not like rooms at a Motel 6. But even nasty prisoners cannot be knowingly housed in ghastly conditions reminiscent of the Black Hole of Calcutta.").

<sup>383</sup> *Farmer*, 511 U.S. at 832.

For convicted inmates, the Eighth Amendment “cruel and unusual punishment” clause imposes a duty on prison officials to provide “humane conditions of confinement;” that is, officials must “ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates.’”<sup>384</sup> For pretrial detainees, the Due Process Clause provides at least as much protection as the Eighth Amendment.<sup>385</sup> This means that, if a pretrial detainee can prove what it takes to win an Eighth Amendment conditions of confinement claim, (*i.e.*, that prison officials were deliberately indifferent to a substantial risk of serious harm), the inmate should be able to prevail on a conditions claim under the Due Process Clause.<sup>386</sup>

#### **a. Elements of a Right to Humane Conditions of Confinement Claim:**

The elements of a claim alleging a violation of the right to humane conditions of confinement are: (1) deprivation of a basic human need; (2) official’s knowledge of the deprivation; (3) failure to respond reasonably; and (4) causation and injury.

Basic human needs include:

##### **1. sanitation and hygiene;**

Basic elements of sanitation and hygiene involve many things.<sup>387</sup> For example, inmates are entitled to:

- adequate toilet facilities, including a working toilet in each cell in which an inmate is confined
- regular access to working showers
- basic hygiene items (toothbrush, toothpaste, shaving supplies, sanitary napkins, soap, towel, running water)<sup>388</sup>
- sanitary food preparation and service<sup>389</sup>
- working plumbing<sup>390</sup>

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<sup>384</sup> Id. (quoting Hudson v. Palmer, 468 U.S. 517, 526 (1984)).

<sup>385</sup> Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244 (1983).

<sup>386</sup> Toone, supra note 22, at 107 (citing Sacramento v. Lewis, 523 U.S. 833, 849-50 (1998)).

<sup>387</sup> Toone, supra note 22, at 115-16. See also Palmer v. Johnson, 193 F.3d 346, 352 (5th Cir. 1999); Harper v. Showers, 174 F.3d 716, 717, 720 (5th Cir. 1999); Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998).

<sup>388</sup> Flanory v. Bonn, 604 F.3d 249, 255 (6th Cir. 2010) (recognizing cognizable claim under Eighth Amendment when inmate was denied toothpaste for 337 days).

<sup>389</sup> See Phelps v. Kanoplas, 308 F.3d 180 (2nd Cir. 2002) (depriving inmate of nutritionally adequate diet for two weeks gave rise to actionable Eighth Amendment claim); Ramos v. Lamm, 639 F.2d 559, 570-71 (10th Cir. 1980) (failing to provide inmates with a “healthy habilitative environment,” which includes nutritionally adequate food prepared under sanitary conditions, constituted Eighth Amendment violation); Drake v. Velasco, 207 F.Supp.2d 809 (N.D. Ill. 2002) (refusing to grant summary judgment on inmate’s claim food was so unsanitary as to prevent his recovery from illness).

<sup>390</sup> DeSpain v. Uphoff, 264 F.3d 965, 977 (10th Cir. 2001) (exposing inmates to flooding and human waste raised viable Eighth Amendment claim); Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992) (taking plaintiff’s affidavit as truthful, “it would be considered barbarous to imprison a criminal in conditions so strikingly reminiscent of the Black Hole of Calcutta.”); Williams v. Griffin, 952 F.2d 820, 825 (4th Cir. 1991) (finding plaintiff’s complaint

- protection from infestation by insects, rodents or other vermin.<sup>391</sup>
- 2. clothing and bedding;
- 3. protection from extreme temperatures;<sup>392</sup>
- 4. clean air;<sup>393</sup>
- 5. clean water;<sup>394</sup>

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sufficiently described unsanitary and overcrowding conditions within the facility, including waste flooding into the showers); McCord v. Maggio, 927 F.2d 844, 847 (5th Cir. 1991) (forcing inmate to choose between standing, or lying or sitting down in foul water and refuse raised a viable Eighth Amendment claim);

<sup>391</sup>Gaston v. Coughlin, 249 F.3d 156, 166 (2nd Cir. 2001) (concluding Eighth Amendment claims of rodent infestations and unsanitary conditions right outside plaintiff's cell should be reinstated); Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992) (allegedly forcing inmate to live with drinking water containing "little black worms which would eventually turn into little black flies" stated Eighth Amendment violation); Williams v. Griffin, 952 F.2d 820, 825 (4th Cir. 1991) (finding infestations of insects and vermin, allegedly known to prison officials, constituted Eighth Amendment violation); Foulds v. Corley, 833 F.2d 52, 54 (5th Cir. 1987) (dismissing plaintiff's Eighth Amendment claim alleging he was forced to sleep on a cold ground while rats crawling over him was premature).

<sup>392</sup>*Excessive heat*: Vasquez v. Frank, 209 F. App'x 538, 541 (7th Cir. 2006); Reece v. Gragg, 650 F. Supp. 1297, 1304 (D. Kan. 1986).

*Excessive cold*: Boulds v. Miles, 221 F. App'x 322, 323 (5th Cir. 2007) (allowing a prisoner to be exposed to extreme temperatures may violate the Eighth Amendment and thus complaint should not have been dismissed); Gaston v. Coughlin, 249 F.3d 156, 164-65 (2nd Cir. 2001) (exposing inmates to freezing and sub-zero temperatures stated an Eighth Amendment claim); Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997) (holding prisoner could bring claim stating inhumane conditions when indoor temperatures averaged about forty degrees).

<sup>393</sup>*Inadequate ventilation*: Blay v. Reilly, 241 F. App'x 520, 525 (10<sup>th</sup> Cir. 2007) (knowing plaintiff worked in an enclosed, poorly ventilated prep room, which caused him serious respiratory distress, was sufficient to put defendants on notice about inadequate conditions); Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996) (holding that air "saturated with the fumes of feces, urine, and vomit" could undermine health and sanitation in violation of the Eighth Amendment).

*Toxic or noxious fumes*: Johnson-El v. Schoemehl, 878 F.2d 1043, 1054-55 (8th Cir. 1989) (spraying pesticides into housing units and refusing to admit which chemicals were being used raised questions about prison officials' indifference); Cody v. Hillard, 599 F. Supp. 1025, 1032 (D.S.D. 1984) (inadequate ventilation of toxic fumes in inmate workplaces), *aff'd in part and rev'd in part on other grounds*, 830 F.2d 912 (8th Cir. 1987) (en banc). *But see* Givens v. Jones, 900 F.2d 1229, 1234 (8th Cir. 1990) (no Eighth Amendment violation where prisoner suffered migraine headaches as a result of noise and fumes during three week long housing unit renovation).

*Exposure to second-hand smoke*: Helling v. McKinney, 509 U.S. 25, 35 (1993) (recognizing an Eighth Amendment claim where inmate's cellmate smoked five packs of cigarettes a day); Talal v. White, 493 F.3d 423, 427-28 (6th Cir. 2005) (permitting inmates and officials to smoke in non-smoking units, while ignoring plaintiff's known smoke allergy, violated inmate's Eighth Amendment rights); Atkinson v. Taylor, 316 F.3d 257, 265 (3rd Cir. 2003) (housing inmate for seven months with "constant" smokers stated analogous claim to that in Helling); Reilly v. Grayson, 310 F.3d 519, 521 (6th Cir. 2002) (finding inmates have a right to be removed from smoky environments).

*Exposure to asbestos*: U.S. v. Little, 308 F. App'x 256, 259-60 (10th Cir. 2009) (exposing inmates to asbestos created conditions which could be expected to cause the inmates serious injury or death); Powell v. Lennon, 914 F.2d 1459, 1463-64 (11th Cir. 1990) (ignoring inmate's request to be transferred out of friable asbestos-ridden dorm showed deliberate indifference). *But see* McNeil v. Lane, 16 F.3d 123, 125 (7th Cir. 1994) (exposure to "moderate levels of asbestos" did not violate the Eighth Amendment). McNeil appears to be the first in a long line of Seventh Circuit cases affirming that "asbestos abounds in many public buildings" and exposure to it in moderate levels "is a common fact of contemporary life and cannot, under contemporary standards, be considered cruel and unusual punishment." Christopher v. Buss, 384 F.3d 879, 882 (7th Cir. 2004) (quoting McNeil, 16 F.3d at 125). Other circuits have not yet imposed such stringent limitations on asbestos claims.

<sup>394</sup>Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992) (alleging drinking water was full of small black worms that eventually turned into small black flies was sufficient to state a "subhuman conditions" claim under the Eighth

6. lighting;<sup>395</sup>
7. protection from excessive noise;<sup>396</sup>
8. accident prevention;<sup>397</sup>
9. exercise;<sup>398</sup>
10. food;
11. sleep;<sup>399</sup>
12. adequate living space/no overcrowding.

Under Alaska Department of Corrections policy, as mandated by the Cleary Final Settlement Agreement,<sup>400</sup> prisoners have certain rights relative to the conditions of their confinement, including:

- single or double cell occupancy and/or supervised dormitories;
- clean and orderly surroundings;
- adequate toilet, bathing and laundry facilities;
- adequate lighting, heating, and ventilation;
- compliance with state, federal, and local fire and life safety laws and regulations;

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Amendment); Jackson v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989) (finding an allegation that drinking water was polluted was not a frivolous claim).

<sup>395</sup> Keenan, 83 F.3d at 1090-91 (finding Eighth Amendment violation where fluorescent lights allegedly shone into prisoner's cell 24 hour a day); Hoptowit v. Spellman, 753 F.2d 779, 783 (9th Cir. 1984) ("Adequate lighting is one of the most fundamental attributes of 'adequate shelter' required by the Eighth Amendment.").

<sup>396</sup> Keenan, 83 F.3d at 1090 (holding inmates, while not necessarily entitled to absolute quiet, must be housed in an environment "reasonably free from excessive noise") (citation omitted).

<sup>397</sup> This includes lack of fire safety, Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) and Gates v. Collier, 501 F.2d 1291, 1300, 1305 (5th Cir. 1974), and risk of injury or death in the event of an earthquake, Jones v. City and County of San Francisco, 976 F. Supp. 896, 909-10 (N.D. Cal. 1997).

<sup>398</sup> Prisoners are constitutionally entitled to out-of-cell exercise. Thomas v. Ponder, --F.3d--, 2010 WL 2794394, at \*5 (9th Cir. July 16, 2010) (denying inmate outdoor exercise for almost fourteen months was a sufficiently serious deprivation for Eighth Amendment purposes); Delaney v. DeTella, 256 F.3d 679 (7th Cir. 2001) (denying all out-of-cell exercise for six months violates Eighth Amendment); Perkins v. Kansas Dept. of Corr., 165 F.3d 803, 810 (10th Cir. 1999) (denying an HIV-positive inmate all access to exercise for many months after he spit at two guards raised a viable claim); Divers v. Dept. of Corr., 921 F.2d 191, 194 (8th Cir. 1990) (alleging recreation of only 45 minutes per week raised a constitutional claim).

Most courts have held that five hours of exercise per week is the constitutional minimum. *See, e.g., Davenport v. DeRobertis*, 844 F.2d 1310, 1315 (7th Cir. 1988) (recognizing a constitutional right to five hours' minimum exercise per week); Spain v. Proconier, 600 F.2d 189, 199-200 (9th Cir. 1979) (same); Toussaint v. McCarthy, 597 F. Supp. 1388, 1402, 1412 (N.D. Cal. 1984) (acknowledging the right to eight hours' minimum); *aff'd in part and rev'd in part on other grounds*, 801 F.2d 1080 (9th Cir. 1986). Most courts have upheld curtailment, or even total elimination, of out-of-cell exercise for short periods under emergency circumstances. *See, e.g., Davenport*, 844 F.2d at 1315 (permitting exceptions to the five-hour minimum for "fractious inmates").

Courts differ on whether prisoners are entitled to outdoor exercise. *See Toussaint v. Yockey*, 722 F.2d 1490, 1492-93 (9th Cir. 1984) (yes); Spain, 600 F.2d at 199-200 (yes); *but see Martin v. Tyson*, 845 F.2d 1451, 1456 (5th Cir. 1988) (no); Clay v. Miller, 626 F.2d 345, 347 (4th Cir. 1980) (no). The Ninth Circuit recently held restricting an inmate's access to outdoor exercise due to safety concerns was lawful under the Eighth Amendment. Norwood v. Vance, 591 F.3d 1062, 1070 (9th Cir. 2010).

<sup>399</sup> Harper v. Showers, 174 F.3d 716, 720 (5th Cir. 1999) (as "sleep undoubtedly counts as one of life's basic needs[,] sleep deprivation might violate the Eighth Amendment). *But see Conlin v. Thaler*, 347 F. App'x 983, 984 (5th Cir. 2009) (alleging unsupportive mattress does not shown an "egregious deprivation" of the basic human need for sleep).

<sup>400</sup> *See infra* Part III.A.

- a wholesome, properly prepared, nutritionally adequate diet;
- health care services comparable in quality to those locally available to the general public;
- access to both indoor and/or outdoor recreational opportunities and equipment;
- safe environments;
- personal choice regarding grooming and appearance limited only by institutional requirements for safety, identification, hygiene, and/or security;
- the right of pre-trial detainees to wear their personal clothing, except when in punitive segregation or in administrative segregation pending investigation of a disciplinary infraction, or under circumstances where security considerations require a clothing restriction.<sup>401</sup>

In light of the Cleary class action suit--filed largely in response to overcrowding and conditions of confinement--the DOC has established comprehensive policies relating to conditions of confinement that account for all of the constitutional concerns listed above.<sup>402</sup>

To prevail on a claim regarding conditions of confinement, an inmate must establish that the deprivation he or she was exposed to was “sufficiently serious.”<sup>403</sup> That is, the deprivation should be “extreme”<sup>404</sup> or “something that would cause an outside observer to react with surprise or horror.”<sup>405</sup> “Routine discomfort” does not meet this standard, as discomfort is considered “part of the penalty that criminal offenders pay for their offenses against society.”<sup>406</sup> However, prison officials may not deprive an inmate of any constitutional right simply by calling their deprivation “reasonable.”<sup>407</sup> There must be a greater nexus between the deprivation and some penological interest than merely what a correctional facility determines is “reasonable” or not.

In assessing the seriousness of a deprivation, the main factor courts will examine is the duration of the deprivation. Courts often conclude that conditions that would otherwise violate the Constitution are acceptable because they only lasted for a short while.<sup>408</sup> According to the Supreme Court, “A filthy overcrowded cell and a diet of ‘gruel’ might be tolerable for a few days and intolerably cruel for weeks or months.”<sup>409</sup> However, a serious deprivation of a basic human need would violate the Constitution even if it did not last very long, while a condition that might not normally violate the Constitution might become unconstitutional if it persists.<sup>410</sup> Some examples of what may or may not classify as a serious deprivation of a basic need are listed below:

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<sup>401</sup> DOC Policy #808.05, Environmental and Programmatic Rights. For a complete list of rights, see <http://www.correct.state.ak.us/corrections/pnp/pdf/808.05.pdf>.

<sup>402</sup> See infra Part III.G.

<sup>403</sup> Farmer v. Brennan, 511 U.S. 825, 834 (1994).

<sup>404</sup> Hudson v. McMillan, 503 U.S. 1, 9 (1992).

<sup>405</sup> Toone, supra note 22, at 108. See also Bolden v. State, Dep’t of Corr., 2010 WL 2791983, at \*3 (Alaska July 14, 2010) (reiterating that a serious deprivation strips an inmate of even the “minimal civilized measure of life’s decencies”) (citation omitted).

<sup>406</sup> Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

<sup>407</sup> See Thomas v. Ponder, at \*10 (“it is difficult to conceive of how a deprivation of a ‘basic human necessity’ . . . may be deemed reasonable” when that deprivation was completely unnecessary to maintaining order).

<sup>408</sup> Toone, supra note 22, at 109.

<sup>409</sup> Hutto v. Finley, 437 U.S. 678, 686-87 (1978).

<sup>410</sup> Toone, supra note 22, at 109.

- Prison official violated the Eighth Amendment by keeping inmates outdoors in brutally cold weather without hats or gloves for one to two hours.<sup>411</sup>
- Three-day confinement in a “crisis management cell” with blood on the walls and excrement on the floor was not a sufficiently “extreme” deprivation to give rise to an Eighth Amendment claim.<sup>412</sup>
- Two nutritionally adequate meals per day did not violate the Eighth Amendment.<sup>413</sup>
- Sleeping on the floor without mattresses for one night was not an impermissible punishment for detainees.<sup>414</sup>
- Cell containing excrement and vomit did not violate the Constitution because the conditions lasted only 24 hours.<sup>415</sup>
- Officials who limited an inmate to flushing only twice per hour did not give rise to a deprivation of the inmate’s right to basic sanitation and hygiene.<sup>416</sup>
- Death row temperatures above ninety degrees, with little ventilation and high humidity, exposed inmates to high risk of heat-related illness in violation of Eighth Amendment;<sup>417</sup> however, temperatures in the mid-eighties with a ventilation system, though uncomfortable, did not violate the Eighth Amendment.<sup>418</sup>

The Ninth Circuit has taken the position that “modest” deprivations of basic human needs will violate the Constitution “only if such deprivations are lengthy or ongoing”; conversely, deprivations of “shelter, food, drinking water, and sanitation,” can violate the Constitution even if they only last for a short period of time.<sup>419</sup> This follows the theory that, “[t]he more basic the particular need, the shorter the time it can be withheld.”<sup>420</sup>

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<sup>411</sup> Gordon v. Faber, 973 F.2d 686, 687-88 (8th Cir. 1992).

<sup>412</sup> Davis v. Scott, 157 F.3d 1003, 1006 (5th Cir. 1998).

<sup>413</sup> Green v. Ferrell, 801 F.2d 765, 770-71 (5th Cir. 1986).

<sup>414</sup> Antonelli v. Sheehan, 81 F.3d 1422, 1427, 1430 (7th Cir. 1996).

<sup>415</sup> Whitnack v. Douglas County, 16 F.3d 954, 958 (8th Cir. 1994).

<sup>416</sup> Barnes v. Wiley, 203 F. App’x 939, 941 (10th Cir. 2006).

<sup>417</sup> Gates v. Cook, 376 F.3d 323, (5th Cir. 2004).

<sup>418</sup> Chandler v. Crosby, 379 F.3d 1278, 1297-1298 (11th Cir. 2005).

<sup>419</sup> Johnson v. Lewis, 217 F.3d 726, 732 (9th Cir. 2000).

<sup>420</sup> Hoptowit v. Ray, 682 F.2d 1237, 1259 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).



## PART II: PRISON LITIGATION

### I. Introduction

Safeguards for the rights of Alaska prisoner are found in the U.S. Constitution and the Alaska Constitution. The constitutional provisions establishing these rights have their own tests and standards that must be employed to determine if a constitutional right has, in fact, been violated. The specific rights afforded to prisoners were discussed in detail in the previous section of this guide (Part I, *supra*). What follows is a brief recap of some important concepts pertaining to prisoners' rights litigation, as well as a detailed explanation of the two major statutes affecting litigation of conditions of confinement claims by prisoners.

As noted earlier, perhaps the most well-known prisoners' right is found in the Eighth Amendment, which prohibits the infliction of "cruel and unusual punishments" on convicted prisoners.<sup>421</sup> The cruel and unusual clause protects inmates from excessive force from prison officials, mandates safe conditions of confinement, and is the source of an inmate's right to adequate medical care. The Eighth Amendment also protects against conditions that pose an unreasonable risk of future harm, as well as those that are currently causing harm.<sup>422</sup>

To establish a violation of the Eighth Amendment, it is necessary to prove two elements – one objective, one subjective:

1. *Objective*: a deprivation of a basic human need (such as food, clothing, shelter, exercise, medical care, or reasonable safety).<sup>423</sup> It is important to note that it is not enough for an inmate to allege that the "totality of conditions" is unconstitutional; rather, the plaintiff must allege deprivation of one or more identifiable human needs.<sup>424</sup>
2. *Subjective*: deliberate indifference on the part of one or more defendants. Although deliberate indifference is an actual-knowledge standard, the plaintiff need not show that defendants knew of a specific risk to her from a specific source.<sup>425</sup> Instead, knowledge can be demonstrated by circumstantial evidence; thus, "a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."<sup>426</sup> It is important to note that there is no deliberate indifference if prison officials "responded reasonably to the risk, even if the harm ultimately was not averted."<sup>427</sup> But, this does not mean that any corrective action by prison officials necessarily forecloses a finding of deliberate indifference: "Patently ineffective gestures purportedly directed

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<sup>421</sup> U.S. CONST. amend. VIII.

<sup>422</sup> Helling v. McKinney, 509 U.S. 25, 33 (1993). The Supreme Court has indicated a slight expansion of Eighth Amendment protections in recent jurisprudence. See Hope v. Pelzer, 536 U.S. 730 (2002) (intentional infliction of pain, discomfort, or risk of harm as punishment for past conduct violates Eighth Amendment; cuffing prisoner to "hitching post" as punishment was a *per se* Eighth Amendment violation, even without aggravating factors such as denial of proper clothing, water, and bathroom breaks).

<sup>423</sup> Helling, 509 U.S. at 31-32.

<sup>424</sup> Wilson v. Seiter, 501 U.S. 294, 304-05 (1991).

<sup>425</sup> Farmer v. Brennan, 511 U.S. 834, 843 (1994); Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998).

<sup>426</sup> Farmer, 511 U.S. at 842.

<sup>427</sup> Id. at 844.

towards remedying objectively unconstitutional conditions do not prove a lack of deliberate indifference, they demonstrate it.”<sup>428</sup>

The Eighth Amendment applies only to convicted prisoners. Pretrial detainees are protected by the Due Process Clause of the Fourteenth Amendment against any conditions that constitute “punishment.”<sup>429</sup> Many courts have held these two standards are equivalent in the context of challenges to conditions of confinement.<sup>430</sup>

The First Amendment also provides significant safeguards for inmates, including religious freedom, the right of access to the courts, freedom of association, and protection from retaliation against prison officials for reporting complaints and grievances. When inmates challenge an official’s abridgement of their First Amendment rights or civil liberties, courts will apply a “reasonable relationship” test to determine the validity of the limitation.<sup>431</sup> This test, known as the Turner test, requires that any restriction on civil liberties must be “reasonably related to legitimate penological interests.”<sup>432</sup>

Prisoners also enjoy important protections under the Fifth and Fourteenth Amendments, which require government officials to provide inmates with the equal protection of the laws and to ensure due process of law before depriving any inmate of life, liberty, or property.<sup>433</sup> Between these protections, different standards apply depending on what class is being affected or what interest or right is being asserted. For instance, prison officials need only a rational reason for treating inmates in segregation differently from inmates in the general population,<sup>434</sup> but a much stronger standard applies when prison officials segregate inmates based on racial classifications.<sup>435</sup> Similarly, prison officials have wide discretion to make decisions with respect

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<sup>428</sup> Coleman v. Wilson, 912 F. Supp. 1282, 1319 (E.D. Cal. 1995). See also Berry v. Peterman, 604 F.3d 435, 441 (7th Cir. 2010) (finding a doctor who knowingly circumvented an effective remedy in favor of an easier, ineffective solution showed deliberate indifference to inmate’s serious dentistry need).

<sup>429</sup> Bell v. Wolfish, 441 U.S. 520, 535 (1979).

<sup>430</sup> See, e.g., Simmons v. Navajo County, Arizona, ---F.3d---, 2010 WL 2509181, at \*4 (9th Cir. June 23, 2010); Minix v. Canarecci, 597 F.3d 824, 830-31 (7th Cir. 2010); Davis v. Oregon County, Missouri, 607 F.3d 543, 548 (8th Cir. 2010); Craig v. Eberly, 164 F.3d 490, 495 (10th Cir. 1998); Council v. Sutton, 306 F. App’x 31, 35-36 (11th Cir. 2010); see also Jacobs v. West Feliciana Sheriff’s Dep’t, 228 F.3d 388, 393 (5th Cir. 2000) (“A pretrial detainee’s due process rights are at least as great as the Eighth Amendment protections available to a convicted prisoner.”).

Not all courts have determined these two standards to be equivalent, however. See, e.g., Griffin v. Hardrick, 604 F.3d 949, 953 (6<sup>th</sup> Cir. 2010) (“The law is unsettled as to whether the analysis for a Fourteenth Amendment excessive-force claim and an Eighth Amendment excessive-force claim is the same.”)

Be sure to check whether your circuit applies a less demanding standard to the claims of pretrial detainees. See, e.g., Benjamin v. Fraser, 343 F.3d 35, 51 (2nd Cir. 2003) (stating pretrial detainees need not show Eighth Amendment deliberate indifference when challenging “a protracted failure” to provide safe living conditions).

<sup>431</sup> Turner v. Safley, 482 U.S. 78, 89 (1987).

<sup>432</sup> Id.

<sup>433</sup> See supra note 3 (providing a list of constitutional rights enforceable against federal, state, and local governments and government officials).

<sup>434</sup> Toone, supra note 22, at 24.

<sup>435</sup> See supra note 288.

to deprivation of an inmate's property,<sup>436</sup> but inmates have stronger due process rights when a liberty interest is at stake.<sup>437</sup>

Whatever the origin of a prisoner's specific right and whichever test will be applied to determine if that right was infringed upon, enforcing that right in a court must be done in accordance with the relevant statute: the Federal Prison Litigation Reform Act or the Alaska Prison Litigation Reform Act.

## **II. Federal Prison Litigation Reform Act<sup>438</sup>**

The Prison Litigation Reform Act (PLRA) of 1996 was intended to curtail frivolous lawsuits filed by inmates against government officials.<sup>439</sup> In a sense it has achieved that goal: it has made it more difficult for prisoners to file *any* lawsuits in federal court. The PLRA has led to a significant reduction in new filings by prisoner plaintiffs in federal courts despite the continued growth of the prison population.<sup>440</sup> Also, the number of prisons under court order has decreased significantly.<sup>441</sup> While the federal courts remain open to many prisoners who seek to challenge conditions of confinement and actions that violate their constitutional rights (whether they seek injunctive relief or damages), the PLRA has seriously hindered their access to this forum.<sup>442</sup>

This section outlines the major prisoners' rights issues affected by the PLRA. There has been substantial litigation surrounding nearly every aspect of the PLRA, but this section does not

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<sup>436</sup> See supra Part I.B.7.a.

<sup>437</sup> See generally, Part I.B.7.b.

<sup>438</sup> Thanks to Elizabeth Alexander, the Director of the National Prison Project of the American Civil Liberties Union Foundation, for allowing the use of her PLRA materials. Any mistakes are the author's.

<sup>439</sup> Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (codified as amended in scattered titles and sections of the U.S.C.); see also H.R. 3019, 104th Cong. (1996). Although PLRA is generally described as containing restrictions on prisoner civil rights litigation, its scope is somewhat broader. In general, it has been interpreted to apply to litigation on behalf of committed and detained juveniles and pre-trial detainees, as well as sentenced prisoners.

<sup>440</sup> Elizabeth Alexander, PRISON LITIGATION REFORM ACT RAISES THE BAR, *Criminal Justice*, Winter 2002, at 16 [hereinafter Alexander].

<sup>441</sup> Id.

<sup>442</sup> Many inmates choose to file their lawsuits in federal courts. There are advantages and drawbacks to the federal court system, just as there are to the state court system.

If you believe you would like your claims to be heard in federal court, you may file a complaint in federal court. If you would like to have your case heard in state court, you may file a complaint in state court. If you wish to keep your claim in state court, you may make claims only under the Alaska Constitution and not under the U.S. Constitution. If you bring any claims under the U.S. Constitution, even if you also have state constitutional claims, the State (or whichever government entity you are bringing suit against) may seek to have your claims moved to a federal court forum. This procedure is known as "removal."

Both the state and federal constitutions have similar provisions – e.g., both have a right to due process and a right against cruel and unusual punishment. Generally, any policies that violate the U.S. constitution will violate the state constitution, though the state constitution may offer more protections than the federal constitution. Further, some rights, like the right to rehabilitation, are found only in the Alaska Constitution. Each case is different, so the choice of filing in federal or state court will not be the same for all cases. Likewise, filing only state law claims or filing federal claims in addition to state law claims may help some prisoners and not others.

discuss the debates surrounding any particular aspect or allegation of unconstitutionality of the various PLRA provisions.<sup>443</sup> Rather, it lays out the rules of law of the PLRA as it stands today.

PLRA restrictions generally fall into two categories: (1) restrictions on the ability of prisoner litigants to get into court, and (2) restrictions on the relief available in prisoner cases.

## **A. Restrictions on the Ability of Prisoner Litigants to Get Into Court**

### **1. Filing Fees and Costs (28 U.S.C. § 1915(b) and (f)(2))**

Before the PLRA, any indigent prisoner could proceed *in forma pauperis* (IFP) in federal court and be excused from prepayment of court filing fees. Under the PLRA, court filing fees will not be waived. Instead, the PLRA requires inmates to pay the filing fee in full. A complex formula requires the prisoner to pay an initial fee of 20% of the greater of the prisoner's average balance or the average deposits to his or her prison account for the preceding six months.<sup>444</sup> If an inmate does not have the money to pay the fees up front, the fee will be paid over a period of time by having monthly installments of 20% of the income credited to the account in the previous month withdrawn from the prisoner's account until the fee has been paid.<sup>445</sup>

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<sup>443</sup> Many sections of the PLRA have faced constitutional challenges. Courts have adjudicated the constitutionality of several provisions, including (1) the provision that permits courts to immediately terminate prison condition consent decrees, see Ruiz v. United States, 243 F.3d 941, 945-50 (5th Cir. 2001) (upholding provision against separation of powers and due process challenges); Tyler v. Murphy, 135 F.3d 594, 597 (8th Cir. 1998) (upholding provision against the argument it deprives courts of authority to remedy constitutional violations); Gavin v. Branstad, 122 F.3d 1081, 1085-92 (8th Cir. 1997) (upholding provision against separation of powers, due process, and equal protection challenges); (2) the provision that limits attorney's fees, see Hadix v. Johnson, 230 F.3d 840, 842-47 (6th Cir. 2000) (upholding provision against equal protection challenge); Boivin v. Black, 225 F.3d 36, 41-46 (1st Cir. 2000) (same); Madrid v. Gomez, 190 F.3d 990, 996 (9th Cir. 1999) (same); (3) the provision requiring physical injury, see Searles v. Van Bebber, 251 F.3d 869, 876-77 (10th Cir. 2001) (upholding provision against due process challenge); Davis v. District of Columbia, 158 F.3d 1342, 1345-48 (D.C. Cir. 1998) (upholding provision against equal protection and access to courts challenges); Zehner v. Trigg, 133 F.3d 459, 463-64 (7th Cir. 1997) (upholding provision against equal protection and separation of powers challenges); but see Wilkins v. Gaddy, 130 S.Ct. 1175, 1178-79 (2010) (although force that causes no discernible injury will likely not be enough to mount a claim, it is the type of force, not the quantum of injury, that ultimately matters); and (4) the provision that requires prisoners proceeding *in forma pauperis* to pay the filing fee in installments, see Tucker v. Branker, 142 F.3d 1294, 1297-1301 (D.C. Cir. 1998) (upholding provision against due process, access to courts, and equal protection challenges); Norton v. Dimazana, 122 F.3d 286, 289-91 (5th Cir. 1997) (upholding provision against access to courts challenge); Nicholas v. Tucker, 114 F.3d 17, 19-21 (2nd Cir. 1997) (upholding provision against equal protection and access to courts challenges); Mitchell v. Farcass, 112 F.3d 1483, 1487-89 (11th Cir. 1997) (upholding provision against equal protection challenge); Roller v. Gunn, 107 F.3d 227, 231-34 (4th Cir. 1997) (upholding provision against access to courts and equal protection challenges); Hampton v. Hobbs, 106 F.3d 1281, 1284-89 (6th Cir. 1997) (upholding provision against access to courts, First Amendment, equal protection, due process, and double jeopardy challenges).

<sup>444</sup> U.S.C. § 1915(b)(1) states:

The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

<sup>445</sup> 28 U.S.C. § 1915(b)(2) states:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody

Prisoners seeking IFP status must submit certified statements of their prison accounts for the preceding six months.<sup>446</sup> Prisoners granted IFP status will pay the entire filing fee for complaints or appeals, currently \$350 for filing a federal court civil complaint<sup>447</sup> and \$455 for filing an appeal.<sup>448</sup> This procedure is complicated because it requires the prison or another like facility to cooperate administratively in the process by which the courts assess the statutory fee. However, the courts can require the prison administration to provide the necessary information.<sup>449</sup>

An inmate's case will not be dismissed if funds do not exist to pay the initial fee. The PLRA states that prisoners shall not be barred from bringing suit or appealing a judgment simply because they cannot pay; instead, the initial fee will be collected "when funds exist."<sup>450</sup> This provision applies only to civil actions. Habeas corpus petitions and other post-judgment proceedings challenging sentences or convictions are generally not considered civil actions under the PLRA.<sup>451</sup> After a prisoner's release, the majority rule is that the former prisoner may proceed IFP after satisfying the poverty conditions applicable for non-prisoners.<sup>452</sup>

If the court assesses costs against a prisoner filing a civil suit, such costs are to be collected in the same manner that the initial filing fees are collected.<sup>453</sup> A court can, however, exercise its discretion not to award costs against a prisoner plaintiff.<sup>454</sup>

## 2. Screening Provisions (42 U.S.C. § 1997e(c)(1))

Under the PLRA, a federal court must screen all suits by prisoners against government officials and all IFP cases at the outset of litigation. Federal courts are required to dismiss *sua sponte* (of their own accord without a motion by either party) cases that are frivolous or malicious, that fail to state a claim on which relief may be granted, or that seek damages from a defendant who is

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of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

<sup>446</sup> 28 U.S.C. § 1915(a)(2).

<sup>447</sup> 28 U.S.C. § 1914(a). Note the filing fee for an application for a writ of habeas corpus is \$5. Id.

<sup>448</sup> 28 U.S.C. § 1913; 28 U.S.C. § 1917 (2010).

<sup>449</sup> See, e.g., Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (holding warden in contempt for failure to forward fees from prisoner's account).

<sup>450</sup> 28 U.S.C. § 1915(b)(1), (4).

<sup>451</sup> See, e.g., Webber v. U.S. Parole Comm'n, 124 F. App'x 834, 835 (5th Cir. 2006) (citing Davis v. Fechtel, 150 F.3d 486, 488-90 (5th Cir. 1998)); O'Brien v. Moore, 395 F.3d 499, 506 (4th Cir. 2005) (citing Smith v. Angelone, 111 F.3d 1131 (4th Cir. 1997)); Martin v. Bissonette, 118 F.3d 871 (1st Cir. 1997). These provisions of the PLRA do not apply to INS detainees either, as they are not "prisoners" within the meaning of § 1915(a)(2). Ojo v. INS, 106 F.3d 680 (5th Cir. 1997).

<sup>452</sup> See, e.g., DeBlasio v. Gilmore, 315 F.3d 396 (4th Cir. 2003); In re Smith, 114 F.3d 1247 (D.C. Cir. 1997); In re Prison Litig. Reform Act, 105 F.3d 1131 (6th Cir. 1997); McGann v. Comm'r, Soc. Sec. Admin., 96 F.3d 28 (2nd Cir. 1996). But see Farley v. Simpson, 178 F. App'x 340, 341 n.1 (5th Cir. 2006) (citing Gay v. Texas Dep't of Corr., 117 F.3d 240 (5th Cir. 1997)) (holding that, despite prisoner's release after filing notice of appeal, he remained subject to PLRA filing fee requirements); Robbins v. Switzer, 104 F.3d 895 (7th Cir. 1997) (same).

<sup>453</sup> 28 U.S.C. § 1915(f)(2).

<sup>454</sup> See, e.g., Feliciano v. Selsky, 205 F.3d 568 (2nd Cir. 2000); but see Skinner v. Govorchin, 463 F.3d 518, 522 (6th Cir. 2006) ("We are not prepared to follow Skinner, accompanied by Feliciano, down this road.").

immune from damage claims.<sup>455</sup> The circuits are split on whether this provision removes a court's power to dismiss with leave to amend so plaintiffs may cure deficiencies in the initial complaints.<sup>456</sup>

Federal prisoners can also lose their earned release or "good time" credits if the court decides that the prisoner filed a lawsuit solely for purposes of harassment or that the lawsuit presented false information:

In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit, under section 3624(b) of title 18, United States Code, that has not yet vested, if on its own motion or the motion of any party, the court finds

- (1) the claim was filed for a malicious purpose;
- (2) the claim was filed solely to harass the party against which it was filed; or
- (3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.<sup>457</sup>

### 3. The "Three Strikes" Provision (28 U.S.C. § 1915(g))

Under the PLRA, federal courts have the right to dismiss *any* prisoner lawsuit brought IFP if the prisoner has brought three or more claims that have been dismissed as "frivolous," "malicious," or stating an improper claim.<sup>458</sup> This provision states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.<sup>459</sup>

This means that if an inmate has had three complaints or appeals dismissed as frivolous, malicious, or failing to state a claim, the inmate must pay the entire filing fee up front, or the case will be dismissed. The only time the upfront fee would be waived and the prisoner allowed to proceed IFP is if the prisoner is at risk of immediate and serious physical injury.<sup>460</sup>

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<sup>455</sup> 28 U.S.C. § 1915(e)(2). Before the PLRA, a court's ability to dismiss cases *sua sponte* was limited to frivolous and malicious cases. NPP Journal, Vol. 13, No. 3 & 4, Fall 1999/Winter 2000, at 10 [hereinafter NPP].

<sup>456</sup> Alexander, *supra* note 396, at 12. See also *Shane v. Fauver*, 213 F.3d 113 (3rd Cir. 2000) (recognizing court's power to allow leave to file amended non-IFP complaint); *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc) (recognizing court's power to allow leave to file amended IFP complaint). But see *Christiansen v. Clarke*, 147 F.3d 655 (8th Cir. 1998) (holding PLRA allowed court to dismiss without granting leave to amend); *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997) (holding leave to amend was no longer allowed).

<sup>457</sup> 28 U.S.C. § 1932 (2009).

<sup>458</sup> 28 U.S.C. § 1915(g).

<sup>459</sup> *Id.*

<sup>460</sup> *Id.* Most circuits, including the Ninth Circuit, now agree "imminent danger" is assessed at the time the lawsuit is filed. See, e.g., *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007). To meet the "serious physical injury" requirement, the injury need not be so severe as to be an Eighth Amendment violation in and of itself. *Gibbs*

This provision, like the filing fees provision, applies to civil actions or appeals and does not include habeas corpus or other challenges to convictions or sentences.<sup>461</sup>

#### **4. Exhaustion of Administrative Remedies (42 U.S.C. § 1997e(a))**

Prisoners must first exhaust their prison's available administrative remedies (*i.e.*, grievance procedures) before bringing an action with respect to prison conditions.<sup>462</sup> The PLRA states:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.<sup>463</sup>

This provision makes exhaustion of the prison's internal grievance system mandatory; if a prisoner does not exhaust the available administrative remedies, the case will be dismissed.<sup>464</sup> Such dismissal is "without prejudice;" thus, it will not implicate the "three strikes" provision described above. The prisoner will be able to return to court after pursuing the grievance process, but will likely have to pay another filing fee.

To file a claim alleging a violation of the Department's regulations, a statute, or the prisoner handbook or to bring a health care claim, inmates in Alaska first must pursue all available avenues within the Department's grievance process. This means filing a timely claim and pursuing all appeal opportunities. Similarly, to file suit over a classification or disciplinary decision or an administrative transfer, an inmate first must attempt to resolve the dispute internally through the hearing appeal process designed for classification, disciplinary and administrative transfer decisions.

##### **a. Consequences of Non-Exhaustion**

The exhaustion requirement is not jurisdictional.<sup>465</sup> The Supreme Court held that failure to exhaust is an affirmative defense that must be raised by the defendants.<sup>466</sup> If the court finds that

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v. Cross, 160 F.3d 962, 966-67 (3rd Cir. 1998). The risk of future injury is enough to invoke this exception. Id. In Gibbs, the court held that the plaintiff had alleged imminent danger of serious physical injury by claiming that dust, lint and shower odor came from his cell vent, causing him to suffer "severe headaches, changes in voice, mucus that is full of dust and lint, and watery eyes." Id.

In Abdul-Akbar v. McKelvie, the Third Circuit held that a court must evaluate the "imminent danger" exception at the time the prisoner attempts to file the new lawsuit, not at the time that the incident giving rise to the lawsuit occurred. 239 F.3d 307 (3rd Cir. 2001). See also Martin v. Shelton, 319 F.3d 1048 (8th Cir. 2003); Malik v. McGinnis, 293 F.3d 559 (2nd Cir. 2002); Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998) ("an otherwise ineligible prisoner is only eligible to proceed IFP if he is in imminent danger *at the time of filing*"). In addition, the Tenth Circuit has held that, because the "three strikes" provision is not jurisdictional, courts retain the jurisdiction to reach the merits of a claim by a prisoner who has "struck out." Dubuc v. Johnson, 314 F.3d 1205 (10th Cir. 2003).

<sup>461</sup> Carson v. Johnson, 112 F.3d 818 (5th Cir. 1997).

<sup>462</sup> 42 U.S.C. § 1997e(a).

<sup>463</sup> Id. Note that this exhaustion provision applies to private detention facilities as well as state-owned, public facilities. Roles v. Maddox, 439 F.3d 1016, 1017-18 (9th Cir. 2006).

<sup>464</sup> Perez v. Wisconsin, Dep't of Corr., 182 F.3d 532, 534-35 (7th Cir. 1999).

<sup>465</sup> Woodford v. Ngo, 548 U.S. 81, 101 (2006).

the prisoner has not exhausted his claims, the case will be dismissed without prejudice.<sup>467</sup> Exhaustion must be completed prior to filing suit.<sup>468</sup>

There is not a great deal of case law yet addressing whether a prisoner who is time-barred from an administrative remedy thereafter forever loses his constitutional or statutory claim.<sup>469</sup> A prisoner in this situation would be well advised to appeal through all the levels of the grievance system and explain in the grievance the reasons for the failure to file on time.<sup>470</sup>

## **b. Qualifying as Exhaustion**

Exhaustion requires pursuing all available administrative appeals, and all claims raised in the lawsuit must be exhausted.<sup>471</sup> Some courts have relied on the rules of the specific prison's grievance policy to determine the level of specificity required in grievances.<sup>472</sup> Also, "exhaustion is not *per se* inadequate simply because an individual later sued was not named in the grievances;" therefore, a claim may not be deemed unexhausted merely because not all defendants named in the suit were named in the relevant grievances.<sup>473</sup>

A related issue is whether attempts at exhaustion qualify if they are technically deficient. If a prisoner does not file a grievance because he is unable to obtain grievance forms, the prisoner

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<sup>466</sup> Jones v. Bock, 549 U.S. 199, 216 (2007).

<sup>467</sup> McKinney v. Carey, 311 F.3d 1198, 1200-01 (9th Cir. 2002); Perez v. Wisconsin, Dep't of Corr., 182 F.3d 532 (7th Cir. 1999); Wendell v. Asher, 162 F.3d 887 (5th Cir. 1998), *overruled by implication on other grounds by Bock*, 549 U.S. at 199.

<sup>468</sup> Johnson v. Jones, 340 F.3d 624, 627 (8th Cir. 2003).

<sup>469</sup> Johnson v. Meadows, 418 F.3d 1152, 1159 (11th Cir. 2005) (holding that failure to timely file a grievance without good cause was a procedural default under Georgia law).

<sup>470</sup> In Woodford v. Ngo, the Supreme Court held "proper exhaustion of administrative remedies is necessary," so under this standard, filing an untimely or otherwise procedurally defective grievance or appeal did not satisfy the PLRA's exhaustion requirement. 548 U.S. at 81. However, the Supreme Court did not specify what constituted "proper" as opposed to "improper" exhaustion; it merely spoke to the facts in that particular case. Id. Meanwhile, the Tenth Circuit stated, "Where prison officials prevent, thwart, or hinder a prisoner's efforts to avail himself of an administrative remedy, they render that remedy unavailable and a court will excuse the prisoner's failure to exhaust." Little v. Jones, 607 F.3d 1245, 1250 (10th Cir. 2010).

Similarly, the Fifth Circuit has held that, where a prisoner's grievance was rejected as untimely but the prisoner had a broken hand and could not file, the court should not dismiss for failure to exhaust because "one's personal inability to access the grievance system could render the system unavailable." Days v. Johnson, 322 F.3d 863, 867-88 (5th Cir. 2003), *overruled by implication on other grounds by Jones*, 549 U.S. at 216. The court also emphasized that, in such circumstances, the prisoner needs to try to exhaust when he or she can, but that the court is not bound by the grievance system's rejection of the grievance as untimely. Id.

In contrast (and prior to the Woodford decision), the prisoner in Pozo v. McCaughtry missed a deadline for one of the levels of appeal of the grievance system. 286 F.3d 1022 (7th Cir. 2002). The grievance was rejected on that basis. Id. After the grievance had been rejected, the prisoner filed his lawsuit. Id. The district court allowed the filing, but the Seventh Circuit reversed and found that the untimely appeal meant that the prisoner could never file a lawsuit. Id. This is an extraordinarily dangerous holding because it gives to those who operate prison grievance systems the power to bar a constitutional claim based on a minor procedural default. Significantly, the decision does not discuss the reasonableness of the grievance system's failure to consider the grievance in light of the minor procedural error. Id.

<sup>471</sup> See, e.g., White v. McGinnis, 131 F.3d 593 (6th Cir. 1997); Bey v. Pennsylvania, Dep't of Corr., 98 F. Supp. 2d 650 (E.D. Pa. 2000); Cooper v. Garcia, 55 F. Supp. 2d 1090 (S.D. Cal. 1999).

<sup>472</sup> Burton v. Jones, 321 F.3d 569 (6th Cir. 2003); Strong v. David, 297 F.3d 646 (7th Cir. 2002).

<sup>473</sup> Bock, 549 U.S. at 219.



may file in court because no administrative remedy is “available.”<sup>474</sup> As the Eighth Circuit has stated, “a remedy that prison official prevent a prisoner from ‘utilizing’ is not an ‘available’ remedy under § 1997e(a).”<sup>475</sup> In a multi-level grievance system, such as in Alaska’s prisons, if prison staff fail to respond within the time limits established by the grievance procedures, the prisoner must appeal to the next stage.<sup>476</sup> If the prisoner does not receive a response at the final appeal level and the time for response has passed, the prisoner has exhausted.<sup>477</sup>

If a prisoner cannot appeal without a decision from the lower level of the grievance system, and the lower level does not respond to the grievance, the prisoner may go ahead and file an appeal.<sup>478</sup> Similarly, a prisoner who “wins” a grievance has exhausted if the grievance gives him everything that the grievance system can.<sup>479</sup> Failure to sign and date the grievance or similar technicalities do not defeat exhaustion if the grievance procedures do not require these steps.<sup>480</sup> Some courts have found that pursuit of a complaint through informal channels satisfies the exhaustion requirement; however, these cases are generally quite fact-specific.<sup>481</sup> When navigating the grievance process in Alaska, it is crucial to understand and follow the Department of Corrections’ policies and procedures.<sup>482</sup>

### c. Exclusions from the Exhaustion Requirement

- In Booth v. Churner, the Supreme Court resolved an inter-circuit conflict by holding that a prisoner seeking damages must exhaust available administrative remedies, even if the administrative remedy in question does not provide damages as a possible remedy.<sup>483</sup> However, if the grievance system can provide no remedy at all to the prisoner, there still may be an argument against requiring exhaustion.<sup>484</sup>

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<sup>474</sup> Mitchell v. Horn, 318 F.3d 523 (3rd Cir. 2003).

<sup>475</sup> Miller v. Norris, 247 F.3d 736, 740 (8th Cir. 2001) (alterations in original). See also Brown v. Valoff, 422 F.3d 926, 935 (9th Cir. 2005) (“a prisoner need not press on to exhaust further levels of review once he has either received all ‘available’ remedies at an intermediate level of review or been reliably informed by an administrator that no remedies are available”).

<sup>476</sup> White v. McGinnis, 131 F.3d 593 (6th Cir. 1997).

<sup>477</sup> Lewis v. Washington, 300 F.3d 829 (7th Cir. 2002) (holding that when prison officials do not respond to prisoner’s initial grievance, administrative remedies are exhausted); Powe v. Ennis, 177 F.3d 393 (5th Cir. 1999).

<sup>478</sup> Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999) (finding prisoner had exhausted when he failed to appeal a grievance after staff told him no appeal was possible); Pearson v. Vaughn, 102 F. Supp. 2d 282 (E.D. Pa. 2000) (same); Taylor v. Barrett, 105 F. Supp. 2d 483 (E.D. Va. 2000).

<sup>479</sup> Brady v. Attygala, 196 F. Supp. 2d 1016 (C.D. Cal. 2002).

<sup>480</sup> Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999); see also Nyhuis v. Reno, 204 F.3d 65 (3rd Cir. 2000) (dictum that substantial compliance with grievance procedure will satisfy exhaustion requirement); Camp v. Brennan, 219 F.3d 279 (3rd Cir. 2000) (holding that investigation of complaint by Secretary of Corrections’ office rather than through regular grievance system satisfied exhaustion requirement). But see Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999) (declining to find exhaustion for investigations by use of force committee and state police).

<sup>481</sup> See, e.g., Marvin v. Goord, 255 F.3d 40, 43 n.3 (2nd Cir. 2001) (finding in dictum that resolution of the issue through informal channels satisfies exhaustion); Lewis v. Gagne, 265 F.Supp.2d 939 (N.D.N.Y. 2003) (finding informal efforts of juvenile detainee to notify facility of his grievances were sufficient to exhaust PLRA requirements).

<sup>482</sup> See DOC Policy # 808.03, Prisoner Grievances.

<sup>483</sup> 532 U.S. 731 (2001).

<sup>484</sup> Id. at 736.

- In Porter v. Nussle, the Supreme Court held that lawsuits raising claims about the use of force or retaliation are considered actions “with respect to prison conditions,” as the phrase is used in the exhaustion provision.<sup>485</sup> Therefore, all such claims must be exhausted before a lawsuit can be filed.<sup>486</sup>
- The leading decision addressing how exhaustion applies in the context of a class action is Jones-El v. Berge.<sup>487</sup> The court held that only the named representatives of the class must exhaust for a class to be certified.<sup>488</sup>
- The District of Columbia Circuit held the PLRA does not preclude courts from exercising their traditional equitable powers to issue injunctions while exhaustion is pending, if injunctive relief would prevent irreparable injury to a plaintiff.<sup>489</sup>
- The exhaustion requirement does not apply to detainees in INS facilities.<sup>490</sup>
- Finally, there is general agreement that the exhaustion requirement does not apply to cases filed before the effective date of PLRA.<sup>491</sup>

## 5. Physical Injury Requirement (42 U.S.C. § 1997e(e))

Prisoners cannot file a lawsuit for mental or emotional injury unless they can also show that there has been physical injury. The PLRA provides:

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.<sup>492</sup>

### a. Action for Mental or Emotional Injury

This provision refers to an “action,” indicating that the entire action, not individual claims within one civil action, must conform to this requirement. However, courts that have examined this provision have analyzed conformity on a claim-by-claim basis.<sup>493</sup> Despite this confusion and despite the fact that the statute does not distinguish between damages and other types of relief,

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<sup>485</sup> 534 U.S. 516 (2002).

<sup>486</sup> Other claims requiring exhaustion of administrative remedies include those under Title II of the ADA and the Rehabilitation Act. O’Guinn v. Lovelock Corr. Ctr., 502 F.3d 1056, 1061-62 (9th Cir. 2007).

<sup>487</sup> 172 F. Supp. 2d 1128 (W.D. Wis. 2001).

<sup>488</sup> Several circuits have adopted the Jones-El rule. See, e.g., Chandler v. Crosby, 379 F.3d 1278, 1287 (11th Cir. 2004) (upholding the “vicarious exhaustion” requirement for prisoner class actions).

<sup>489</sup> Jackson v. District of Columbia, 254 F.3d 262 (D.C. Cir. 2001); see also Goord, 255 F.3d at 43 (remanding claim to determine whether exhaustion was necessary before bringing a preliminary injunction requesting urgent medical care).

<sup>490</sup> Edwards v. Johnson, 209 F.3d 772 (5th Cir. 2000). Exhaustion also does not apply to civilly committed persons. Hicks v. James, 225 F. App’x 744, 748 (4th Cir. 2009) (citing Perkins v. Hedricks, 340 F.3d 582 (8th Cir. 2003)).

<sup>491</sup> See, e.g., Salahuddin v. Mead, 174 F.3d 271 (2nd Cir. 1999); Bishop v. Lewis, 155 F.3d 1094 (9th Cir. 1998).

<sup>492</sup> 42 U.S.C. § 1997e(e).

<sup>493</sup> See, e.g., Bock, 549 U.S. at 221; Robinson v. Page, 170 F.3d 747 (7th Cir. 1999).

federal courts have agreed that this provision acts to bar only damages claims (and compensatory damages at that), leaving injunctive and declaratory relief claims unaffected.<sup>494</sup>

### **b. Mental or Emotional Injury Defined**

The term “mental or emotional injury” refers to “such things as stress, fear, and depression, and other psychological impacts.”<sup>495</sup> Many courts have found claims of unconstitutional deprivation of liberty or property are not actions for mental or emotional injury.<sup>496</sup> But, the circuits are split on whether claims for other violations of constitutional rights, in the absence of a resulting physical injury, are intrinsically claims for mental or emotional injury. The Seventh and Ninth Circuits have held that First Amendment claims are not subject to the physical injury requirement.<sup>497</sup> In contrast, several other circuits treat First Amendment claims as claims for mental and emotional distress,<sup>498</sup> and the D.C. Circuit has held privacy claims as claims for mental or emotional injuries.<sup>499</sup>

### **c. Physical Injury Defined**

Courts differ on what constitutes sufficient harm to be a physical injury. Until recently, some courts held that in an Eighth Amendment excessive force case, physical injury “must be more than *de minimis* but need not be significant.”<sup>500</sup> However, Wilkins announced that injury and force are imperfectly correlated, and “it is the latter that ultimately counts.”<sup>501</sup> Thus, Wilkins essentially abrogated the *de minimis* injury requirement so long as the force applied was in violation of the Eighth Amendment.<sup>502</sup> However, it is unclear how the Wilkins holding affects non-Eighth Amendment claims involving mental or emotional injury.

In practice, allegations of cuts and abrasions have been found to satisfy the physical injury requirement,<sup>503</sup> as have intrusive bodily searches.<sup>504</sup> However, a bruised ear did not satisfy the requirement,<sup>505</sup> nor did confinement in a filthy cell with exposure to mentally ill patients.<sup>506</sup>

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<sup>494</sup> Alexander, supra note 396, at 14 (citing Harper v. Showers, 174 F.3d 716 (5th Cir. 1999) and Perkins v. Kansas, Dep’t of Corr., 165 F.3d 803 (10th Cir. 1999)).

<sup>495</sup> Alexander, supra note 396, at 19 (citing Amaker v. Haponik, 1999 WL 76798, at \*7 (S.D.N.Y. Feb. 17, 1999)).

<sup>496</sup> Id.

<sup>497</sup> Stewart v. Lyles, 66 F. App’x 18, 22 (7th Cir. 2003) (citing Rowe v. Shake, 196 F.3d 778 (7th Cir.1999)); Oliver v. Keller, 289 F.3d 623, 628 n.5 (9th Cir. 2002) (citing Cannell v. Lightner, 143 F.3d 1210 (9th Cir. 1998)).

<sup>498</sup> Royal v. Kautzky, 375 F.3d 720, 723 (8th Cir. 2004); cf. Allah v. Al-Hafeez, 226 F.3d 247 (3rd Cir. 2000) (determining First Amendment claims must be accompanied by physical injury to qualify for compensatory damages, although nominal damages could still be awarded absent physical injury).

<sup>499</sup> Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998).

<sup>500</sup> Sigler v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997); see also Gomez v. Chandler, 163 F.3d 921 (5th Cir. 1999).

<sup>501</sup> Wilkins v. Gaddy, 130 S.Ct. 1175, 1179 (2010).

<sup>502</sup> Id.

<sup>503</sup> Gomez, 163 F.3d at 921.

<sup>504</sup> Liner v. Goord, 196 F.3d 132 (2nd Cir. 1999).

<sup>505</sup> Sigler, 112 F.3d at 191.

<sup>506</sup> Alexander, supra note 396, at 14.

The Seventh Circuit, in a case challenging the plaintiff's exposure to excessive lead in the prison drinking water, left open the question of whether exposure to a currently non-injurious condition that is likely to lead to a future physical injury is barred by the provision. The court reversed and remanded for development of the record.<sup>507</sup>

In Davis v. District of Columbia,<sup>508</sup> the court held that physical manifestations of emotional distress do not satisfy the statutory requirement. In contrast, the Tenth Circuit remanded on the same question.<sup>509</sup>

Most courts hold that this provision does not bar a former prisoner who files suit for damages based on the conditions to which the plaintiff was subjected in prison.<sup>510</sup> On the other hand, the provision has been applied to a lawsuit challenging a false arrest unrelated to the prisoner's current incarceration, even though the arrest did not occur in a custodial facility.<sup>511</sup>

The physical injury requirement does not apply to cases filed prior to the effective date of PLRA.<sup>512</sup>

## 6. Attorney's Fees

The PLRA attorney's fees provision affects the ability of inmates to obtain legal counsel. The PLRA limits an attorney's fees in any action filed by a prisoner under 42 U.S.C. § 1988, the Civil Rights Attorney's Fees Act of 1976.<sup>513</sup> Under this provision, fees are barred in "any action brought by a prisoner" except when fees are "directly and reasonably incurred in proving an actual violation of the plaintiff's rights."<sup>514</sup> Fees can also be awarded if they are directly and reasonably incurred in enforcing the relief ordered for the violation."<sup>515</sup> The statute also requires fees to be "proportionately related to the court ordered relief for the violation" but does not state what proportion,<sup>516</sup> although defendants may be required to pay fee awards up to 150% of any damages awarded.<sup>517</sup>

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<sup>507</sup> Robinson v. Page, 170 F.3d 747 (7th Cir. 1999); see also Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001) (holding claim of likelihood of developing a disease from asbestos exposure was not actionable as pled).

<sup>508</sup> 158 F.3d 1342 (D.C. Cir. 1998).

<sup>509</sup> Perkins v. Kansas, Dep't of Corr., 165 F.3d 803 (10th Cir. 1999).

<sup>510</sup> Kerr v. Puckett, 138 F.3d 321 (7th Cir. 1998); but see Harris v. Garner, 216 F.3d 970 (11th Cir. 2000) (en banc) (dismissing former prisoners claims without prejudice because they commenced their suit while incarcerated). But see Cox v. Malone, 199 F.Supp.2d 135 (S.D.N.Y. 2002) (applying provision to former prisoner).

<sup>511</sup> Napier v. Preslicka, 314 F.3d 528 (11th Cir. 2002); see also Quinlan v. Pers. Transp. Servs. Co., LLC, 329 F. App'x 246, 248-49 (11th Cir. 2009) (applying § 1997e(e) to inmate who claimed to suffer injury while being transported between facilities).

<sup>512</sup> Swan v. Banks, 160 F.3d 1258 (9th Cir. 1998); Craig v. Eberly, 164 F.3d 490 (10th Cir. 1998); Zehner v. Trigg, 133 F.3d 459 (7th Cir. 1997) (dismissing case based on physical injury provision when plaintiff had failed to raise non-retroactivity of PLRA in trial court).

<sup>513</sup> 42 U.S.C. § 1997e(d).

<sup>514</sup> 42 U.S.C. § 1997e(d)(1)(A).

<sup>515</sup> 42 U.S.C. § 1997e(d)(1)(B)(ii).

<sup>516</sup> 42 U.S.C. § 1997e(d)(1)(B)(i).

<sup>517</sup> 42 U.S.C. § 1997e(d)(2).

Hourly rates for attorneys are capped at 150% of the Criminal Justice Act (“CJA”) rates for criminal defense representation, as set forth in 18 U.S.C. §3006A.<sup>518</sup> Currently, in almost all federal districts, the authorized CJA rate is \$75, so the hourly PLRA rate is \$112.50<sup>519</sup>

Prisoners are also affected by the provision that mandates “up to” 25% of a damage judgment to be applied to the fee award; if the fee award is not greater than 150% of the judgment, defendants must pay the rest.<sup>520</sup> This means that in damages cases, a portion of the judgment awarded to the prisoner, not to exceed 25% of the award, is to be applied to satisfy the attorney’s fees. The remainder of the fees, up to 150% of the judgment, is to be covered by the defendants. For example, if damages were found to be \$20,000, and requested fees were \$50,000, then only \$30,000 in fees could be awarded (up to 150% of the judgment). Of that amount, \$5000 would come from the plaintiff’s damages award (up to 25% of the award).<sup>521</sup>

## **B. Restrictions on Available Relief in Prisoner Cases**

The PLRA contains several provisions that restrict a court’s ability to enter and to maintain prospective relief in prison litigation cases.

### **1. Injunctive Relief (18 U.S.C. § 3626)**

#### **a. Required Findings (18 U.S.C. § 3626(a)(1))**

In order to enter injunctive or prospective relief<sup>522</sup> regarding conditions of confinement, the court must find that the relief is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary.<sup>523</sup> These findings must be recited upon entering the relief.<sup>524</sup> In addition, the court is to give substantial weight to any adverse impact on public safety and operation of the criminal justice system.<sup>525</sup>

The PLRA does not change the standard for granting a preliminary injunction.<sup>526</sup> Preliminary injunctive relief is limited to ninety days unless the court makes the relief final, and the court must make the same findings required for other kinds of injunctive relief.<sup>527</sup> In Mayweathers v. Newland,<sup>528</sup> the Ninth Circuit held that this provision does not bar a court from entering a series of preliminary injunctions; as long as relief is re-entered at the appropriate times, a preliminary injunction can continue indefinitely.<sup>529</sup>

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<sup>518</sup> 42 U.S.C. § 1997e(d)(2)-(3).

<sup>519</sup> Alexander, supra note 396, at 15.

<sup>520</sup> 42 U.S.C. § 1997(e)(d)(2).

<sup>521</sup> Alexander, supra note 396, at 15.

<sup>522</sup> “Prospective relief” is all relief other than compensatory monetary damages. 18 U.S.C. § 3626(g)(7) (2010).

<sup>523</sup> 18 U.S.C. § 3626(a)(1) (2010).

<sup>524</sup> Id.

<sup>525</sup> Id.

<sup>526</sup> Jones-El v. Berge, 164 F. Supp. 2d 1096, 1116 (W.D. Wis. 2001) (citing Smith v. Arkansas, Dep’t of Corr., 103 F.3d 637, 647 (8th Cir. 1996)).

<sup>527</sup> 18 U.S.C. § 3626(a)(2).

<sup>528</sup> 258 F.3d 930 (9th Cir. 2001).

<sup>529</sup> Id. at 936.

### **b. Termination of Judgments (18 U.S.C. § 3626(b))**

Under the PLRA, court orders in prison litigation, including consent decrees, may be terminated after two years unless the court finds that there is a “current and ongoing violation” of federal law. After this two-year period, orders may be challenged every year.<sup>530</sup>

Violation of the court order itself is not enough to constitute a violation under § 3626(b)(3);<sup>531</sup> there must also be a violation of the U.S. Constitution, a statute, or a regulation.<sup>532</sup> There is still debate regarding what “current and ongoing” means — whether it means “right now” or whether it can include violations that a court might reasonably expect to recur soon if the injunction is dissolved. Several circuits have determined that an imminent constitutional violation does not satisfy the requirement of a “current and ongoing” violation.<sup>533</sup>

Additionally, a court order may be challenged at any time if it was entered absent the required findings that the order was narrowly drawn, necessary, and the least intrusive means of correcting the violation of the federal right.<sup>534</sup>

### **c. Important Cases Regarding Injunctive Relief**

- All courts to address the issue have held that, with regard to litigated decrees, the PLRA does not change the standards for issuance of an injunction.<sup>535</sup>
- Even under the PLRA restrictions, a court may enter a system-wide injunction if it is necessary to cure a “system-wide injury.”<sup>536</sup>
- One court has held that the PLRA’s prospective relief provisions do not limit a court’s power to grant remedies for contempt.<sup>537</sup>
- All circuits to consider the issue have upheld the PLRA’s termination provisions against constitutional challenges such as separation of powers, due process, and equal protection claims.<sup>538</sup>
- Some courts interpret the findings for pre-PLRA litigated orders as sufficiently analogous to survive post-PLRA scrutiny.<sup>539</sup>

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<sup>530</sup> 18 U.S.C. § 3626(b)(1); 18 U.S.C. § 3626(c)(1).

<sup>531</sup> Plyler v. Moore, 100 F.3d 365, 370 (4th Cir. 1996).

<sup>532</sup> NPP, supra note 410, at 28. Note that PLRA has been read to limit federal courts’ ability to grant prospective relief to claims under federal law only. Handberry v. Thompson, 446 F.3d 335, 345-346 (2nd Cir. 2006).

<sup>533</sup> Para-Profl Law Clinic v. Beard, 334 F.3d 301, 304 (3rd Cir. 2003); Gilmore v. California, 220 F.3d 987, 1009 n.27 (9th Cir. 2000) (noting in dictum that this requirement presents “a serious separation of powers claim”); Cason v. Seckinger, 231 F.3d 777, 784 (11th Cir. 2000).

<sup>534</sup> 18 U.S.C. § 3626(b)(2); 18 U.S.C. § 3626(b)(4).

<sup>535</sup> Armstrong v. Davis, 275 F.3d 849, 872 (9th Cir. 2001); Smith v. Arkansas, Dep’t of Corr., 103 F.3d 637, 647 (8th Cir. 1996) (“The Act merely codifies existing law and does not change the standards for whether to grant an injunction.”); Williams v. Edwards, 87 F.3d 126, 133 n.21 (5th Cir. 1996) (same).

<sup>536</sup> See Armstrong, 275 F.3d at 870 n.27.

<sup>537</sup> Marion County Jail Inmates v. Anderson, 270 F. Supp. 2d 1034 (S.D. Ind. 2003).

<sup>538</sup> See, e.g., Benjamin v. Jacobson, 172 F.3d 144 (2nd Cir. 1999)

- Ordinarily, a plaintiff facing a termination motion is entitled to an evidentiary hearing upon request if there are disputed facts.<sup>540</sup>
- The Ninth Circuit has held that defendants seeking termination of a decree have the burden of showing the absence of a current and ongoing violation.<sup>541</sup> The Fifth Circuit, however, has held that those opposing termination have the burden of demonstrating a current and ongoing violation.<sup>542</sup>
- The Tenth Circuit “reject[s] the general proposition that only defendants can seek equitable modification of unlitigated consent decrees.”<sup>543</sup>

## 2. Automatic Stay

If a court does not decide a motion for termination within 30 days (or up to 90 days if good cause is shown), an automatic stay of relief goes into effect.<sup>544</sup> This stay continues until the court decides on the motion to terminate.<sup>545</sup> The Supreme Court rejected constitutional challenges to the automatic stay provision on separation of powers grounds based on the argument that the stay provision suspends a final judgment.<sup>546</sup> The Court also rejected a construction of the automatic stay provision that would have allowed a court to enjoin the stay pending a ruling on a motion for termination.<sup>547</sup> The Court left open the possibility that application of the automatic stay might violate the due process clause in cases so complex that no court could reach a decision on a termination motion within ninety days.<sup>548</sup>

## 3. Settlements

In order to enter into a federal court settlement that includes prospective relief, the settlement must meet the same requirement that the PLRA establishes for other court orders.<sup>549</sup> Parties may enter into “private settlement agreements” that do not meet the PLRA standards, but these settlements cannot be enforced in federal court.<sup>550</sup>

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<sup>539</sup> See, e.g., Gilmore v. California, 220 F.3d 987, 1008 n.25 (9th Cir. 2000); Smith v. Arkansas Dep’t of Corr., 103 F.3d 637, 647 (8th Cir. 1996). But see Cagle v. Hutto, 177 F.3d 253, 257 (4th Cir. 1999) (holding that *post hoc* PLRA findings are not permitted).

<sup>540</sup> Ruiz v. United States, 243 F.3d 941 (5th Cir. 2001); Hadix v. Johnson, 228 F.3d 662 (6th Cir. 2000); see also Laaman v. Warden, New Hampshire State Prison, 238 F.3d 14 (1st Cir. 2001) (“whether a full-fledged evidentiary hearing is required . . . is a matter for the discretion of the district court.”); Cason v. Seckinger, 231 F.3d 777 (11th Cir. 2000).

<sup>541</sup> Gilmore, 220 F.3d at 1008-09.

<sup>542</sup> Guajardo v. Tex. Dep’t of Criminal Justice, 363 F.3d 392, 396 (5th Cir. 2004).

<sup>543</sup> David C. v. Leavitt, 242 F.3d 1206, 1211 (10th Cir. 2001).

<sup>544</sup> 18 U.S.C. § 3626(e)(2).

<sup>545</sup> Id.

<sup>546</sup> Miller v. French, 530 U.S. 327, 342 (2000).

<sup>547</sup> Id. at 340-41.

<sup>548</sup> Id. at 350.

<sup>549</sup> 18 U.S.C. § 3626(c)(1).

<sup>550</sup> NPP, supra note 410, at 29; 18 U.S.C. § 3626(c)(2).

#### 4. Class Actions

The PLRA requires only the named plaintiffs to exhaust administrative remedies.<sup>551</sup> Various holdings to that effect are consistent with general practice in class actions, which the PLRA does not purport to displace.<sup>552</sup> A leading treatise on class actions states: “When exhaustion of administrative remedies is a precondition for suit, the satisfaction of this requirement by the class plaintiffs normally avoids the necessity for each class member to satisfy this requirement independently.”<sup>553</sup>

#### 5. Conclusion

The PLRA has succeeded in its mission of reducing the number of prisoner lawsuits challenging conditions of confinement. Most notably, the PLRA: (1) restricts “conditions of confinement” litigation brought by prisoners;<sup>554</sup> (2) limits attorney’s fees for successful cases;<sup>555</sup> (3) requires a physical injury for a prisoner to recover damages for mental or emotional injury suffered while incarcerated;<sup>556</sup> (4) requires indigent prisoners to pay the filing fees in civil cases in installments;<sup>557</sup> (5) requires courts to screen prisoner civil actions for frivolousness, maliciousness, or failure to state a claim;<sup>558</sup> and (6) authorizes the revocation of good time credits if a court finds that a prisoner has brought a claim maliciously or solely to harass a party, or has presented false testimony in pursuing a claim.<sup>559</sup>

### III. The Alaska Prison Litigation Reform Act

#### A. The Cleary Question

##### 1. Historical Perspective

Cleary began in August 1981 as a class-action lawsuit filed by inmate Michael Cleary. Cleary v. Smith challenged the conditions of Alaska’s correctional facilities. In 1983, the superior court approved two partial settlement agreements between the parties. The next year, a trial took place to address substantive prisoners’ issues like overcrowding and rehabilitation. The trial lasted six weeks and judgment was rendered in 1985. Both sides appealed to the Alaska Supreme Court, which appointed a monitor to report to the court.

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<sup>551</sup> Boston, John, EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER THE PLRA (2001) at 49; Jackson v. District of Columbia, 254 F.3d 262, 268-69 (D.C. Cir. 2001) (implying exhaustion by some but not all class members would be sufficient to state a claim); Rahim v. Sheahan, 2001 WL 1263493, at \*7-8 (N.D. Ill. Oct. 19, 2001) (extending defendant’s waiver of exhaustion with respect to named plaintiffs to absent class members); Hattie v. Hallock, 8 F. Supp. 2d 685, 689 (N.D. Ohio 1997), *amended*, 16 F. Supp. 2d 834 (N.D. Ohio 1998) (acknowledging dicta that “vicarious exhaustion” is available in class actions but not outside of them).

<sup>552</sup> Shook v. El Paso County, 386 F.3d 963, 970 (10th Cir. 2004).

<sup>553</sup> 5 NEWBERG ON CLASS ACTIONS at § 24.66 (3d ed., Supp. 2001).

<sup>554</sup> PLRA § 802 (amending 18 U.S.C. § 3626).

<sup>555</sup> *Id.* at § 803(d) (adding 42 U.S.C. § 1997e(d)).

<sup>556</sup> *Id.* (amending 42 U.S.C. § 1997e(e)).

<sup>557</sup> *Id.* at § 804(a) (adding a new 28 U.S.C. § 1915(b)).

<sup>558</sup> *Id.* at § 805(a) (adding a new 28 U.S.C. § 1915(a)).

<sup>559</sup> *Id.* at § 809(a) (adding a new 28 U.S.C. § 1932)).



In 1990, the parties negotiated, and the court ordered, a Final Settlement Agreement and Order (“Cleary FSA” or “FSA”), which set standards for prison conditions and required judicial oversight to ensure compliance by the Department of Corrections.<sup>560</sup>

In 1999, the Alaska Legislature enacted the Alaska Prison Litigation Reform Act (APLRA).<sup>561</sup> The APLRA established, among other things, standards for terminating prospective relief in civil actions challenging conditions at prison facilities.<sup>562</sup> The APLRA requires that a court terminate prospective relief previously ordered in a civil action absent findings of ongoing violations of a state or federal right.<sup>563</sup>

On August 30, 2000, the State defendants filed a motion pursuant to the APLRA requesting to terminate the 1990 FSA. Plaintiffs opposed the motion, alleging the APLRA was unconstitutional.

The APLRA is substantially derived from the federal Prison Litigation Reform Act (PLRA).<sup>564</sup> Like the PLRA, APLRA allows for the immediate termination of prospective relief if at any time the relief was found to be granted absent findings of a federal right violation.<sup>565</sup> A majority of courts hold the PLRA termination provision mandates termination of the consent decree itself. The minority approach holds the PLRA does not terminate the underlying consent decree or order but rather restricts a court’s authority to order continued prospective relief under the order.<sup>566</sup>

On May 4, 2001, the Superior Court held another hearing on this matter. The court-appointed compliance monitor reported that all matters referred to him were resolved in conformity with the standards established in the FSA, and that judicial oversight through the court-appointed monitor was no longer necessary. As a result, the court terminated active judicial supervision of the case and released the monitor and class counsel from their duties.

On July 3, 2001, the Superior Court ruled on the state’s motion to set aside the Cleary FSA.<sup>567</sup> In rejecting the state’s arguments, the court adopted the Ninth Circuit (minority) approach to terminating a consent decree. The Court narrowly construed the APLRA to affect only the prospective relief due parties under the FSA, not the FSA itself. The court determined that the legislature intended the APLRA to limit a court’s ability to order prospective relief absent a showing of violations of state or federal law.<sup>568</sup> Where there is no showing of an ongoing

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<sup>560</sup> This court-ordered settlement is considered a consent decree. A consent decree is defined as a “court order that is based on the agreement of the parties,” not including a private settlement agreement. AS 09.19.200(g)(2) (2009).

<sup>561</sup> AS 09.19.200 (2010). Note: unless otherwise stated, all cited provisions of AS 09.19.200 are current as of 2009.

<sup>562</sup> AS 09.19.200(c). Prospective relief is defined as “all relief other than compensatory monetary damages.” AS 09.19.200(g)(5). Relief is defined as “any legal or equitable remedy in any form that may be ordered by the court, and includes a consent decree but does not include a private settlement agreement.” AS 09.19.200(g)(6).

<sup>563</sup> AS 09.19.200(c). “State or federal right” means “a right arising from the United States Constitution, the Constitution of the State of Alaska, or a federal or state statute.” AS 09.19.200(g)(7).

<sup>564</sup> Prison Litigation Reform Act of 1995, Pub. L. No. 104-134 (codified as amended in scattered titles and sections of the U.S.C.); see also H.R. 3019, 104th Cong. (1996).

<sup>565</sup> 18 U.S.C. § 3626(b)(2).

<sup>566</sup> Gilmore v. California, 220 F.3d 987, 1000 (9th Cir. 2000).

<sup>567</sup> Cleary v. Smith, Case No. 3AN-81-5274 CI (Alaska Sup. Ct. July 3, 2001).

<sup>568</sup> Id.

violation of state or federal law, the APLRA requires a court to terminate prospective relief previously ordered in a civil action.<sup>569</sup> The court also held that the APLRA must be construed consistently with the PLRA to the extent possible. The opinion clarified that the APLRA requires a court to terminate relief available under a consent decree absent a state or federal violation but does not require termination of the underlying consent decree or final order.<sup>570</sup>

## **2. Status of the Cleary FSA**

The APLRA was found to be a constitutional exercise of legislative authority, provided that it is interpreted only to terminate prospective relief—and not the underlying settlement agreement—in the absence of a showing of a violation of state or federal law.<sup>571</sup> Thus, Cleary survives, but the prospective relief available under Cleary is limited to when an inmate can show a violation of a state or federal law. For instance there is no state or federal right relating to decoration of one's prison cell; thus, an inmate who was ordered to take down a racy poster hanging in his cell could not file a compliance motion under Cleary. But if that same inmate were denied access to the prison law library, he could bring an action under Cleary to enforce his right of access to the courts, per the First Amendment to the U.S. Constitution and AS 33.30.193.<sup>572</sup> Inmate classification issues also survived the State's challenge of Cleary. Alaska inmates retain the constitutional right to rehabilitative programs and the statutory right to be held in the least restrictive housing available.<sup>573</sup>

Nonetheless, the question still remains: If a court were to find a state or Federal statute violation, what remedy would be available to prisoners? Would the remedy be one that already exists in the Cleary FSA? Or would the court impose a remedy based on the APLRA or PLRA, both of which require the narrowest order necessary to correct the violation?<sup>574</sup> Only time will tell. But some of the provisions in the FSA, like the due process requirements and the institutional population capacities, could be available remedies. Of course, the state would likely argue that the APLRA requires the narrowest remedy still considered to be constitutional, and that the remedies available under Cleary are not the narrowest possible. But, the state agreed to those remedies in the settlement agreement, so contesting them puts the state in the awkward position of arguing that it made a bad deal. The state was not obligated to provide the remedies it did in Cleary. For the most part, the remedies available under Cleary are probably the most minimal, as anything less would not likely alleviate the alleged violation.

## **B. APLRA Provisions**

### **1. Required Findings**

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<sup>569</sup> Id.

<sup>570</sup> The court also held that the APLRA does not violate state or federal due process or equal protection and noted that inmates do not have a property interest in a consent decree.

<sup>571</sup> Cleary v. Smith, Case No. 3AN-81-5274 CI (Alaska Sup. Ct. July 3, 2001).

<sup>572</sup> Even though Cleary applies only to violations of state and federal rights, many claims can be couched in terms of a state or federal right, if pled carefully. And if the court determines that there was no violation of a state or federal right, the case would not have succeeded anyway.

<sup>573</sup> See infra Part III.B.

<sup>574</sup> AS 09.19.200(a)(2)-(3).

A court may not order prospective relief in a civil action with respect to correctional facility conditions unless the court finds:

1. the plaintiff has proven a violation of a state or federal right;
2. the prospective relief is narrowly drawn and extends no further than is necessary to correct the violation of the right;
3. the prospective relief is the least intrusive means necessary to correct the violation of the right; and
4. the prisoner has exhausted all administrative remedies available to the prisoner before filing the civil action.<sup>575</sup>

In making these findings, the court must weigh any adverse effects on public safety or the criminal justice system caused by the prospective relief.<sup>576</sup>

“When a court finds multiple violations of a state or federal right, when multiple remedies are ordered, or when the prospective relief applies to multiple facilities, the findings required above shall be made as to each violation, remedy, and facility,” respectively.<sup>577</sup>

## **2. Preliminary Injunctive Relief**

A court may enter preliminary injunctive relief only upon finding that the requested relief (1) is narrowly drawn and extends no further than is necessary to correct the harm, and (2) is the least intrusive means necessary to correct that harm.<sup>578</sup> Preliminary injunctive relief shall automatically expire 90 days after it is ordered unless the court orders final relief within that period.<sup>579</sup>

## **3. Class Actions**

In class-action lawsuits challenging correctional facility conditions, prospective relief applicable to the class may only be ordered after the court makes the findings required under 09.10.200(c), and finds that the violation of a state or federal right is applicable to the entire class.<sup>580</sup> A class action will be terminated upon the motion of the defendant if these requirements are not met.<sup>581</sup>

## **4. Termination of Prospective Relief**

Prospective relief ordered in a civil trial with respect to correctional facility conditions, including relief ordered under a consent decree, shall be terminated upon the motion of the defendant

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<sup>575</sup> AS 09.19.200(a). A court may order prospective relief as provided in a consent decree without complying with these requirements if the relief does not continue for more than two years. AS 09.19.200(e). Furthermore, parties may enter into private settlement agreements that do not comply with the limitations on relief imposed by AS 09.10.200(a), as long as the terms of the agreement are not subject to court enforcement. AS 09.19.200(e).

<sup>576</sup> AS 09.19.200(a).

<sup>577</sup> Id.

<sup>578</sup> AS 09.19.200(b).

<sup>579</sup> Id.

<sup>580</sup> AS 09.19.200(c).

<sup>581</sup> Id.

unless the court finds that there is a current violation of a state or federal right and makes the findings required under 09.10.200(a).<sup>582</sup> Prospective relief must be modified by motion whenever the findings required above no longer apply to one or more provisions of the prospective relief then in effect.<sup>583</sup>

## **5. Automatic Stay**

The court must promptly rule on a motion to modify or terminate prospective relief.<sup>584</sup> A motion to modify or terminate prospective relief stays the order for prospective relief beginning on the 90th day after the motion is filed, and the stay ends on the date the court enters a final order ruling on the motion.<sup>585</sup> The court may postpone an automatic stay for not more than 30 days for good cause.<sup>586</sup>

## **6. Filing Fees**

A prisoner may not commence litigation against the state until the prisoner has paid full filing fees to the court.<sup>587</sup> However, the court may exempt a prisoner from paying part of the fees if the court finds exceptional circumstances prevent the prisoner from paying the full fees.<sup>588</sup> Imprisonment and indigence do not constitute exceptional circumstances if the prisoner has available income or resources that can be applied to the filing fee.<sup>589</sup> The court will determine the amount of the exemption and set a fee to be paid by the prisoner.<sup>590</sup> In setting this fee, the court shall require the prisoner to pay a filing fee equal to 20 percent of the larger of the average monthly deposits made to the prisoner's account or the average balance of the account for the preceding six months.<sup>591</sup>

## **C. Conclusion**

The APLRA imposes several procedural hurdles on inmates attempting to file a civil action with respect to correctional facility conditions. The Act also limits the prospective relief available in such lawsuits. However, the APLRA is not as restrictive as the Federal Prison Litigation Reform Act. For instance, the APLRA does not have a "three strikes, you're out" provision for prisoners whose claims are found to be frivolous, malicious, or without merit. The APLRA does mirror the PLRA with respect to payment of filing fees, and it too requires that a prisoner exhaust all administrative remedies prior to filing a lawsuit. The APLRA also established standards for terminating prospective relief in civil actions challenging conditions at prison facilities, including prospective relief ordered under a consent decree (i.e., it restricts a prisoner's ability to sue for prospective relief under the Cleary FSA). The APLRA mandates that a court may not

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<sup>582</sup> AS 09.19.200(c).

<sup>583</sup> Id.

<sup>584</sup> AS 09.19.200(f).

<sup>585</sup> Id.

<sup>586</sup> Id.

<sup>587</sup> AS 09.19.010(a) (2009). Note: unless otherwise stated, all provisions of AS 09.19.010 are current as of 2010.

<sup>588</sup> AS 09.19.010(c).

<sup>589</sup> Id.

<sup>590</sup> AS 09.19.010(d).

<sup>591</sup> Id.

order prospective relief in a civil action with respect to correctional facility conditions unless the court finds that (1) the plaintiff has proven a violation of a state or federal right, (2) the prospective relief is narrowly drawn and extends no further than is necessary to correct the violation of the right, and (3) the prospective relief is the least intrusive means necessary to correct the violation of the right.

The passage of the APLRA raised questions about the Cleary FSA. The APLRA severely limited the consent decree set out in Cleary. The APLRA sought to terminate prospective relief ordered under a consent decree, but the Alaska Superior Court ruled that the APLRA should be construed narrowly so as to only affect the prospective relief due parties under the consent decree and not to terminate the consent decree itself. In that respect, the Cleary FSA survives, but prospective relief is only available if an inmate can establish an ongoing violation of a state or federal right. Thus, there is still some utility to the Cleary FSA because an inmate can bring an enforcement action against the state under Cleary and avoid paying any statutorily required filing fees. Cleary, then, has a pragmatic value — the first step for inmate litigation should always be to file as a compliance motion under Cleary. In addition there are some remedies available under Cleary that could be construed as the most minimally intrusive ways to correct a violation and might, therefore, be enforceable.

#### **IV. Class Action Litigation under the PLRA and APLRA**

Generally speaking, a federal lawsuit filed to enforce any of the rights discussed in this guide would have to satisfy the requirements of the PLRA and a suit brought in state court would have to meet the requirements of the APLRA. The restrictions placed on individual litigation by these statutes, including exhaustion of administrative remedies, apply to class action litigation as well. However, under the PLRA, only the named plaintiffs must exhaust their administrative remedies.<sup>592</sup> Various holdings to that effect are consistent with general practice in class actions, which the PLRA does not purport to displace.<sup>593</sup> The PLRA does not impact the make-up of class certification in any way, leaving courts to apply “existing law governing class certification.”<sup>594</sup>

Additionally, it should be sufficient for named prisoner plaintiffs to exhaust with respect to their individual complaints and/or experiences (e.g., “I was denied heart medication”) rather than to structural or systemic issues (inadequate or unlawful policies, deficient staff training or supervision) that are often raised in injunctive class litigation.<sup>595</sup> In other words, the prisoner does not have to exhaust the grievance system with respect to a particular remedial request but is only obliged to put his or her complaint before prison authorities for resolution prior to filing a lawsuit.<sup>596</sup> It is enough for prisoners to allege in their grievances what happened to them. It is then up to the authorities to determine what remedies are available, either generally or in a particular case.

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<sup>592</sup> See supra note 550.

<sup>593</sup> Boston, John, EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER THE PLRA (2001) at 49 (citing Anderson v. Garner, 22 F.Supp.2d 1379, 1383 (N.D.Ga 1997)).

<sup>594</sup> Id.

<sup>595</sup> Id. at 50.

<sup>596</sup> Booth v. Churner, 532 U.S. 731, 735 (2001).

Under the APLRA, in class action lawsuits challenging correctional facility conditions, prospective relief applicable to the class may only be ordered after the court makes the required findings under the statute. These findings include: the plaintiff has proven a violation of a state or federal right; the prospective relief is narrowly drawn and extends no further than is necessary to correct the violation of the right; the prospective relief is the least intrusive means necessary to correct the violation of the right; and, the prisoner has exhausted all administrative remedies available to the prisoner before filing the civil action. The court must then determine whether the alleged violation of a state or federal right is applicable to the entire class. This provision is not much different from that already required for class actions under the Alaska Rules of Civil Procedure.<sup>597</sup> Therefore, it stands to reason that, like the PLRA class action requirements discussed above, only the named inmates would have to exhaust all administrative remedies and demonstrate that there was a violation of a state or federal right.

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<sup>597</sup> ALASKA R. CIV. P. 23(a) (2009).

### **PART III: ALASKA DEPARTMENT OF CORRECTIONS POLICIES AND PROCEDURES**

The Department of Corrections' policies and procedures are substantively derived from the provisions in the Cleary FSA. The Department of Corrections (DOC) has conceded that the Cleary FSA has become the Department's standard operating procedure during the past decade. In that respect, the regulations established by the DOC pass constitutional muster by providing for protection of the health and safety of inmates and allowing for opportunities for prisoners to exercise their civil rights and civil liberties.

#### **A. Medical and Health Care Services**

##### **1. Access to Health Care Services**

All of the Alaska administered prisons are on the same health care system. According to DOC, all sentenced and unsentenced prisoners shall have access to medical, dental, and mental health care services comparable in quality to those available to the general public.<sup>598</sup> This includes prisoners housed in both state and private facilities. Prisoners in punitive and administrative segregation must also receive the same access to health care as that provided to prisoner in the general population.<sup>599</sup> DOC will also ensure that special health care services are made available to prisoners.<sup>600</sup>

Providing health care comparable to that of the "general public" is noteworthy because it establishes a high baseline for the standard of care provided by DOC. However, DOC will still employ the most cost-effective health care treatment to meet the prisoner's needs for essential and special health care services.<sup>601</sup> While the same *quality* of care will be provided to both sentenced and unsentenced inmates, the *level* of health care delivered to a particular inmate will be based on a number of factors, including the "estimated date of release."<sup>602</sup> This distinction is important because there will be a number of situations where the Department makes a decision not to provide a specific service. The reason may be due to an inability to follow-up fully on a particular intervention or treatment or to the non-urgent nature of the request.<sup>603</sup> Examples of such situations include nonessential dental care, orthopedic services, small hernia repairs, and certain therapies that require an extensive evaluation prior to starting treatment (i.e. treatment for Hepatitis C).<sup>604</sup> The Prisoner Health Plan states that, "[i]n instances where delay of several months has no significant effect on functioning or long-term health and discharge is imminent or

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<sup>598</sup> DOC Policy # 807.02, Access to Health Care Services.

<sup>599</sup> Id. In some instances, this will require the Department to develop procedures for providing access to health care to high-risk inmates.

<sup>600</sup> Id. "Special health care services" include services for the prisoner's well being beyond those services received in everyday general practice. These services include: health education materials; hearing services (the Department will provide hearing aids and other hearing prosthetics for prisoners under DOC Policy # 807.15, Health Care Prosthetics); diagnostics (health care screening, testing, diagnoses, and tests); maternity care; (including pre-natal, natal, and post-natal care); treatment for contagious and communicable diseases; and detoxification and withdrawal programs.

<sup>601</sup> DOC Policy # 807.02, Access to Health Care Services.

<sup>602</sup> DOC Policy # 807.02 Attachment A: Prisoner Health Plan, § II, Sentenced and Unsented Status.

<sup>603</sup> Id.

<sup>604</sup> Id.

an inmate is unsentenced, care *may* not be approved.”<sup>605</sup>

However, what this really means is that care *will* not be approved in these circumstances. The reason for denying health care may be fiscal-related. While it is a violation of the Constitution to deny medical care for reasons of expense,<sup>606</sup> if the care needed is not for a serious problem, does not cause harm, and is not the result of deliberate indifference, such a denial will not run afoul of the Eighth Amendment.<sup>607</sup> DOC is cognizant of this and makes a point to state, “Regardless of status[,] all essential and medically necessary care will be approved and delivered in a timely manner.”<sup>608</sup>

When a prisoner is admitted to an institution, he or she receives an orientation that must include instructions for medical, dental, and psychiatric health care.<sup>609</sup> The Prisoner Health Plan also describes access to health care,<sup>610</sup> while the Prisoner Handbook, which is to be given to all prisoners, addresses access to health care and counseling services.<sup>611</sup> Upon admission, an inmate can fill out a form if he or she is in need of any kind of medication to be administered. Ongoing or chronic care medication is checked to ensure that it is legitimate. Prisoners are routinely given an exam within 14 days of admittance. But, they can be seen earlier than 14 days if the admitting nurse thinks it is necessary.

There is either a physician’s assistant or nurse practitioner in charge of each facility. The number of on-duty medical staff ranges from two to ten employees depending on the facility. One staff member is responsible for dispensing medication. Doctors visit on a routine or as-needed basis. If health care staff other than a physician, dentist, psychiatrist, psychologist, optometrist, osteopath, podiatrist, physician’s assistant, or advanced nurse practitioner shall perform health care treatment, it will be per written orders of licensed practitioners or per nursing protocols as approved by the Health Care Administrator and Medical Director of Inmate Health.

## **2. Medical and Surgical Services Provided**

Medical and surgical services are provided to inmates when medically necessary as determined under DOC guidelines. These services include, but are not limited to:

- specialty consultations including diagnostics, treatment or second opinions, provided on-site in the clinic or in-patient infirmary or off-site at a community provider office, health care facility, or hospital
- emergency room services
- surgical and anesthesiology services
- vision examinations for prescribing corrective lenses

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<sup>605</sup> Id. (emphasis added).

<sup>606</sup> Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392-93 (1992) (“Financial constraints may not be used to justify the creation or perpetuation of constitutional violations”).

<sup>607</sup> This is troubling because DOC basically implies that it will not provide medical care if the inmate will be released soon, unless there is something very wrong with the inmate and DOC absolutely has to provide care.

<sup>608</sup> DOC Policy # 807.02 Attachment A: Prisoner Health Plan, § II, Sentenced and Unsentenced Status.

<sup>609</sup> DOC Policy # 811.08, Prisoner Orientation

<sup>610</sup> DOC Policy # 807.02, Attachment A.

<sup>611</sup> DOC Policy # 809.01.



- dispensing and fitting eyeglasses
- eyeglass frames and lenses
- physical therapy
- radiology
- MRI services when prior authorization is obtained
- wound care, casts and related supplies
- audiology services and hearing aids
- speech-language pathology services
- blood products and related services
- radiation therapy and chemotherapy
- pharmacy services, including both prescriptive and over-the-counter medications
- mental health and psychiatric services
- oral health and dental care.

Covered inpatient hospital services include:

- routine daily hospital services
- drugs prescribed by the attending physician
- central service supplies
- operating room services and surgical supplies
- anesthesia and recovery room services
- normal and cesarean delivery services and supplies
- X-ray, laboratory, and physical therapy
- respiration therapy
- electroencephalography and electrocardiography.

### **3. Alaska Department of Corrections Medical Care Priority Levels<sup>612</sup>**

Medical care and treatment are prioritized into different levels. The level of health care services provided by DOC will be consistent with the standards for such services in the community. This means appropriately credentialed personnel in a professional setting will conduct health care procedures in a clinically appropriate manner.

DOC will provide care that is “medically mandatory,” “presently medically necessary,” and “medically acceptable, *but not* medically necessary.” DOC will not provide care for conditions deemed of “limited medical value.” The following guidelines are used by the DOC to determine whether treatment will be provided to an inmate:

#### **a. Levels of Therapeutic Care**

##### **Level 1: Medically Mandatory**

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<sup>612</sup> These guidelines are explained in the Prisoner Health Plan, DOC Policy # 807.02, Attachment A: Prisoner Health Plan, § III(A)-(B). The explanations of the guidelines in this section were copied directly from the Prisoner Health Plan, and are therefore not individually cited. Citations to any other sources will be noted.

“Medically mandatory care” is care that is essential to life and health without which rapid deterioration may occur and in which medical or surgical intervention makes a significant difference. Examples include:

- acute problems, potentially fatal, where treatment prevents death and allows full recovery, such as appendectomy for appendicitis or repair of a deep open wound in the neck
- acute problems, potentially fatal, where treatment prevents death, but does not necessarily allow for full recovery, such as burn treatment and treatment of severe head injuries
- maternity care, such as onset of labor and delivery, as well as treatment for obstetrical emergencies

### **Level 2: Presently Medically Necessary**

“Presently medically necessary” treatment is care without which the inmate’s well-being could not be maintained without significant risk of either further serious deterioration of the condition or without significant pain or discomfort. Examples include:

- chronic, usually fatal conditions where treatment improves life span and quality of life, such as medical management of insulin dependent diabetes mellitus, surgical treatment for treatable cancer of the uterus, and medical management of disease processes equivalent to asthma and hypertension
- immunizations
- comfort care such as pain management and hospice-type care for the end stages of diseases such as cancer and AIDS
- proven effective preventative care for adults, such as preventative dental care, mammograms, and pap smear
- acute but non-fatal conditions where treatment causes a return to previous state of health, such as fillings for dental cavities and medical treatment of various infectious disorders
- acute non-fatal conditions where treatment allows the best approximation of return to previous health, such as reduction of dislocated elbow and repair of corneal laceration.<sup>613</sup>

### **Level 3: Medically Acceptable *but not* Medically Necessary**

“Medically acceptable *but not* medically necessary” refers to care for non-fatal conditions where treatment *may* improve quality of life for the patient. Examples include:

- routine hernia repair
- treatment of non-cancerous skin lesions
- corneal transplant for cataract
- hip replacement

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<sup>613</sup> Such treatments must have demonstrated “medical efficacy” reflecting a high degree of likelihood of a successful outcome.

Off-site procedures and therapies for Level 3 chronic diseases, when deemed appropriate for treatment by the institutional health practitioner, will be referred to the Medical Director for clinical review and approval.

#### **Level 4: Limited Medical Value**

“Limited medical value” refers to care that is available to certain individuals but significantly unlikely to be cost-effective or to produce long-term gain. This includes treatment of minor conditions where treatment merely speeds recovery, gives little improvement in quality of life, offers minimal reduction of symptoms, or is exclusively for the convenience of the individual. Examples include:

- tattoo removal
- elective circumcision
- minor nasal reconstruction (*e.g.*, correction of a deviated septum)

Care and treatment for conditions of this sort will not be authorized.

#### **b. Exceptions**

There will always be occasions when the level of care of a certain disorder will be unclear or when it is not appropriate to apply the prescribed levels to an individual patient. For instance, there may be occasions when it is not appropriate to provide care for a Level 2 diagnosis, or it may seem appropriate to provide care for a Level 4 case. DOC is aware of this, and any individual case or proposed therapy can be reviewed for appropriateness, a second opinion, denial of coverage, etc., by submitting a request to the Medical Director.

### **4. Non-emergency Health Care**

All prisoners, including those on furlough and in restitution centers, requiring non-emergency health care can attend “sick call” for medical attention or may complete a “Request for Medical Care” form for non-emergencies.<sup>614</sup> “Sick call” is

[a]n opportunity for the inmate to receive health care services by initiating a visit with a health care provider during a designated time of the day. Health care requests are evaluated and treated in a clinical setting. This is the system through which each inmate reports for and receives appropriate health care services for non-emergency illness or injury.<sup>615</sup>

Sick call takes place at least one day per week in facilities of fewer than 50 prisoners, at least three days per week in facilities of 50 to 200 prisoners, and at least five days per week in

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<sup>614</sup> DOC Policy # 807.11, Sick Call.

<sup>615</sup> DOC Policy # 807.2, Attachment A, § VI.

facilities of over 200 prisoners.<sup>616</sup> In addition, a health care staff member will visit segregation units at least daily, during routine rounds or while dispensing medication.<sup>617</sup>

## **5. Emergency Health Care**

Prisoners who need emergency health care should immediately notify the staff. Staff will then call on-site medical staff and initiate first-aid. In the case of extreme emergency (i.e., threat to life or limb) that cannot wait for medical consultation, the shift supervisor will contact emergency medical services to arrange for transport of the prisoner.<sup>618</sup> In an emergency situation requiring surgery or other urgent care, the staff on duty will call 911 and transport the prisoner to the hospital.

## **6. Essential Health Care**

A prisoner has the right to receive essential health care services, including dental, psychological, psychiatric, or medical services, when a health care provider, with reasonable medical certainty and exercising ordinary skill and care at the time of observation concludes that:

- a. the prisoner's symptoms indicate a serious disease or injury;
- b. treatment could cure or substantially alleviate the disease or injury; and
- c. the potential for harm if treatment is delayed or denied could be substantial, or
- d. services are needed to alleviate pain and suffering, including: procedures necessary to aid in increasing the level of functioning throughout the prisoner's sentence, such as prosthetic devices,; and health care needed to enable a prisoner to participate in, or benefit from, rehabilitative services.<sup>619</sup>

## **7. Unusual or Costly Procedures**

The commissioner must approve any unusual or costly health care or dental procedures that go beyond essential care. The commissioner has the discretion, after consulting with health care authorities, to disapprove health care or dental procedures for ailments that do not seriously threaten the prisoner's health or well being while in prison.

## **8. Elective Health Care**

DOC need not provide prisoners with elective health care. Elective procedures are those that are not necessary for the maintenance of basic medical, mental, and oral health.

## **9. Prisoner Transfer and Medical Care**

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<sup>616</sup> DOC Policy # 807.11, Sick Call.

<sup>617</sup> DOC Policy # 807.02(E), Medical and Health Care Services.

<sup>618</sup> DOC Policy # 807.2, Attachment A.

<sup>619</sup> DOC Policy # 807.15, Health Care Prosthetics. See also Rust v. State, 582 P.2d 134, *modified on other grounds*, 584 P.2d 38 (1978).

When a prisoner is transferred from one facility to another, his medical record and medication theoretically goes with him. The transportation officer should administer medication during the transfer. This is how it *should* happen; but, it is possible that the process could break down, and it often does. The inmate should see the medical staff of the new institution the morning after arrival. The inmate is now a patient of the new medical staff, who can continue the prior care or make another recommendation.

## **10. Treatment Plan**

A physician, dentist, or other health care practitioner shall develop a written treatment plan for each prisoner who needs special health care.<sup>620</sup> The plan must include a statement of short and long term goals, specific courses of therapy, referrals to supportive and rehabilitative services when needed, and recommended travel arrangements if the prisoner may need to be transferred in the future.<sup>621</sup>

## **11. Health Care Expenses**

### **a. No-Charge Treatment**

There is no charge for access to sick call, unless the visit results in a specific health procedure for which there is a charge. All prisoners, including those on furlough and in restitution centers, may attend.<sup>622</sup> No charge will be assessed for testing for pregnancy, HIV, AIDS, tuberculosis, sexually transmitted diseases, or other communicable diseases. Also, no charge will be assessed for injuries sustained from work performed for DOC or from an assault or violation of facility regulations or state law by another prisoner. Nor will any charge be assessed for services initiated by health care providers; for treatment for communicable diseases or pregnancy; or for treatment of chronic diseases or conditions where the potential for harm to the prisoner is substantial if treatment is delayed. Additionally, no prisoner is financially responsible for the following health care services: admission health appraisals and physical exams; education services provided by the health care staff; medication line visits; testing and treatment of staph infections (when symptoms exist); and requests for over-the-counter drugs from health care staff.<sup>623</sup>

### **b. Co-Payment for Medical and Dental Services**

#### **1. Co-Payment Charges for Health Care Visits**

Prisoners will be charged a co-payment fee of \$4.00 for each health care visit, except as set out above.<sup>624</sup> A prisoner with a chronic condition requiring ongoing treatment will be charged for the initial visit but not for follow-up visits for the same condition, even if the prisoner is transferred to another facility. However, if the prisoner is with the Department for more than one

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<sup>620</sup> DOC Policy #807.2, Access to Medical Care Services.

<sup>621</sup> Id.

<sup>622</sup> DOC Policy # 807.07, Prisoner Responsibility for Health Care.

<sup>623</sup> Id.

<sup>624</sup> Id.

year, the prisoner will be charged a co-payment fee of \$4.00 once each year for ongoing treatment. If, during a routine follow-up treatment for a chronic condition, a new health problem is identified, a co-payment fee of \$4.00 will be charged for the treatment of the new condition.

## **2. Co-Payment Charges for Other Services**

Inmates will be billed \$4.00 for any number of initial prescriptions ordered at the same time.<sup>625</sup> Four dollars will be billed regardless of the number of changes to or renewals of prescriptions ordered at one time.

The use of medical equipment available in a facility, such as crutches or Neoprene braces, will result in a charge of \$4.00 per use. The use of medical equipment not available in the facility will result in a charge of \$20.00.

Health care services provided for injuries incurred in sports activities will result in a charge of \$4.00 if a health care provider recommended against participation.

### **c. Inability to Pay**

An inmate's inability to pay will not be used to restrict his access to health care services or necessary procedures or prescriptions.<sup>626</sup> An inmate who is unable to pay will be billed and his or her account will be accessed when funds become available.<sup>627</sup> The Department may seek to have medical expenses provided or paid for by third-party coverage when practical and if the prisoner is eligible (*e.g.*, Veteran's Administration, Alaska Native Health Services Hospital, union health plan coverage, Medicare or Medicaid, major health care insurance coverage, or public assistance benefits).<sup>628</sup>

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<sup>625</sup> Id.

<sup>626</sup> Id.

<sup>627</sup> DOC Policy # 807.07.

<sup>628</sup> AS 33.30.028, Responsibility For Costs of Medical Care, provides:

(a) Notwithstanding any other provision of law, the liability for payment of the costs of medical, psychological, and psychiatric care provided or made available to a prisoner committed to the custody of the commissioner is, subject to (b) of this section, the responsibility of the prisoner and the:

(1) prisoner's insurer if the prisoner is insured under existing individual health insurance, group health insurance, or any prepaid medical coverage;

(2) Department of Health and Social Services if the prisoner is eligible for assistance under AS 47.07 or AS 47.25.120 - 47.25.300;

(3) United States Department of Veterans Affairs if the prisoner is eligible for veterans' benefits that entitle the prisoner to reimbursement for the medical care or medical services;

(4) United States Public Health Service, the Indian Health Service, or any affiliated group or agency if the prisoner is a Native American and is entitled to medical care from those agencies or groups; and

(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay.

## B. Classification

### 1. Overview

The Department of Corrections has established procedures in order to appropriately assign a prisoner to facility placement, custody status, and work and rehabilitative programs.<sup>629</sup> Assignment to the appropriate security level facility and custody status is a balance between placing a prisoner in the least restrictive setting and maintaining the security and order of the facility, the special needs of the prisoner, and other available resources of the department.<sup>630</sup>

The security level of a facility refers to the correctional institutions themselves. It is the degree of security assigned to an institution based on its constraint and security features and staffing ratio.<sup>631</sup> The security level of a correctional facility will be maximum, medium, minimum, or multi-level, depending on the features available at each facility.<sup>632</sup> A classification committee shall assign a custody level or custody status to a prisoner based on the degree of staff supervision necessary to monitor and control the prisoner's behavior.<sup>633</sup>

The classification system subdivides a prisoner population into groups based on matrix scoring and individual prisoner program needs. Matrix scoring is a point system used by the DOC that assigns a numeric value to specific factors such as the type of offense the prisoner was convicted of and the inmate's mental state and behavior while in custody. The total points assigned to an inmate will dictate the security and custody levels to which the inmate is assigned.<sup>634</sup>

The higher an inmate's security level score, the more of a security risk he or she is considered. For example, a prisoner detained on a Class B felony would receive 5 points, while a Class A felony scores 7 points. In determining custody status scoring, the higher an inmate's score, the more likely custody level should be decreased. For instance, an inmate with current drug or alcohol use would get 2 points, an inmate with past usage history would get 3 points, and an inmate with no history of drug or alcohol use would receive 4 points. Similarly, a prisoner with

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<sup>629</sup> 22 AAC 05.200.

<sup>630</sup> Id. Classification includes:

1. assigning prisoners to the proper security and custody levels;
2. furthering the Department's goals for humane treatment, public safety and effective correctional administration;
3. providing information for prisoner population management and planning;
4. distributing correctional resources to meet the Department's and the prisoners needs; and
5. identifying prisoner programs and services for budgetary purposes.

DOC Policy # 701.2, Classification Mission Statement.

<sup>631</sup> 22 AAC 05.271.

<sup>632</sup> 22 AAC 05.276.

<sup>633</sup> 22 AAC 05.271.

<sup>634</sup> The factors the department considers for determining an inmate's security score are: type of detainer (misdemeanor, Class A, B, C, or unclassified felony); the severity of the current offense (same); time left until release date; type of prior conviction; history of escapes or attempted escapes; and history of violent behavior. The factors the department considers for determining an inmate's custody level score are: percent of time served; involvement with drugs and/or alcohol; mental/psychological stability; type of most serious disciplinary report; frequency of disciplinary reports; level of responsibility prisoner has demonstrated; and family/community ties. DOC Form # 735.03a, Classification Form.

5 or more disciplinary reports filed against him would get no points, while an inmate with no reports receives 3 points.

Classification is one of the most important issues to examine within the DOC. An inmate's classification status will determine in what facility and under what level of custody the inmate is to be guarded. This, in turn, determines whether the inmate will be in segregation or in the general population and what opportunities for employment and programming are available to that inmate.

The DOC has implemented several procedural safeguards with respect to classification decisions. First, within 30 days of the sentenced prisoner's arrival at the designated institution or within 60 days after sentencing and commitment (whichever occurs first), a sentenced prisoner will be given a hearing before a classification committee to determine or update the prisoner's security and custody status and program needs.<sup>635</sup> This is called "Initial Classification." The result of the initial classification, or any classification decision, is a designation. For instance, a prisoner could be designated "maximum custody" or "minimum custody." The initial classification decision is *not* subject to appeal.

An unsentenced prisoner--that is, one who is awaiting trial, sentencing, or probation or parole revocation--must be classified by the superintendent within 15 working days after admission into a facility with regard to security and custody status and program involvement.<sup>636</sup>

A pretrial detainee incarcerated for ten days who is not in punitive segregation<sup>637</sup> is normally eligible to participate in educational programs, religious services, and counseling.<sup>638</sup> The pretrial detainee's custody level and housing assignment are relevant in determining the level of participation.<sup>639</sup> Within 120 days after the superintendent's decision, and every 120 days after

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<sup>635</sup> 22 AAC 05.216. At a hearing before a classification committee, the chairperson shall ensure that the prisoner understands the purpose of the hearing and all of the procedural opportunities afforded the prisoner. 22 AAC 05.230. A member of the committee, the prisoner's facility probation officer, or staff advocate (if the prisoner is being assisted by an advocate) may propose classification action and shall describe the aspects of the prisoner's record or other rationale that form the basis of the proposal. Id.

The prisoner has the following procedural opportunities: (a) a reasonable opportunity to challenge the factual basis or rationale advanced in support of the proposed classification action; and (b) the right to appear and the opportunity to present evidence and witnesses in the prisoner's own behalf and to confront and cross examine witnesses, subject to limitation by the chairperson based upon repetition, relevancy, risk of reprisal, or security of the facility; if a witness is examined out of the presence of the prisoner, the chairperson shall inform the prisoner of the substance of the testimony and specify on the record the reasons for any exclusion. Id.

A prisoner is entitled to the active assistance of an advocate in investigating the facts and coordinating the prisoner's presentation at a classification hearing if the purpose of the hearing is consideration of continued assignment to administrative segregation, or termination of a furlough. Once selected, the advocate shall meet with the prisoner at least 36 hours before the scheduled hearing to assist the prisoner. 22 AAC 05.246. If requested by the prisoner, the advocate shall assist the prisoner in interviewing and preparing examination of witnesses for the hearing, and advise the prisoner how best to proceed on the possible classification actions for which the advocate was selected. Id. If necessary, the advocate must have the assistance of an interpreter. Id.

<sup>636</sup> 22 AAC 05.226.

<sup>637</sup> Segregation is solitary confinement in the segregation housing unit. Segregation can be either administrative or punitive. See *infra* Part III.C.

<sup>638</sup> 22 AAC 05.226.

<sup>639</sup> Id.



that, a prisoner awaiting trial, sentencing, or probation or parole revocation must be given a hearing before a classification committee to review the prisoner's security and custody status and program involvement.<sup>640</sup>

After an initial classification hearing, a prisoner must be given a classification review hearing before a classification committee at (1) approximate one-year intervals, if the prisoner has two or more years remaining to a firm release date, or (2) approximate six-month intervals, if the prisoner has less than two years remaining to a firm release date or is classified community or minimum custody.<sup>641</sup> The procedures for a classification review hearing are the same as those for a classification hearing.

In addition to initial classification and scheduled classification review hearings, a hearing before a classification committee, at which the prisoner has a right to be present, is required if the following classification actions are possible:

- (1) transfer to a facility outside of Alaska;
- (2) transfer to a mental health or psychiatric facility;
- (3) administrative transfer;
- (4) continued placement in administrative segregation;
- (5) termination of a furlough; and
- (6) an increase in custody status.<sup>642</sup>

Initial classification decisions may not be appealed, but prisoners can appeal subsequent classification hearings and classification reviews.<sup>643</sup> A classification committee action that does not require review by the superintendent may be appealed only to the superintendent unless the superintendent has exercised discretionary authority to modify the classification action. A classification action by a superintendent may be appealed only to the regional director, except for a denial of or removal from a furlough, which may be appealed to the deputy commissioner if the regional director denies the appeal.

If the purpose of the classification hearing or review was the consideration of a transfer of a prisoner, the result may be appealed only to the deputy commissioner. The appeal must be made within five working days after the prisoner receives notice of the decision or after the transfer, whichever occurs first.

All other appeals must be submitted by a prisoner within five working days after receiving notice of the decision through a facility staff member designated by the superintendent for the purpose, or, if a valid reason for delay is stated by a prisoner, this time limit may be extended. With the exception of a transfer to a facility outside Alaska, action on a classification decision can occur pending an appeal.

Once an appeal has been filed and received, a response to the prisoner must be made as follows:

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<sup>640</sup> Id.

<sup>641</sup> 22 AAC 05.221.

<sup>642</sup> 22 AAC 05.241.

<sup>643</sup> 22 AAC 05.260.

- (1) appeal to superintendent: response within five working days;
- (2) appeal to regional director: response within 15 working days; and
- (3) appeal to deputy commissioner: response within 15 working days.

The appropriate official's failure to respond within the time limits set out in this section must be considered a denial of the appeal. However, a late response granting an appeal is valid.

Some prisoners are classified for transfer to a contract facility outside Alaska. Such transfer is permissible, so long as the out-of-state facility is not operated by the Federal Bureau of Prisons, the prisoner is provided a classification hearing, and a determination is made that the prisoner's rehabilitation or treatment would not be substantially impaired by the transfer.<sup>644</sup> In order to permit adequate communication with counsel, a prisoner with a pending criminal appeal will ordinarily not be transferred under this section to a contract facility outside of Alaska until at least 70 days after sentencing.<sup>645</sup>

A prisoner housed in a facility outside Alaska is entitled to a hearing before a classification review team at approximate one-year intervals.<sup>646</sup> The prisoner's continued placement outside Alaska will be considered at the hearing. The prisoner must be provided a copy of the decision and may appeal the decision to the deputy commissioner within ten working days after receiving notice of the decision.

A prisoner incarcerated in a non-federal contract facility outside of Alaska may be returned to Alaska at the discretion of central classification, if central classification determines that out-of-state placement has substantially impaired the rehabilitation or treatment of the prisoner.<sup>647</sup> A prisoner whose request to return to Alaska is denied may appeal the decision to the deputy commissioner within ten working days after receiving notice of the decision.

The classification system is described in more detail below.

## **2. Definitions**

As used in this section, the following definitions shall apply:<sup>648</sup>

- a. **Administrative Transfer:** The transfer of a prisoner between facilities for any purpose related to an emergency or potentially hazardous situation or to facilitate an administrative action that can be more efficiently accomplished at another facility, such as:
  1. parole hearing;
  2. court action;
  3. medical or mental health treatment;

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<sup>644</sup> 22 AAC 05.252.

<sup>645</sup> Id.

<sup>646</sup> 22 AAC 05.254.

<sup>647</sup> 22 AAC 05.256(c).

<sup>648</sup> The definitions in this section were copied directly from DOC Policies and Procedures, Chapter 700, Classification. The sections are not cited individually here.

- 4. military tribunal;
  - 5. family emergency; or
  - 6. population management.
- b. Appeal: A process by which a prisoner may have a classification action reviewed at an administrative level higher than that at which the original action was taken.
  - c. Category: Any of the numbered classes by which the particular reasons and needs for central monitoring of a case are specified.
  - d. Central Monitoring Case: A prisoner identified under provisions of this policy who presents special needs for management while incarcerated.
  - e. Central Monitoring System: The set of procedures by which prisoners with special management needs are identified and monitored.
  - f. Classification Committee/Hearing Officer: A group of individuals (or an individual) convened in order to review and assess a prisoner's security, custody, and program needs and make a classification recommendation as regards the prisoner.
  - g. Classification Packet: Prisoner case record documents and information forwarded to Central Classification for effecting a classification action, which contains, if applicable, the following:
    - final judgment and commitment, presentence investigation report, recent psychiatric/psychological reports; time accounting records, security designation and classification forms; health care record extract; the taped proceedings of a classification action recommending or resulting in a transfer to an institution or facility outside of Alaska; and related information.
  - h. Confirmation: Process by which information concerning proposed Central Monitoring Cases is reviewed at the institutional and Central Office levels and the prisoner entered into the Central Monitoring System.
  - i. Contract Misdemeanant Housing (CMH): A correctional facility provided through contract agreement for the confinement of prisoners convicted solely of misdemeanor crime(s); quasi-correctional facility providing a degree of security, custody, care, and discipline for misdemeanor prisoners similar to that required by the policies and regulations of this Department, consistent with the security and custody status of the prisoners who have been placed in the CMH facility.
  - j. Designation Custody Level: A prisoner's interim custody level determined at the initial designation on the basis of the prisoner's total security score on the Security Designation Form; the custody level in effect throughout the prisoner's residence in a Restitution Center or until the prisoner receives an initial classification at a receiving institution.

- k. **Exception Case:** Prisoner whose offense or subsequent conduct involves: a notorious crime, such as one which has attracted substantial attention in the media, which is particularly violent, or which is a serious sex offense; substantial threats against a person or persons; an escape risk such as an escape attempt in the last 5 years or an actual escape in the last 10 years; or has been found guilty but mentally ill and is sentenced in accordance with AS 12.47.050.
- l. **Exigent Circumstances:** Any set of circumstances that pose a threat to the security and/ or order of an institution and require immediate action.
- m. **Firm Release Date:** The date on which the prisoner is scheduled to be released, as established by one of the following methods:
  - 1. good time calculations;
  - 2. court order; or
  - 3. Alaska State Board of Parole action.
- n. **Initial Classification:** The first classification hearing a prisoner receives at a designated institution or following arrival at an institution when there has not been a previous classification hearing after designation.
- o. **Multiple Category Classification:** The applicability of two or more categories as basis for a prisoner to be confirmed as a central monitoring case.
- p. **Out-of-State Transfer:** The transfer of a prisoner outside the State of Alaska to a facility operated by the Federal Bureau of Prisons or a non-federal contract facility.
- q. **Over-ride:** A classification changing security and/or custody level to a level different from that which would ordinarily be assigned on the basis of matrix scoring on the classification form, or which has been assigned by a lower level of authority; a decision which must be supported by a written factual basis that may be confirmed and/or verified as appropriate justification by a reviewing authority
- r. **Reclassification:** Classification committee review of a prisoner's custody level, security score and/or program needs on a scheduled basis or at the direction of the superintendent or designee.
- s. **Restitution Center:** A residential center in the community which provides certain non-violent prisoners the opportunity for rehabilitation through community service and employment while protecting the community through supervision and partial incarceration, and creates a means to provide restitution to victims of crimes, payment of court ordered fines, dependent support, prisoner cost of care, and other prisoner expenses.
- t. **Short-Term Prisoner:** A sentenced prisoner with 180 days or less remaining to a firm release date at the time of designation.

- u. **Special Medical Need:** The serious and complex medical treatment and care needs of a prisoner that, because of the nature of the medical condition or the extraordinary costs involved in the treatment, cannot be provided within the State of Alaska.
- v. **Special Mental Health Need:** The needs of a prisoner who, in the opinion of a physician, psychologist or psychiatrist, is suffering from a mental illness for which the prisoner cannot secure adequate treatment in prison and who cannot be given adequate mental or psychiatric treatment within any facility owned or operated by the Department.
- w. **Traditional or Rural Alaska Lifestyle:** A way of life as reflected by a person who is not fluent in the English language and communicates predominantly in an Alaska Native dialect; or an individual whose entire life has been spent essentially in a village or rural setting with a population of 1,000 or less, which is not connected by roadways or ferries to a metropolitan community of greater than 1,000 population. A person from a setting with a population greater than 1,000, such as Bethel, Nome, Barrow or Kotzebue may fall within this category if the totality of the circumstances indicates a background that is extremely rural and/or traditional in character such as a rural Alaskan whose social experience is typified by in-village or remote residence with his or her conduct and means of livelihood being of a subsistence nature and lacking in exposure to non-rural life and having negligible commercial work experience for wages. Time spent for schooling at Mt. Edgecumbe in Sitka does not in and of itself exclude a person from being classified as having maintained a traditional, subsistence, or rural Alaskan lifestyle.

### **3. Custody Status and Security Level**

The custody status assigned to a prisoner is based upon the matrix score attained on the classification form, which establishes the degree of security staff supervision required to appropriately monitor and control the prisoner's conduct and behavior within the context of correctional management.<sup>649</sup>

#### **a. Custody Levels**

A classification committee shall assign a custody level to a prisoner based on the degree of staff supervision necessary to monitor and control the prisoner's behavior, in accordance with procedures established by the commissioner. Levels of custody and degree of staff supervision appropriate for each level are as follows:

(1) **Community Custody:** Assignment to community custody indicates that the prisoner must be considered for the least-restrictive housing, program, and supervision available in the Department, which may include furlough, contract facility placement in the community, outings with or without escort, work details outside the facility with minimal supervision and, if necessary, hospitalization without a guard.

(2) **Minimum Custody:** Assignment to minimum custody indicates that a prisoner must be considered for the least-restrictive housing, program, and supervision available within the

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<sup>649</sup> DOC Policy # 735.01, Designation Process for Long-Term Sentenced Prisoners.

facility's perimeter and activities outside the perimeter. These activities may include supervised contract facility placement, work details outside the facility with periodic staff supervision, trips outside the facility with a single staff escort, and if necessary, hospitalization under guard; a minimum custody prisoner is not eligible for furlough.

(3) Medium Custody: Assignment to medium custody indicates that a prisoner must be considered for regular housing, program, and supervision within the facility's perimeter. A medium-custody prisoner is not eligible for furlough. Work assignments or activities outside the facility's perimeter must be approved by the deputy commissioner. The prisoner must be placed in hand restraints and escorted by at least one officer when moved outside the facility's perimeter, and, if necessary, must be hospitalized under guard.

(4) Close Custody: Assignment to close custody indicates that a prisoner requires a substantial level of supervision due to being identified as assaultive, predatory, riotous, an escape risk, or seriously disruptive to the orderly administration of the facility. A prisoner is eligible for housing and program activities within the secure perimeter of the facility, which facilitate close staff supervision. Close-custody prisoners are not eligible for furlough, and movement outside the facility's perimeter requires the superintendent's approval, the presence of at least two officers, one of which must be armed, and the prisoner in hand and leg restraints. If hospitalization is necessary, the prisoner must be under guard.

(5) Maximum Custody: Assignment to maximum custody indicates that a prisoner requires the maximum level of supervision available within the facility due to being identified as an escape risk or the most assaultive, predatory, riotous, or seriously disruptive to the orderly administration of the facility. A maximum custody prisoner must be placed in secure housing with very limited program activities with maximum supervision within the secure perimeter of the facility. Maximum custody prisoners are not eligible for furlough, and movement within the facility requires two escorting officers using restraints as necessary and appropriate. Movement outside the facility's perimeter, other than for court appearances, requires the superintendent's written approval, the presence of at least two officers, one of which must be armed, and the prisoner in hand and leg restraints. If hospitalization is necessary, the prisoner must be under guard.

## **b. Security Levels<sup>650</sup>**

There are three categories of institutional security level based upon the rating of structural variables and staffing ratios, they are:

Level I (Minimum): The least secure institution, which is designed and staffed to house prisoners who require minimal supervision;

Level II (Medium): Moderately secure institution, which is designed and staffed to house prisoners who require intermediate security, regular quarters and a medium level of supervision; and

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<sup>650</sup> The explanations of Security Levels contained in this section were copied directly from DOC Policy # 803.19, Institution Security Classification, and are therefore not cited individually.

Level III (Maximum): The most secure institution, which is designed and staffed to house prisoners who require the closest confinement and the maximum level of supervision.

#### **4. Unsented Prisoner Classification<sup>651</sup>**

An unsented prisoner is a prisoner who is awaiting trial, sentencing, or probation/parole revocation. An unsented prisoner must be classified with regard to security level, custody status, and program involvement. An unsented prisoner incarcerated for ten days who is not in punitive segregation, is eligible to participate in educational programs, religious services, and counseling programs available in the unsented holding area of the institution.

Each unsented prisoner must be classified with regard to custody level, security level and program involvement by the holding institution within 15 working days after admission into the facility. The Superintendent's classification decision is not subject to appeal.

Within 120 days after this classification by the Superintendent and every 120 days thereafter as long as the prisoner is an unsented prisoner, the unsented prisoner must be given a hearing before a Classification Committee to review his or her security and custody status and program involvement. The unsented prisoner classification decisions made by a Classification Committee may be appealed in accordance with DOC Policy #760.01, Appeal Procedures. Forms to facilitate an appeal will be provided to the prisoner by institutional staff upon request by the prisoner.

#### **5. Classification Process for Short-Term Sented Prisoners<sup>652</sup>**

A sentenced prisoner with 180 days or less remaining to a firm release date at the time of designation is a "short-term" prisoner. A short-term prisoner will be designated to the least restrictive correctional facility consistent with the prisoner's classification matrix score in the context of sound correctional management.

Each short-term, sentenced felony prisoner will be designated by the holding institution within 15 working days after sentencing. Short-term prisoners sentenced for a misdemeanor will be designated within five working days after sentencing, except for prisoners sentenced to serve five days or less; these very short-term prisoners will be designated as soon as possible after arrival at the receiving institution. The designation decision is not subject to appeal.

#### **6. Classification Process for Long-Term Sented Prisoners<sup>653</sup>**

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<sup>651</sup> The information contained in this section is taken directly from DOC Policy # 705.01, Unsented Prisoner Classification.

<sup>652</sup> The information contained in this section is taken directly from DOC Policy # 735.02, Designation Process for Short-Term Sented Prisoners.

<sup>653</sup> The information contained in this section is taken directly from DOC Policy # 735.01, Designation Process for Long-Term Sented Prisoners.

All newly sentenced prisoners with more than 180 days remaining to a firm release date will be designated within 15 working days after sentencing and commitment to the least restrictive security and custody levels appropriate for the prisoner. The designation decision is not subject to appeal except in the case of out-of-state designation. If designation is for an out-of-state facility, the prisoner must be provided a classification hearing in accordance with DOC Policy #750.02, Out-of-State Transfers. The designation decision based upon the classification hearing is appealable to the Deputy Commissioner for Operations in accordance with DOC Policy # 760.01, Appeal Procedures.

## 7. Central Monitoring Cases<sup>654</sup>

DOC has established a system to monitor and control the status of specified prisoners who are classified as “special management cases” while in the custody of the Department. Certain categories of prisoners require case management coordination and supervision beyond that routinely afforded prisoners during their incarceration. These prisoners are known as Central Monitoring Cases. It is the policy of the Department to identify these prisoners and to provide special scrutiny over changes in their status for the duration of their imprisonment or until the need for such scrutiny is no longer necessary. The Central Monitoring System is established for this purpose.

Prisoners in the following categories are identified and processed for confirmation as Central Monitoring Cases:

CODE	CATEGORY	DESCRIPTION
01	Witness Security	Prisoners whose safety may be jeopardized due to their cooperation with criminal justice agencies.
02	Disruptive Group	Prisoners who belong to, or are closely associated with, prison gangs or other groups with a history of disrupting institutional operations and security.
03	Assaultive	Prisoners who have a history of violent behavior either in the community or while incarcerated or who, for specified reasons, are considered to present a substantial risk of future violent behavior.
04	Escape Risks	Prisoners who have a history of escape or who, for specified reasons, are considered to present a substantial risk of escape.
05	Protection	Prisoners who, for specified reasons, require protection from other known or unknown individuals and therefore require segregation from the general population.
06	Separation	Prisoners who may not be confined where they are accessible to other specified individuals.
07	Broad Publicity	Prisoners who have received widespread publicity as the result of their criminal activity or whose

<sup>654</sup> The information contained in this section is taken directly from DOC Policy # 702.10, Central Monitoring Cases.



		status during incarceration is a matter of extraordinary public interest.
08	Interstate Federal Transfers	Prisoners who require special monitoring due to their status as transfers from other jurisdictions.
09	Threats to Others	Prisoners who have made threats toward specified individuals or groups of individuals.
10	Sophisticated Criminal Activity	Prisoners who are members of organized crime or who have been involved in large-scale sophisticated criminal activities.
11	Sex Offenders	Prisoners who have a history of sex offenses.

## 8. Initial Classification<sup>655</sup>

The Department will classify prisoners for placement in the least restrictive level consistent with prisoners' security and custody levels and sound correctional management.<sup>656</sup>

### a. Prisoner Custody Level

Subject to an override based upon a valid correctional interest, the Department will base a prisoner's custody status on the matrix score attained on the classification form. The matrix score establishes the degree of security staff supervision required to appropriately monitor and control the prisoner's conduct and behavior within the context of sound correctional management.

### b. Circumstances That Require a Hearing<sup>657</sup>

A prisoner has a right to a classification hearing under any of the following circumstances:<sup>658</sup>

1. initial classification of a sentenced prisoner;
2. classification review and/or reclassification;
3. transfer to an institution or facility outside Alaska;
4. transfer to a mental health or psychiatric facility;
5. administrative transfer to another institution or facility;
6. placement in administrative segregation and every thirty days for as long as the prisoner is in administrative segregation;
7. termination of a furlough;
8. return from out-of-state placement, in-state restitution center, or other contract facility;
9. any increase in custody level;
10. every 120 days after the date of an unsentenced prisoner's initial classification, so long as the prisoner is unsentenced; and

<sup>655</sup> The information in this section comes directly from DOC Policy # 735.03, Initial Classification.

<sup>656</sup> The Department will provide facility designation and initial classification to sentenced and unsentenced prisoners under 22 AAC 05.206, 05.211, 05.216 and 05.226.

<sup>657</sup> The information in this section comes directly from DOC Policy # 735.04, Required Classification Hearing.

<sup>658</sup> 22 AAC 05.241; DOC Policy # 735.04.

11. any classification action as may be determined by the Commissioner or designee to be the subject of a hearing.

### **c. Time Frame for Classification Hearing**

#### **1. Prisoners in an Institution**

The institution must give a sentenced prisoner a hearing before a classification committee to determine or update the prisoner's security and custody status and program needs (except for a prisoner in a community facility within 30 days of the sentenced prisoner's arrival at the designated institution or within 60 days after sentencing and commitment, whichever occurs First).

#### **2. Prisoners in a Community Facility**

A prisoner designated to a restitution center, contract misdemeanor housing, or other community placement is exempt from the initial classification time frames above. However, a prisoner admitted into an institution from anyone of these community facilities must be provided a classification hearing within 30 days of his or her arrival at the institution. Prisoners residing in a restitution center, contract misdemeanor housing, or other community placement must be reviewed by the furlough officer at least annually.

### **d. Notice of Classification Hearing**

The institution shall give a prisoner at least 48 hours prior written notice on a Notice of Appearance form (Form # 735.03B) of a scheduled classification hearing. The notice must inform the prisoner:

1. of the time and place of the hearing;<sup>659</sup>
2. of the purpose of the hearing, and in the case of a prisoner placed in administrative segregation, the facts that form the basis for segregation under 22 AAC 05.485;<sup>660</sup>
3. that the prisoner is entitled to choose a hearing advocate from a pool if the classification decision could result in the prisoner's assignment or continued assignment to administrative segregation under 22 AAC 05.485 or in termination of a furlough under 22 AAC 05.335;<sup>661</sup>
4. that, in all other cases, a staff member assigned by the Superintendent shall inform the prisoner before the hearing of the classification process and possible classification action;<sup>662</sup>

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<sup>659</sup> 22 AAC 05.216(b)(1).

<sup>660</sup> 22 AAC 05.216(b)(2).

<sup>661</sup> 22 AAC 05.216(b)(3)(A).

<sup>662</sup> 22 AAC 05.216(b)(3)(B).

5. that the committee/hearing officer shall tape record the hearing and keep it in transcribable form for the time periods and purposes set out in the Code if the purpose of the hearing is consideration of a prisoner's assignment or continued assignment to administrative segregation, termination of a furlough, placement in a psychiatric or mental health facility, or transfer to an institution or facility outside of Alaska;<sup>663</sup>
6. of the right to counsel in the hearing if:
  - a. the prisoner has been assigned to administrative segregation in connection with an infraction that, if established, would constitute a violation of a felony criminal statute and a decision by the district attorney to file felony charges is pending or charges have been filed;<sup>664</sup> or
  - b. the Department is considering transferring the prisoner to a psychiatric or mental health facility;<sup>665</sup>
7. that the prisoner may prepare testimony, solicit statements, or compile other evidence before the hearing, if such action would not create a substantial risk of reprisal or undermine the security of the institution;<sup>666</sup>
8. that the classification committee/hearing officer shall make written factual findings and indicate the evidence relied upon in sufficient detail to provide an adequate basis for review of its decision;<sup>667</sup> and
9. that the prisoner may appeal the classification committee's decision under DOC Policy # 760.01, Appeal Procedures.<sup>668</sup>

#### **e. Staff Assistance for Classification Hearing**

A prisoner is entitled to the active assistance of a hearing advisor or advocate to investigate the facts and coordinate the prisoner's presentation at a classification hearing if the purpose of the hearing is to consider the prisoner's assignment or continued assignment to administrative segregation or termination of a furlough.

#### **1. Selecting a Hearing Advisor**

A prisoner may request a hearing advisor from a pool of three or more correctional officers or institutional probation officers designated by the Superintendent for that purpose.

- a. The prisoner has the right to select from at least two advisors in the pool.

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<sup>663</sup> 22 AAC 05.216(b)(4).

<sup>664</sup> 22 AAC 05.216(b)(6).

<sup>665</sup> 22 AAC 05.216(b)(6).

<sup>666</sup> 22 AAC 05.216(b)(7).

<sup>667</sup> 22 AAC 05.216(b)(8).

<sup>668</sup> 22 AAC 05.216(b)(9); DOC Policy # 760.01, Appeal Procedures.

- b. The Superintendent may deny a request for administrative reasons, e.g., the staff member is on vacation or sick leave, or would have to be paid overtime for appearing before the classification committee/hearing officer.

## **2. Hearing Advisor's Duties**

The advisor shall meet with the prisoner at least 36 hours before the scheduled hearing to assist the prisoner. The advisor shall, at the prisoner's request, help the prisoner interview and prepare for examination of witnesses for the hearing and advise the prisoner how best to proceed on the possible classification actions at the hearing. If necessary, the advisor shall arrange for the assistance of an interpreter.

## **3. No Advisor Assistance**

The prisoner is not entitled to the assistance of a hearing advisor if the purpose of the classification hearing is to consider a classification action other than the prisoner's assignment or continued assignment to administrative segregation or termination of a furlough. However, institutional staff must still inform prisoners before the hearing of the classification process and possible classification action.

## **f. Agenda and Procedural Rights at Classification Hearing**

The classification hearing must proceed as follows:

1. The chair/hearing officer shall ensure that the prisoner understands the purpose of the hearing and his or her procedural rights.
2. A member of the committee/hearing officer, the institutional probation officer, prisoner, or hearing advisor if the prisoner is being assisted by an advisor, may propose classification action and shall describe the aspects of the prisoner's record or other rationale that form the basis of the proposal.
3. If, either before or at the hearing, additional time is needed to gather information, testimony or evidence relating to the proposed action, the chair/hearing officer may postpone the hearing for up to 20 working days except for a hearing regarding continued assignment to administrative segregation. In that case, the chair may only postpone the hearing for up to 24 hours.
4. The prisoner has the following procedural rights:
  - a. a reasonable opportunity to challenge the factual basis or rationale advanced in support of the proposed classification action;
  - b. the right to appear and present evidence and witnesses on his or her own behalf and to confront and cross-examine witnesses, subject to the limitation of evidence

or examination of witnesses based upon repetition, relevancy, risk of reprisal, or the facility's security; if a witness is examined out of the prisoner's presence, the chair/hearing officer must inform the prisoner of the substance of the testimony and specify on the record the reasons for excluding the prisoner; and

- c. the chair/hearing officer may require the prisoner to direct his or her questions through the hearing advisor, counsel, probation officer (if present), or through the chair/hearing officer.
5. The committee/hearing officer may only consider evidence presented at the hearing or contained in the prisoner's case record. Prisoner conduct before and during the hearing and evidence that contains or constitutes hearsay if it appears to be reliable and relevant to the issues under consideration may also be considered. Findings and recommendations of prior disciplinary or classification committees/hearing officers, once all appeals have been exhausted, are conclusive and not subject to further review.
6. The prisoner has the right to appeal the classification decision. The prisoner must be provided a copy of the final decision that includes a description of the appeal process under DOC Policy # 760.01, Appeal Procedures. Staff shall give the prisoner appeal forms upon request.

#### **g. Classification Decision**

##### **1. Classification Matrix Factors**

The classification committee/hearing officer must complete the Classification Form for Sentenced Prisoners form (Form # 735.03A) using the Instructions form (Form # 735.01A) and issue its decision within three working days after the hearing.<sup>669</sup> The committee/hearing officer must base the prisoner's custody and security status on the matrix scoring and factors including any recommendation to override the matrix score.<sup>670</sup> The scored factors include:

##### **a. Security Score:**

- (1) type of detainer
- (2) severity of current offense
- (3) additional felonies and/or misdemeanors
- (4) time to firm release date
- (5) type of prior convictions
- (6) history of escape or attempted escapes
- (7) history of violent behavior

##### **b. Custody Score:**

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<sup>669</sup> 22 AAC 05.216.

<sup>670</sup> Id.

- (1) percent of time served
- (2) involvement with drugs and/or alcohol
- (3) mental/psychological stability
- (4) type of most serious disciplinary report
- (5) frequency of Disciplinary Reports
- (6) responsibility prisoner has demonstrated
- (7) family and community ties

## **2. Classification Hearing Decision Referred to Superintendent**

- a. The committee/hearing officer must forward for review to the Superintendent any decision that recommends transfer, change in security or custody status, grants or denies a furlough placement, continues a prisoner's placement in a restitution center contract facility, approves placement or continued placement in administrative segregation, or relates to an exception case.<sup>671</sup> The Superintendent has five working days to approve, deny, or modify the committee's decision, except for continued placement of a prisoner in administrative segregation, which pending disciplinary action is governed by the Alaska Administrative Code.<sup>672</sup> The Superintendent must record his or her reasons for denying or modifying the decision on Form # 735.01A.<sup>673</sup>
- b. All other classification hearing decisions not required to be reviewed by the Superintendent are final unless modified by the Superintendent within three working days after the hearing.<sup>674</sup>
- c. If the Superintendent recommends transfer, he or she must forward the recommendation and the prisoner's classification packet to Central Classification.<sup>675</sup> If Central Classification approves the transfer, the chief classification officer or designee shall select the receiving institution or facility, determine the prisoner's security and custody levels, and coordinate arrangements for the transfer.<sup>676</sup> The classification packet must include:
  - (1) final judgment and commitment
  - (2) presentence investigation report
  - (3) recent psychiatric/psychological reports
  - (4) time accounting records
  - (5) security designation and classification forms
  - (6) needs assessment survey form and attached documents, as indicated
  - (7) health care record extract
  - (8) the taped proceedings if the classification action recommends or results in a transfer to an institution or facility outside of Alaska

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<sup>671</sup> 22 AAC 05.216(d).

<sup>672</sup> Id.

<sup>673</sup> Id.

<sup>674</sup> Id.

<sup>675</sup> 22 AAC 05.216(e).

<sup>676</sup> Id.

(9) related information

- d. Staff shall give the prisoner a copy of the Central Classification decision within two working days of its receipt at the holding institution. The decision must include a description of the appeal process.<sup>677</sup>

#### **h. Classification Appeal**

A. The Department provides prisoners the right to appeal any classification action except initial designation, as provided in 22 AAC 05.260. All appeals of classification committee action must be prepared and processed under DOC Policy # 760.01, Appeal Procedures.

1. For an unsentenced prisoner:

- a. The initial unsentenced prisoner Designation is without administrative appeal.
- b. Subsequent classification committee action, except for transfer, may be appealed to the Regional Director; and Classification committee action regarding transfer may be appealed directly to the Deputy Commissioner.

2. For a sentenced prisoner:

- a. The sentenced prisoner Designation is without administrative appeal.
- b. Classification committee action not referred to or modified by the Superintendent may be appealed only to the Superintendent, and no higher.
- c. Classification committee action referred to or modified by the Superintendent, except for transfer, may be appealed to the Regional Director.
- d. Classification committee action regarding transfer may be appealed directly to the Deputy Commissioner for Operations.

#### **B. Appeal of Classification Committee Decision**

1. A Classification Committee action that does not require review by the Superintendent may be appealed only to the Superintendent unless the Superintendent has exercised discretionary authority to modify the classification action – in that case, the decision may be appealed to the Regional Director or to the Deputy Commissioner for Operations.

NOTE: Unsentenced prisoner staff/superintendent classification and sentenced prisoner designation are not subject to administrative appeal.

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<sup>677</sup> 22 AAC 05.216(f)

2. Except as provided below, a classification action by a Superintendent may be appealed only to the Regional Director, except for a denial of or removal from a furlough, which may be appealed to the Deputy Commissioner for Operations if the Regional Director denies the appeal.
  3. Notwithstanding, the result of a classification hearing, the purpose of which was the consideration of a transfer of a prisoner, may be appealed only to the Deputy Commissioner for Operations.
  4. The appeal of a classification action must be made within five working days after the prisoner receives notice of the decision or, in the case of transfer, within five working days after the prisoner arrives at the transfer destination, whichever occurs first. If a valid reason for delay is stated by the prisoner and verified by the institutional staff member designated to receive classification appeals at the holding institution, the five working day time limit for filing may be extended for an additional reasonable time period. However, an extension of time to file an appeal is an exception and must be accompanied by justification sufficient to support the exception to the prescribed time parameters.
  5. Except as provided below for out-of-state and contract facility placement prisoners, an Appeal must be on the Appeal of Classification Action (Form # 20-760.01) and must be submitted through the institutional staff member designated by the Superintendent for the purpose of receiving, reviewing, and forwarding classification appeals, as follows:
    - a. the designated staff member receiving the Appeal shall review the appeal for form and content appropriateness;
    - b. the staff members shall prepare a cover memorandum, addressed to the appropriate official, summarizing the process to date; and
    - c. shall prepare the packet of supporting documentation to accompany the appeal to include:
      1. the Classification Form(s) upon which the appeal is based;
      2. the prisoner's Appeal(s) of Classification Action which must be entered on Form # 20-760.01A;
- NOTE: A separate Appeal of Classification Action must be prepared for each level of appeal, i.e., the appeal statement/form prepared for the Regional Director and containing his or her response will not be appropriate for appeal of that decision to the Deputy Commissioner for Operations. However, the lower-level appeal response must accompany an appeal to the next higher level.
3. the tape recording of the classification hearing; and



4. the cover memorandum of explanation certifying that the appeal has been routed through institutional staff;
6. A prisoner in out-of-state placement or in-state contract facility placement who is appealing a classification decision made in accordance with DOC Policy # 750.03, Classification Review Team, and/or DOC Policy # 750.04, Return of Prisoners From Out-of-State Placement, may appeal the decision, in writing, directly to the Deputy Commissioner for Operations within ten working days after receiving written notice of the decision.
7. For purposes of appeal, a prisoner may have access to the tape recording of a related disciplinary hearing or the classification hearing being appealed, except that the portion of the tape that contains the testimony of an informant must be summarized in as much detail as possible so as not to place the informant in danger; this summary must be made available to the prisoner. The tape remains the property of the Department. A tape containing informant testimony may have a summary transcript prepared, and the summary transcript made available to the prisoner in lieu of the actual recording.
8. With the exception of a transfer to an institution outside of Alaska, a classification action may be commenced pending an appeal.

**j. Appeal Response:**

1. Once an appeal has been filed and received, a response must be made as follows:
  - a. Appeal to Superintendent: response within five working days;
  - b. Appeal to Regional Director: response within 15 working days;
  - c. Appeal to Deputy Commissioner for Operations: response within 15 working days
2. The appropriate official may grant the appeal, grant the appeal and modify the classification decision, deny the appeal, or refer the matter back to the committee for rehearing.
3. The official responding to the appeal shall enter his or her decision on the Appeal of Classification Action or, in the case of out-of-state or contract facility placed prisoner appeals, prepare a letter of response on official letterhead and sign the response in the appropriate space.
4. The appropriate official's failure to respond within the time limits set out above must be considered a denial of the appeal. However, a late response granting an appeal is valid.
5. The prisoner must be informed of the official's decision by receipt of the Appeal Response within the time frames set out above. A copy of the Response should be sent to the Superintendent, the prisoner's case record and the prisoner's case manager/institutional probation officer at the holding facility. In the case of a transfer appeal, Central Classification should receive a copy of the Response as well.

## **8. Classification Review<sup>678</sup>**

Each prisoner's custody status, security level, and program needs will be reviewed and reassessed on a scheduled basis.

### **a. Schedule of Classification Review**

1. A prisoner with two or more years remaining to a firm release date will have a classification review at approximate one-year intervals (every 11-13 months).
2. A prisoner with less than two years remaining to a firm release date or who is classified community or minimum custody will have a classification review at approximate six month intervals (every 5-7 months).
3. A prisoner with one year or less remaining to a firm release date will have a classification review at approximate one year and six months before a firm release date.
4. A prisoner originally sentenced to serve a short sentence of one year or less will have a classification review approximately six months prior to release, as is appropriate to the length of sentence and firm release date.
5. A prisoner originally sentenced to serve a very short-term sentence of 90 days or less will not have a classification review other than classification action called for for designation or initial classification.
6. A prisoner returned to Alaska in accordance with DOC Policy # 750.04, Return of Prisoners From Out-of-State Placement, must have a classification review within ten days after return to the state.
7. A prisoner returned to Alaska for a reason other than that set out in DOC Policy # 750.04, Return of Prisoners From Out-of-State-Placement, must have a classification review within 30 days after the prisoner's return to the State.
8. A prisoner may have a classification review hearing at any time at the discretion of the Regional Director or the Superintendent.

### **b. Classification Review for an In-State Contract Facility**

1. A prisoner residing in a Restitution Center (RC) or Contract Misdemeanant Housing (CMH) will receive a formal review of designation in accordance with DOC Policy # 750.03, Classification Review Team, at least annually.

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<sup>678</sup> The information contained in this section comes directly from DOC Policy # 745.01, Prisoner Classification Review.

2. A prisoner received into an institution from a contract RC or CMH will receive an initial classification hearing in accordance with DOC Policy # 735.03, Initial Classification, within 30 days of the prisoners arrival at the institution.
3. A prisoner serving his or her entire sentence in a RC or CMH will not have a classification review other than the formal review of designation, initial classification as may be called if received into an institution from a contract RC or CMH, or other hearings in accordance with DOC Policy # 735.04, Required Classification Hearing.

#### **c. Classification Review for Prisoners Incarcerated Outside Alaska**

A prisoner housed in a facility outside Alaska in accordance with DOC Policy # 750.02, Out-of-State Transfers, will receive a hearing before a classification review team in accordance with DOC Policy # 750.03, Classification Review Team, at approximate one-year intervals (11-13 months).

#### **d. Classification Review Hearing for Prisoners Incarcerated In Alaska**

1. The Classification Review hearing will be a hearing conducted in conformance with procedures the same as those for initial classification in accordance with DOC Policy # 735.03, Initial Classification; and
2. The Designation Review hearing for in-state contract facilities and the classification review team hearing for prisoners incarcerated outside Alaska will be conducted in accordance with DOC Policy # 750.03, Classification Review Team.

#### **e. Victim's Rights At Classification Review**

A prisoner sentenced to incarceration for a felony crime against person on or after October 3, 1984, will have the victim(s) contacted by institutional staff for comment prior to a classification hearing at which community custody or placement is to be considered, for advance notification of the prisoner's furlough or other release, or both, in accordance with DOC Policy # 818.11, Victim Notification.

#### **f. Appeal of Classification Review Decision**

1. In-state classification review actions may be appealed by the prisoner in accordance with DOC Policy # 760.01, Appeal Procedures.
2. Out-of-state classification review actions may be appealed by the prisoner to the Deputy Commissioner for Operations within ten days after receiving notice of the decision.

### **9. Prisoner Transfer**

#### **a. Administrative Transfer<sup>679</sup>**

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<sup>679</sup> The information in this section comes from DOC Policy # 750.01, Administrative Transfer.

It is the policy of the Department to facilitate and expedite, when necessary or appropriate, the transfer of sentenced or unsentenced prisoners between institutions for any purpose related to an emergency or potentially hazardous situation or to facilitate an administrative action that can be more efficiently accomplished at another institution.

An administrative transfer is the transfer of a prisoner between facilities for any purpose related to an emergency or potentially hazardous situation or to facilitate an administrative action that can be more efficiently accomplished at another facility, such as:

1. parole hearing;
2. court action;
3. medical or mental health treatment;
4. military tribunal;
5. family emergency; or
6. population management.

A prisoner who is administratively transferred must be accompanied by a memorandum from the sending Superintendent to the receiving Superintendent. This Transfer Memorandum must include:

1. the reason(s) for the transfer;
2. what is expected to be accomplished or provided through the transfer;
3. any special expectations or steps required at the time of, or soon after, the prisoner's arrival at the receiving facility; and
4. specifics that the receiving Superintendent needs to know to properly process the prisoner.

If the transfer will result in the prisoner being assigned to administrative segregation, the prisoner must be granted a classification hearing as set out in DOC Policy # 735.03, Initial Classification, within no less than three working days in accordance with DOC Policy # 804.01, Administrative Segregation.

A prisoner may appeal an administrative transfer to the Deputy Commissioner for Operations in accordance with DOC Policy # 760.01, Appeal Procedures, within five working days after he or she receives notice of the transfer or after the transfer, whichever occurs first. The filing of an appeal will not delay a transfer, except when the transfer is to an out-of-state facility.

Except as provided above, a transferred prisoner must be provided a classification hearing as set out in DOC Policy # 735.03, Initial Classification, within ten working days after arrival at the receiving institution, except when the prisoner is being returned from out-of-state placement to facilitate an administrative action such as a court appearance when the prisoner must be provided a classification hearing within 30 days after returning.

#### **b. Out-of-State Transfers<sup>680</sup>**

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<sup>680</sup> The information contained in this section is taken directly from DOC Policy # 750.02, Out-of-State Transfers.

Because of the lack of long-term correctional institutions and a shortage of needed rehabilitative services in the State, it is the policy of the Department to transfer some prisoners to institutions operated by the Federal Bureau of Prisons or contract facilities outside the State.

### **1. Out-of-State Transfer to a Federal Prison**

A prisoner may be transferred outside Alaska to an institution operated by the Federal Bureau of Prisons (“FBP”) if the prisoner is provided a classification hearing, a determination is made that the prisoner's rehabilitation or treatment would not be substantially impaired by the transfer, and the prisoner meets one or more of the following criteria:

- a. the prisoner requests out-of-state transfer;
- b. the prisoner has a term of incarceration of seven and one half years or more remaining to be served;
- c. the prisoner lacks significant family or community ties or lacks a significant time of residency in Alaska and has more than two years remaining to be served;
- d. the prisoner requires protective custody because the prisoner would, in all likelihood, be subjected to a life-threatening situation if housed in an appropriate facility in Alaska;
- e. the prisoner has been convicted of a violent offense, either as the present offense or as a prior conviction, and is an escape risk because of one or more documented escapes from a correctional facility or two or more documented escape attempts from a correctional facility and has more than two years remaining to be served; or
- f. the prisoner has a special medical or mental health needs that cannot reasonably be met in Alaska.

### **2. Limitations on Transfers to a Federal Prison**

Any of the following factors weigh heavily against a decision to transfer a prisoner to a facility operated by the FBP:

- a. the prisoner has no prior criminal record or no prior incarcerations;
- b. the prisoner is less than 20 years old; or
- c. the prisoner has maintained a traditional or rural Alaska lifestyle; and
- d. a prisoner with a pending criminal appeal that has not had the record on appeal certified for at least 30 days.

### **3. Limitation on Out-of-State Transfer to a Non-Federal Contract Facility**

- a. A prisoner may be transferred outside Alaska to a contract facility which is not operated by the FBP if the prisoner is provided a classification hearing and a determination is made that the prisoner's rehabilitation or treatment would not be substantially impaired by the transfer.
- b. In order to permit adequate communication with counsel, a prisoner with a pending criminal appeal will ordinarily not be transferred to a contract facility outside of Alaska until at least 70 days after sentencing.

### **4. Transfer to an Out-of-State Psychiatric Facility**

A prisoner being processed for transfer to a mental health or psychiatric facility outside Alaska for observation or treatment of a mental illness must be provided a classification hearing in accordance with DOC Policy # 745.02, Classification for Transfer to Psychiatric Facility.

#### **c. Appeal of Decision to Transfer Out-of-State**

A prisoner may appeal to the Deputy Commissioner a decision for transfer out-of-state in accordance with DOC Policy # 760.01, Appeal Procedures. The appeal must be submitted through the institutional staff member designated for that purpose within five working days of the time that the prisoner receives written notice of the Central Classification decision. A prisoner who has an appeal pending under this section may not be transferred out-of-state until the appeal process is completed.

#### **d. Return of Prisoners from Out-of-State Placement<sup>681</sup>**

It is the policy of the Department to review the classification of prisoners placed out-of-state and to return prisoners incarcerated out-of-state as is appropriate on a case-by-case basis in response to established return eligibility criteria and the availability of space within institutions in-state as determined by the Central Classification Unit of the Department.

A. A prisoner incarcerated outside the state in a facility operated by the Federal Bureau of Prisons must be returned to Alaska within 60 days after Central Classification receives written notification from, or on behalf of, a prisoner meeting any of the following criteria:

\*The prisoner's life is in danger, as evidenced by one or more of the following:

- a. a recent verified attempt on the prisoner's life;
- b. a recommendation for return by the out-of-state holding institution because the prisoner's life is in danger; or

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<sup>681</sup> The information in this section comes directly from DOC Policy # 750.04, Return of Prisoners from Out-of-State Placement.

c. other documentation sufficient to indicate that a prisoner's life is in danger;

\*The prisoner has two years or less remaining to a firm release date and does not have an out-of-state sentence consecutive to his or her State sentence; or

\*The prisoner is incarcerated outside Alaska solely for medical or mental health treatment and either that treatment is completed or facilities or resources have become available in Alaska for an equivalent level of treatment and security.

B. For every three prisoners transferred outside Alaska to a facility operated by the Federal Bureau of Prisons, at least one other prisoner who is already in Federal Bureau of Prisons placement must be returned to the state from the Federal Bureau of Prisons upon notification to Central Classification in writing and the Chief Classification Officer or designee's concurrence, that any of the following criteria have been met:

\*The prisoner has a family crisis that could be demonstrably minimized by the prisoner's return;

\*The prisoner has been incarcerated outside Alaska for five or more years and has maintained a disciplinary-free facility record, excluding minor infractions, for the entire period of time; or

\*The prisoner has special needs that cannot be met by the Federal Bureau of Prisons.

C. A prisoner incarcerated in a non-federal contract facility out-of-state may be returned to Alaska, or transferred directly to a different non-federal contract facility, at the discretion of Central Classification, if the Chief Classification Officer or designee determines that the instant placement has substantially impaired the rehabilitation or treatment of the prisoner.

A prisoner returned to Alaska under one of the above scenarios must receive a classification hearing as set out in DOC Policy # 735.03, Initial Classification, within ten days of the prisoner's return unless the prisoner is being returned from out-of-state placement to facilitate an administrative action such as a court appearance, in which case the prisoner must be provided a classification hearing within 30 days after the prisoner's return.

The priority for prisoner return from out-of-state placement is established in accordance with the following guidelines:

- a. Prisoners in the categories outlined under (A). above must be given first priority for return to Alaska.
- b. Prisoners in the categories outlined under (B) above will be given the second priority for return to the State.

- c. Prisoners in the category outlined under (C) above will be given third priority for return to the State; and may be transferred directly to a different non-federal contract facility in lieu of return to Alaska, at the discretion of Central Classification.
- d. Prisoners not falling within one of the categories identified under (A) – (C). above will be assigned the lowest priority for return to Alaska.
- e. During the annual prisoner classification review in accordance with DOC Policy # 750.03, Classification Review Team, every effort will be made to identify those prisoners who meet eligibility criteria for return to Alaska. Actual return will be dependent upon available space in an institution of appropriate security and custody level for the prisoner being returned.

A prisoner whose written request to return to Alaska under (A) – (C) above is denied may appeal the decision, in writing, directly to the Deputy Commissioner for Operations within ten working days after receiving notice of the decision in accordance with DOC Policy # 760.01, Appeal Procedures.

**e. Transfer to Mental Health or Psychiatric Facility<sup>682</sup>**

- 1. When, in the opinion of institutional or contract mental health professional personnel, the local institutional mental health resources do not adequately meet a prisoner's current mental health treatment needs, the prisoner may be administratively transferred to a more appropriate institution in accordance with DOC Policy # 750.01, Administrative Transfer.
- 2. In the case of a prisoner requiring a level of mental health treatment beyond that available in an institution, the prisoner may be transferred to a mental health or psychiatric facility as follows:
  - a. In emergency cases that require a prisoner's immediate transfer into a psychiatric facility for mental health observation or stabilization, the transfer is an interim emergency medical placement and does not require a classification hearing unless:
    - i. the prisoner is not returned to the original institution within 20 days, in which case the prisoner must be provided a classification hearing within 30 days of the transfer; or
    - ii. a clinical diagnosis indicates the need for treatment in a psychiatric facility for more than ten days, in which case the prisoner must be provided a classification hearing within 15 days of the diagnosis.
- 3. A prisoner who has been transferred to a mental health facility and who requires a classification hearing or a prisoner being considered for long-term transfer to a

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<sup>682</sup> Information in this section is contained in DOC Policy # 745.02, Classification for Transfer to Mental Health or Psychiatric Facility.



psychiatric hospital inside or outside Alaska for observation or treatment of a mental illness must be provided a classification hearing as follows:

- a. notice of all the following rights at least ten days before the classification hearing;
  - b. a tape recorded classification hearing in accordance with DOC Policy # 735.03, Initial Classification;
  - c. disclosure, at the time of notice of the hearing, of the evidence being relied upon as the basis for the transfer;
  - d. an opportunity to be heard in person, to present testimony of witnesses, and to confront and cross-examine witnesses, except upon findings of good cause for not permitting such presentation, confrontation, or cross-examination;
  - e. an independent decision maker not involved in the recommended transfer, who may be an impartial member of the institution's staff, shall preside over the hearing;
  - f. a written statement by the decision maker as to the evidence relied upon and reasons for transferring the prisoner;
  - g. availability of legal counsel, if the prisoner is financially unable to furnish counsel, in accordance with AS 18.85;
  - h. the right to appeal to the Deputy Commissioner for Operations a decision for transfer within five working days following receipt of notice of decision in accordance with DOC Policy # 760.01. Appeal Procedures; and
  - i. for out-of-state transfers, in accordance with DOC Policy # 750.02, Out-Of-State Transfers, a stay of transfer until a properly-filed appeal has been decided.
4. The physician, psychologist or psychiatrist who previously determined that the prisoner is suffering from a mental illness for which treatment in a mental health facility is appropriate must testify at the classification hearing. If the mental health professional who made the finding of mental illness is presently unavailable, another physician, psychologist or psychiatrist designated by the Commissioner may be substituted to testify at the classification hearing.

### **C. Segregation**

Each institution has an administrative segregation unit that is used to securely house and protect prisoners. The Department may not use administrative segregation as punishment. Administrative segregation is intended to benefit the security of both the facility and the prisoner. Inmates in administrative segregation must receive a classification review hearing every 30 days.

Punitive segregation is a punishment. The Department may impose punitive segregation, confinement to quarters, or weekend or holiday lockups to alter a prisoner's inappropriate behavior and to affirm institutional standards for prisoner conduct. Confinement in punitive segregation, confinement to quarters, or weekend or holiday lock-ups may be 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. Prisoners' privileges will be limited while in punitive segregation, consistent with the sanction of segregation as punishment. The Superintendent of each institution must ensure that staff supervise and monitor all segregated prisoners according to the security considerations inherent in punitive segregation status.<sup>683</sup>

## **1. Administrative Segregation**

### **a. Assignment to Administrative Segregation<sup>684</sup>**

The Department may assign a prisoner to administrative segregation if the prisoner:

1. has not been classified since initial admission to the institution, or has not yet had a physical examination under DOC Policy # 807.14, Health Examinations;
2. is incapacitated;
3. is suffering or suspected of suffering from a communicable disease;
4. is prescribed segregation by a physician, physician's assistant, or mental health professional based upon his or her mental or physical condition;
5. requests the segregation in writing (the Department may deny a prisoner's request for administrative segregation if the prisoner does not have a valid security or medical reason – wanting a private room is not a sufficient reason);
6. is detained as a non-criminal hold under AS. 47.30.705 or AS. 47.37.170;
7. is being held as a material witness under a court order;
8. presents a substantial and immediate threat to the security of the facility;
9. requires protective custody; or
10. presents a substantial and immediate threat to the public and no less restrictive alternative addresses the problem.<sup>685</sup>

### **b. Placement in Administrative Segregation**

#### **1. Emergency Placement**

A staff member may immediately segregate a prisoner if he or she reasonably believes that the prisoner presents a substantial and immediate threat to him or herself, others, or the security of the facility. The shift supervisor must approve the prisoner's placement in segregation either at the time that the prisoner is segregated or immediately following segregation. The institution shall hold a classification hearing within three working days of the emergency placement. In exceptional circumstances and for good cause, the institution may have a 24-hour extension.

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<sup>683</sup> 22 AAC 05.505.

<sup>684</sup> 22 AAC 05.485(1)-(10).

<sup>685</sup> DOC Policy # 804.01, Administrative Segregation.

## **2. Non-Emergency Placement**

Except for prisoners segregated under reasons (a)(6) – (a)(10) above and except for the limited emergency placement described above, the institution may not segregate a prisoner without first notifying the prisoner in writing (on Form # 804.01A) of the reasons for the intended placement and holding a classification hearing to determine if circumstances exist that justify placement in administrative segregation.

The institution need not hold an initial classification hearing if a prisoner requests administrative segregation under section a(5) above. However, the institution must promptly release the prisoner upon request unless the prisoner meets the requirements for emergency placement.

### **c. Classification Hearing**

#### **1. Notice of Hearing**

The Department shall give the prisoner 48 hours notice of the classification hearing and advise the prisoner of his or her right to assistance from a hearing advisor or counsel when segregation is in connection with an infraction that would constitute violation of a felony criminal statute or is related to transfer to a psychiatric facility. A prisoner is entitled to a hearing advisor to investigate the facts and coordinate the prisoner's presentation at the classification hearing.

#### **2. Evidence/Witnesses**

The prisoner must be given the opportunity to challenge the factual basis for the placement, to appear, to present evidence, and to examine witnesses, unless the hearing officer or classification committee makes a written factual finding that to do so would subject another person to a substantial risk of harm. In that case, the Department shall give the prisoner the substance of the witness' testimony. The prisoner must also be provided the opportunity to make a statement on his or her own behalf.

#### **3. Department's Burden**

The institution must demonstrate that the prisoner meets the criteria in (a)(1) – (a)(10) above in order to place the prisoner in administrative segregation. Except as provided for below, within three working days after the hearing, the hearing officer or committee must prepare a Classification form (Form # 735.03A or Form # 705.01A) for the Superintendent's review and action. The form must include written factual findings and the evidence that the committee/hearing officer relied upon in sufficient detail to permit appellate review.

#### **4. Superintendent's Review**

Except as provided below, the Superintendent has five working days to make a final decision on the hearing officer or committee's recommendation. The Superintendent may approve, disapprove, or modify the committee/hearing officer's decision. If disapproved or modified, the

Superintendent shall state the reasons on the Classification form. The prisoner shall receive a copy of the final decision. If the decision is for placement or continued placement in administrative segregation, it must include a description of the appeal process set out in DOC Policy # 760.01, Appeal Procedures.

## **5. Right to Appeal**

The prisoner has the right to appeal the Superintendent's decision.

### **d. Appeal of Decision.**

A prisoner may appeal the Superintendent's decision to the Director of Institutions (except when transferred to another institution). If the administrative segregation assignment involves transferring the prisoner to another institution, the prisoner may appeal the classification action directly to the Deputy Commissioner.

### **e. Review Hearings**

The classification committee shall hold review hearings within 30 days after the first hearing and every 30 days thereafter for as long as the prisoner remains in segregation. At this hearing, the institution must demonstrate that conditions still justify segregating the prisoner.

### **f. Expedited Time Frames for Action after Hearing**

A prisoner assigned to administrative segregation who has had a classification hearing and is either facing or appealing disciplinary action, is entitled to action within the following expedited time frames:

1. the committee/hearing officer shall prepare the Classification form and deliver it to the Superintendent within one working day after the classification hearing;
2. the Superintendent shall approve, disapprove, or refer the matter back to the committee/hearing officer for further consideration within two working days after receiving the Classification form;
3. if the matter is referred back to the committee/hearing officer, the committee/hearing officer has four working days to review the matter and resubmit it to the Superintendent for review; and
4. the institution shall release the prisoner immediately from segregation unless the Superintendent decides that the prisoner continues to meet the criteria for administrative segregation.

### **g. Conditions of Administrative Segregation**

Except in an emergency, cell occupancy in the administrative segregation unit may not exceed operational capacity. When an emergency requires multiple occupancy beyond operational capacity, a report must be prepared immediately and given to the Superintendent for review and action. In addition, segregated prisoners must be provided the same food, bedding, linen, and personal hygiene opportunities as the general prison population except as provided below and segregation unit quarters must be adequately ventilated, lighted, heated, and cleaned.

#### **h. Rights and Privileges**

Segregated prisoners must be provided the same general rights and privileges as the general prisoner population unless the Department makes an individualized determination that a prisoner's participation in the specific right, privilege, or opportunity threatens the order and security of the facility. In such a case, the Superintendent or designee shall make written findings of fact showing that the prisoner is an escape, smuggling, or security risk and, therefore, not entitled to a certain right or privilege. The Superintendent or designee must notify the prisoner of this decision as soon as practicable either before or upon denying the right or privilege. The prisoner may appeal such a determination as provided above.

#### **i. Supervision of Segregation Unit**

The Superintendent or designee shall inspect the segregation unit(s) daily. The Superintendent shall inspect the unit in person at least once during each workweek. The segregation unit and the prisoners housed therein will be monitored on a regular basis to facilitate the observation and evaluation of the conditions of segregation, and to maintain the appropriate degree of staff contact with prisoners in segregation as follows:

- (1) the Assistant Superintendent shall visit the unit at least once each working day;
- (2) the Shift Supervisor shall visit the unit at least once during each shift;
- (3) health care personnel shall visit or otherwise be available to prisoners as needed, consistent with the Health Care Services policies and procedures;
- (4) probation officers, program representatives, and staff counselors shall visit the unit as appropriate for the prisoners' needs and requests;
- (5) mental health professionals shall visit the unit if requested by institutional staff or prisoners; and
- (6) religious faith representatives may visit the unit in response to prisoners' authorized requests.

#### **j. Release From Administrative Segregation**

The Superintendent shall release a prisoner from segregation under the following conditions:

1. after the Superintendent's review of placement and a determination that the prisoner does not meet the requirements for administrative segregation;
2. the prisoner has been appropriately classified after initial admission to the

institution in accordance classification procedures;

3. after the prisoner completes the requisite health screening and physical examinations under DOC Policy # 807.14, Health Examinations; or

4. after reviewing the classification committee/hearing officers' recommendations, the Superintendent determines that the prisoner no longer meets the criteria for administrative segregation.

## **2. Punitive Segregation<sup>686</sup>**

### **A. Assignment to Punitive Segregation**

The institution may place a prisoner in punitive segregation after a disciplinary hearing in which the prisoner is found guilty of a violation that warrants this sanction.

### **B. Conditions of Punitive Segregation**

A prisoner's participation in the following activities [is] automatically suspended when the prisoner is in punitive segregation:<sup>687</sup>

- a. participation in education programs or group religious services;
- b. contact visitation;
- c. secure visitation other than with immediate family members (e.g., spouse, parents, children, or siblings);
- d. telephone calls, except those to an attorney or the ombudsman's office;
- e. use of radio, tape recorder, phonograph, television or games;
- f. recreation, except the prisoner has the right to out-of-cell exercise at least one hour per day and must have access to fitness equipment sufficient to exercise the large muscle groups in an area large enough to reasonably accommodate the equipment and activity;
- g. reading material, except for religious, legal matter, or educational materials if the prisoner is enrolled in a course;
- h. eating in a community dining area;
- i. use of the commissary;

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<sup>686</sup> The information contained in this section comes directly from DOC Policy # 804.02, Punitive Segregation.

<sup>687</sup> 22 AAC 05.470(b)(1)-(9).

- j. right to wear personal clothing in living units; and
- k. physical access to the law library and assistance in using the law library, except for law librarian's services, as individual security demands require; the prisoner may have at least four law books in his or her cell at any one time, and the law librarian's assistance locating, researching, and obtaining legal materials; if necessary, the Department may arrange secure visits between the prisoner and the law librarian.

The prisoners' living conditions in punitive segregation must approximate but be more restrictive than those of the general prisoner population. The basic conditions below apply to punitive segregation:

- a. Quarters must be sanitary and have adequate ventilation, light, and heat.
- b. The cell or room must be single occupancy. Staff shall inform the superintendent when a situation arises that necessitates multiple occupancy. The superintendent or designee shall establish the criteria for exceeding single occupancy.
- c. Prisoners must wear a prescribed uniform and have a bed, mattress, bedding, and linens. The institution may not segregate a prisoner without clothing or bedding unless health care personnel prescribe these extraordinary limitations for medical or psychiatric reasons and the superintendent approves the limitations.
- d. Prisoners must normally be provided normal meals from the institution's daily menu, although the DOC may use disposable utensils. Prisoners on special diets must be provided meals that meet their special needs.
- e. Prisoners must maintain standard personal hygiene. The institution shall provide personal hygiene items such as toothpaste, toothbrush, soap, and shaving items, etc. For safety or security, the institution may issue the prisoner a returnable kit of toilet articles. Each segregated prisoner must shower at least three times a week, unless these procedures present an undue security hazard. The Department shall provide laundry and barbering services on a regularly scheduled basis.
- f. Segregated prisoner personal property is limited to personal hygiene items and the reading and writing materials necessary for religious purposes, legal matters, or educational programs if the prisoner is enrolled in a course.
- g. incoming or outgoing mail for segregated prisoners is the same as for the general prisoner population.

#### **D. Prisoner Grievances<sup>688</sup>**

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<sup>688</sup> The information in this section comes directly from DOC Policy # 808.03, Prisoner Grievances.

A prisoner may file a grievance over any matter within DOC's control including a violation of the Department's regulations, a statute, or a procedure set out in the prisoner handbook, or health care grievances. Prisoners may not file grievances concerning classification or disciplinary decisions, administrative transfers, prohibited conduct of prisoners, Alaska Parole Board procedures or decisions, or court procedures or decisions. Other avenues are available to contest these decisions.<sup>689</sup>

## **A. Grievance Process Summary**

**Step One.** An inmate must first attempt to resolve the grievance informally by filling out a Request for Interview Form (Form # 808.11). If the inmate is not satisfied with the result of informal resolution, then:

**Step Two.** An inmate must fill out Form # 808.03C and give it to the facility's Grievance Coordinator (GC) in order to file a formal grievance. This form must be filed within 30 days from the date the grieved action occurred or the date the inmate had knowledge of the action. The GC may screen the grievance, ask for permission to resolve it if it seems easy to resolve, or assign an investigator. If the grievance is screened, the inmate can attempt to correct any deficiencies in the grievance and re-submit it, or can appeal the screening decision. If the screening appeal is denied, there is no further action that the inmate can take. If the GC assigns an investigator:

**Step Three.** An inmate will receive a written decision from the Department concerning the grievance. This decision may be appealed by filling out Form # 808.03D within two days. If the inmate files an appeal:

**Step Four.** An inmate will receive another written decision from the Department. If the inmate does not agree with this decision, the inmate may seek review by the Department's Grievance and Compliance Administrator (GCA). Prisoners must request review by writing a letter directly to the GCA within 30 days. This is the final step unless the grievance is an issue addressed in the Cleary FSA and involves a violation of a state or federal right. If it does, a compliance action may be filed with the court.

## **B. Preliminary Grievance Matters**

1. Filing Period: A grievance must be filed within 30 days of the date the incident occurred or from the date the prisoner had knowledge of the incident. Filing a form for informal resolution does not satisfy this requirement.
2. Grievance Against the Superintendent: A grievance may be filed against a superintendent of a facility only for action taken directly by the superintendent.
3. Grievance Coordinator: The superintendent shall assign an appropriate staff member as the coordinator

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<sup>689</sup> These matters may only be raised through an appeal of a classification or disciplinary action, or court action.



4. Where to File a Grievance: Except for emergency grievances, all grievances and grievance appeals must be filed in the locked box located in the housing unit. The grievance coordinator will make and keep a copy of the grievance
5. Transferred or released prisoners: If a prisoner is transferred while the grievance is being processed, the Grievance Coordinator shall continue the grievance process in coordination with the coordinator of the receiving institution, unless the transfer resolves the issue. If a prisoner has been released from custody, the prisoner must notify the coordinator in writing and leave a contact address if he or she wants the grievance process to continue.
6. Retaliatory action: The department shall promptly investigate any allegations of retaliation against prisoners who use the grievance process to ensure that the prisoner is not subjected to any form of retaliation for the pursuit of a grievance.

## **C. General Grievance Procedures**

### **1. Informal Resolution**

A prisoner must first try to resolve the grievance informally before filing a grievance, except for an emergency grievance or a grievance alleging staff misconduct. The prisoner must complete a Request for Interview form (Form # 808.11) and give it to the appropriate staff member or place it in the locked box in the housing unit.

### **2. Filing a Grievance (Level One)**

If informal resolution fails, a prisoner may file a grievance. To do so, the prisoner must fill out the first page of the Prisoner Grievance Form (Form # 808.03C), attach the response to the informal resolution attempt, and place the form in the locked box. The Grievance Coordinator will record the grievance and its subject matter in the grievance log. The grievance process begins when the GC records and files the grievance

The GC shall promptly decide whether the grievance should be screened, resolved easily, sent to the GC of the facility where the incident occurred, sent directly to the Superintendent, or assigned to an investigator

#### **A. Screened Grievances**

If screened, the GC will fill out a Grievance Screening Form (Form # 808.03A) and provide a copy to the prisoner. If a prisoner can correct the deficiency that caused the screening, the prisoner may resubmit the grievance. The grievance will be considered timely if resubmitted within two working days of receipt of the screening form.

If the Prisoner believes that the grievance was screened improperly and this is part of a systemic problem, the prisoner can file a separate grievance concerning the screening process.

### **1. The GC shall screen out and return a grievance if:**

- a. The action or decision being grieved is not a grievable issue;
- b. The grievance is not within the institution or department's jurisdiction;
- c. The issue was not first addressed informally;
- d. The issue was already grieved by the prisoner or by another prisoner and resolved;
- e. the grievance is submitted on behalf of another prisoner who is able to file his or her own grievance;
- f. the form is not filled out completely;
- g. the grievance is not filed within 30 days;
- h. the grievance is grieving an action not yet taken;
- i. the grievance contains inappropriate use of obscene or profane words;
- j. the grievance is factually incredible or clearly devoid of merit;
- k. the specific relief sought is unclear;
- l. the grievance raises unrelated issues that should be presented in separate grievances; or
- m. the grievance is against the superintendent but is not for action taken directly by the superintendent.

### **2. Appeal of a Screened Grievance**

- (a) The prisoner must state in writing why the screening decision is incorrect on the Request for Interview Form (Form # 808.11A), attach it to the grievance and the screening form, and return it to the GC within two working days after receiving the screening decision.
- (b) The GC shall record the appeal and forward it to the superintendent or, if the grievance concerns an action taken by the superintendent, to the Deputy Director of Institutions.
- (c) The superintendent/deputy director has ten working days after receipt of the appeal to complete the review and issue a written decision through the GC to the prisoner. If a response is not received within the ten working days, the appeal is considered denied. However, a late response granting an appeal is valid. This level of review is final.

### **B. Easily Resolved Filed Grievance**

The GC has discretion to attempt to resolve the initially filed grievance if it can be easily resolved with the concurrence of the prisoner. If such a resolution is reached, the Resolved Filed Grievance form (Form # 808.03B) must be filled out completely and properly counter-signed by the prisoner and the GC.

### **C. Investigator Assigned**

If the grievance is not screened out or resolved and withdrawn after its initial filing, the GC must either investigate or assign another staff member to investigate. The investigator shall forward a clear and concise written statement of findings (on the second page of Form # 808.03C) to the superintendent through the GC within ten working days from the date the grievance was filed.

### **Grievance against Superintendent**

If Grievance is against the superintendent, the GC shall forward it to the Deputy Director of Institutions for assignment to an impartial investigator. The investigator shall forward the findings and recommendations to the Deputy Director of Institutions.

### **Allegations of Staff Misconduct**

When the GC receives a grievance alleging staff violations of the ethical code or standards of conduct (defined in DOC Policy # 202.01), the GC shall record and forward the grievance directly to the superintendent. The superintendent shall then either:

1. investigate, resolve the grievance, and provide a written decision to the prisoner through the GC; or
2. return the grievance to the GC for informal resolution or assignment to an investigator

### **3. Formal Review by the Superintendent/Deputy Director**

The superintendent or deputy director shall, through the GC, give the prisoner a written response on Form # 808.03C, within five working days after receiving the investigator's findings. The decision must note any corrective action, include sufficient findings and conclusions to provide for further review, and include a copy of the investigator's findings and recommendations.

### **4. Appeal Process (Level Two)**

A prisoner may appeal a superintendent/deputy director decision. A prisoner must file a Prisoner Grievance Appeal Statement Form (Form # 808.03D) with the GC within two working days after receiving the superintendent/deputy director's decision. The GC shall record the appeal and immediately send it to the deputy director, or, in the case of an appeal from the deputy director's decision where the superintendent had been initially grieved, to the Director.

- a. The director/deputy director shall respond to the prisoner in writing through the GC within 15 working days after receiving the appeal. The director/deputy director shall either affirm or reverse the superintendent's decision, note any corrective action, and set out findings and conclusions sufficient to permit further review. If a response is not received within 15 working days, the appeal is considered denied. However, a late response granting the appeal is valid.

- b. The director/deputy director shall file a copy of the appeal and written response to the appeal with the Grievance and Compliance Administrator.
- c. The Department may deny any prisoner's appeal that does not allow for these procedures.

## **5. Review by the Grievance and Compliance Administrator**

A prisoner who believes a grievance has not been handled consistent with this policy may seek review by the Department's Grievance and Compliance Administrator ("GCA") after the director/deputy director renders a decision. Prisoners must request review by writing a letter, and sending it in a sealed envelope directly to the GCA within 30 days. The GCA shall respond to the prisoner within 30 days.

## **D. Emergency Grievances**

An emergency grievance may be made by notifying the GC, the superintendent, or the superintendent's designee (e.g., shift supervisor during nights, weekends, holidays) orally or in writing. Emergency grievances involve issues that threaten life or the security of the facility or that may cause harm to any individual. The superintendent or designee (with immediate notification to superintendent) shall determine whether the issue grieved is an emergency. The GC, superintendent, or designee shall investigate and resolve the emergency grievance the same day or before the end of the shift. The GC, superintendent, or designee shall give the prisoner a written decision as soon as practicable.

## **E. Health Care Grievances**

### **1. Scope**

A prisoner may file a medical grievance regarding medical treatment, including:

- a. the prisoner is refused treatment by medical, dental, psychiatric, or mental health staff, whether salaried or contract service personnel;
- b. the Department refuses treatment recommended by a consulting health care professional (non-Department personnel); or
- c. the prisoner is recommended for treatment by a consulting health care professional and the prisoner wants that recommendation reviewed

### **2. Procedures**

Prisoners shall follow the sections on informal resolution and filing a grievance (level one) explained above. In addition, the following procedures apply:

- a. The GC, in consultation with health care staff not the subject of the grievance, shall promptly decide whether the grievance should be screened or can be resolved easily. If it is not screened, the GC shall assign the grievance to the facility Health Care Officer (HCO) for investigation and response. The facility Health Care Officer shall send a written response (on Form # 808.03C) to the prisoner, through the GC, within ten working days from the date the grievance is filed.
- b. If the grievance is against the facility HCO, the GC shall ask the Anchorage Central Office Health Care Administrator to assign an impartial investigator. If the investigation is to be conducted by a person from outside the facility, the investigator shall have ten working days from receipt of the assignment to send a written response to the prisoner through the GC.
- c. The facility HCO shall investigate and resolve emergency grievances either within the same day or by the end of the officer's shift. The officer shall send a written decision to the prisoner through the GC as soon as practicable.

### **3. Appeal**

If a prisoner is not satisfied with the response to the grievance, the prisoner may appeal. The prisoner must complete Form # 808.03D and give it to the GC within two working days after receiving the decision. The GC shall direct the HCO to compile copies of all relevant medical records for placement in a sealed envelope. The GC shall record and forward the grievance appeal and the sealed records to the Health Care Administrator's office for the assignment of an impartial investigator.

- a. The assigned investigator shall investigate the matter and provide the Department's Medical Director with a written statement of findings and recommendations within ten working days of receipt.
- b. The medical director shall review the investigator's written recommendations and, through the GC, give the prisoner a written decision within five working days of receipt of the investigator's statement of findings and recommendations. The decision must contain findings of fact and conclusions as to the merits of the grievance. The medical director shall send copies of all appeal decisions to the Grievance and Compliance Administrator.
- c. If the appeal involves a health care decision made by the medical director, the Medical Grievance Review Committee shall review the investigator's written recommendations and, through the GC, give the prisoner a written decision within ten working days of receipt of the investigator's statement of findings and recommendation. The decision must contain findings of fact and conclusions as to the merits of the grievance. The Medical Grievance Review Committee shall send copies of all appeal decisions to the Grievance and Compliance administrator.

- d. If the prisoner believes that the health care grievance involves a malpractice issue, the prisoner may only appeal to the State Occupational Licensing Board.

## **F. Cleary Non-Compliance Grievances**

If a prisoner files a grievance concerning an issue addressed in the Cleary FSA, the prisoner must: (1) exhaust the administrative grievance procedure set out in this policy and (2) allow the Grievance and Compliance Administrator 30 working days to review the Department's decision and give the prisoner a written decision. If the prisoner does not agree with the GCA's decision, the prisoner may file a compliance motion under Cleary.<sup>690</sup> This motion must satisfy the requirements of the APLRA

Note: Legal counsel for the Cleary Plaintiff Class has been released. A prisoner must therefore proceed *pro se* or retain separate counsel to file an action with the Cleary Court.

## **E. Prisoner Disciplinary Proceedings**

Disciplinary infractions committed by a prisoner will have a bearing on an inmate's custody status and designation. As a result, the Department has developed a comprehensive hearing process to provide due process protections to inmates accused of committing a disciplinary infraction.

Minor infractions can be handled informally, but more serious infractions require a disciplinary hearing. At the hearing, prisoners have procedural rights such as the right to present evidence and witnesses, to confront witnesses, and to appeal the decision of the disciplinary tribunal.

### **1. Prohibited Conduct for Prisoners<sup>691</sup>**

Prohibited conduct for prisoners in state facilities is governed this section. A violation must be punished as either a major, high- or low-moderate, or minor infraction.

Major infractions include the following:

1. homicide;
2. assault upon a staff member or a visitor;
3. escape or evasion from custody;
4. setting a fire;
5. rioting;
6. assault by a prisoner upon another prisoner under circumstances that create a substantial risk of serious physical injury;
7. threatening or intimidating a witness in an official proceeding;
8. possession, use, or introduction of weapons or escape implements;
9. stealing, destroying, altering, or damaging government property, or the property of another, which results in damages of \$1,000 or more; and

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<sup>690</sup> See Hertz v. State, 869 P.2d 154 (Alaska 1994).

<sup>691</sup> 22 AAC 05.400.

10. commission of a class A or unclassified felony offense.

High-moderate infractions include the following:

1. fighting (i.e., mutual combat) with a person;
2. extortion, blackmail, or protection, such as the demanding or receiving of favors or anything of value in return for protection against bodily harm, property loss, or under threat of informing;
3. engaging in sexual acts with others or making sexual proposals or threats;
4. wearing a disguise or mask;
5. stealing, destroying, altering or damaging government property or the property of another, which results in damages of \$100 or more, but less than \$1,000;
6. tampering with or blocking a locking or security device;
7. possession, use, or introduction of contraband, except that described in Major Infractions, which directly threatens the security of the facility, such as excess money or unauthorized drugs;
8. intentional misuse of prescribed medication, such as hoarding medication or taking another person's medication;
9. adulteration of food or drink;
10. participation in an organized work stoppage;
11. possession of staff clothing or unauthorized civilian clothing;
12. counterfeiting, forging, or unauthorized reproduction of a document, article of identification, money, security, or official paper or the possession or use of such a document, which presents a threat to the security of the facility;
13. giving or offering an official or staff member a bribe;
14. threats to another of immediate bodily harm;
15. engaging in a group or individual demonstration or activity that involves throwing of objects, loud yelling, loud verbal confrontation, or pushing, shoving, or other physical contact that disrupts or interferes with the orderly administration of the facility;
16. refusal to provide a urine specimen when requested by a staff member;
17. spitting or throwing urine or fecal matter on or at a staff member;
18. intentionally providing a false statement before a classification or disciplinary committee or a hearing officer in a disciplinary matter or to an investigator in a grievance, classification, or disciplinary matter;
19. refusing to obey a direct order of a staff member;
20. misuse of the telephone, such as making intimidating, obscene, harassing, or threatening phone calls;
21. encouraging others to engage in a food strike;
22. refusal or failure to participate in a court-ordered treatment program, unless the conviction is being appealed and refusal is based upon advice of counsel;
23. intentionally interfering with a prisoner count; and
24. commission of a class C or B felony offense.

Low-moderate infractions include the following:

1. indecent exposure;

2. stealing, destroying, altering, or damaging government property, or the property of another, which results in damages of \$50 or more, but less than \$100;
3. unauthorized use of mail or telephone;
4. lying or providing a false statement to a staff member under circumstances other than those described in High Moderate Infractions;
5. giving or loaning property or anything of value for profit or favors if it threatens the security or orderly administration of the facility;
6. threats to another of future bodily harm;
7. possession of anything not authorized for retention or receipt by the prisoner and not issued through regular facility channels;
8. malingering or feigning an illness, injury, or suicide attempt;
9. missing a prisoner count, unexcused absence or tardiness from work or an assignment, failure to perform work as instructed by a staff member, or refusing to perform a work assignment for alleged medical reasons without being excused by medical staff;
10. failure to abide by posted sanitation rules or failure to keep one's person and quarters in accordance with posted rules;
11. being in an unauthorized area;
12. using equipment or machinery contrary to instructions or posted safety standards or use of equipment or machinery which is not specifically authorized;
13. using abusive or obscene language or gesture that is likely to provoke a fight or that clearly disrupts or interferes with the security or orderly administration of the facility;
14. tattooing or self-mutilation, other than attempts at suicide;
15. unauthorized communication or contact with the public or visitors;
16. giving to or exchanging anything of value with or accepting anything of value from any other person without prior approval of the superintendent, if it threatens the security or orderly administration of the facility;
17. threatening damage to or theft of another's personal property;
18. kicking, shouting, or banging, or engaging in any other persistent nuisance noise or activity;
19. willful failure or refusal to keep a medical or health care appointment scheduled with the prisoner's knowledge and consent; and
20. commission of a misdemeanor offense.

Minor infractions include the following:

1. gambling or possession of unauthorized gambling paraphernalia;
2. possession of unauthorized prisoner clothing;
3. failure to follow posted safety rules, except as described in Low Moderate Infractions;
4. smoking where prohibited;
5. stealing, destroying, altering, or damaging government property or the property of another, which results in damages of less than \$50; and
6. failure to follow a written rule of the facility, of which the prisoner has been provided notice and which has been approved by the regional director.



Planning or attempting to commit, or aiding or encouraging a prisoner to plan or attempt to commit an infraction described in this section is considered the same as a commission of the infraction itself.

A list of the prohibited conduct described in this section must be provided in writing to each prisoner upon admission to a facility. If a prisoner is illiterate or cannot understand English, the list of prohibited conduct must be read and explained or interpreted, as necessary.

## **2. Informal Resolution<sup>692</sup>**

A facility staff member may informally handle prisoner conduct that constitutes a minor infraction by correcting, counseling, or advising the prisoner as to the proper or acceptable behavior. Upon approval of the assistant superintendent, a facility staff member may informally handle prisoner conduct that constitutes a low-moderate or high-moderate infraction by correcting, counseling, or advising the prisoner as to the proper or acceptable behavior. However, all prisoner misconduct that constitutes a low-moderate or higher infraction must be reported to the assistant superintendent by separate report for each infraction. If the matter is handled informally, the staff member shall file an information report unless the infraction is a minor infraction.

Staff members may not informally discuss the facts of an alleged infraction with other staff members other than the assistant superintendent, in order to ensure impartiality in the disciplinary process.

## **3. Advance Notice to Prisoner of Hearing before Disciplinary Tribunal<sup>693</sup>**

A prisoner scheduled to appear before a disciplinary tribunal must be provided written notice at least 48 hours in advance of the hearing. A prisoner may waive the 48-hour notice requirement by requesting an earlier appearance before the disciplinary tribunal. The notice referred to in this section must (1) include a brief description of the agenda followed at a disciplinary tribunal; (2) include the procedural opportunities afforded a prisoner; and (3) inform the prisoner that, no later than 24 hours before the hearing, the prisoner must inform the disciplinary tribunal in writing of witnesses that might be called or evidence that might be introduced.

If the prisoner is represented by a staff advocate, at the prisoner's request, the advocate shall inform the disciplinary tribunal in writing of witnesses the prisoner might call or evidence that might be introduced.

## **4. Agenda at Disciplinary Tribunal Hearing<sup>694</sup>**

A disciplinary tribunal hearing occurs in two phases, the adjudicative phase and the dispositive phase. The adjudicative phase must occur first and must be directed toward determining whether

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<sup>692</sup> 22 AAC 05.405.

<sup>693</sup> 22 AAC 05.415.

<sup>694</sup> 22 AAC 05.420.

the prisoner committed the alleged infraction. If the prisoner is found to have committed the infraction, the dispositive phase must follow and must be directed toward determining what sanction is to be imposed. If the accused prisoner refuses to appear or participate in the hearing, adjudication and disposition may be made in the prisoner's absence.

The adjudicative phase of the hearing must proceed as follows:

1. The hearing officer or committee chairperson, as applicable, shall call the meeting to order and, unless the alleged violation is a minor infraction, ensure that the proceedings are tape-recorded.
2. The hearing officer or chairperson, as applicable, shall read the disciplinary report to the prisoner.
3. The hearing officer or chairperson, as applicable, shall request the prisoner to admit or deny each of the infractions alleged.
4. If an admission is entered, the dispositive phase may begin.
5. If a denial is entered, the following procedure applies:
  - (a) If the prisoner or the disciplinary tribunal has requested the appearance of the staff member who wrote the disciplinary report, the staff member must be called into the room and questioned.
  - (b) If the disciplinary report has noted the existence of witnesses or other evidence relevant to the alleged infraction, the hearing officer or chairperson, as applicable, may call the witnesses or otherwise introduce the evidence.
  - (c) The accused prisoner or advocate may present the prisoner's version of events, call witnesses, and introduce evidence.
  - (d) When the accused prisoner is finished presenting evidence, the prisoner must be excused from the room and the disciplinary tribunal shall, by a preponderance of the evidence, find whether the prisoner has committed the infraction. The tape recorder need not be operating during the deliberations of the disciplinary tribunal.
  - (e) The prisoner must be called back into the room and informed, on the record, of the disciplinary tribunal's decision.

The dispositive phase of the hearing must proceed as follows:

1. If the prisoner admits the alleged infraction or is found by the disciplinary tribunal to have committed it, the disciplinary tribunal shall consider what sanction to impose.
2. The prisoner or advocate may present any evidence or information believed to mitigate punishment. The disciplinary tribunal must consider such evidence or information in imposing a penalty.
3. The prisoner may be excused from the room while the disciplinary tribunal determines what penalty to impose. The tape recorder need not be operating during the deliberations of the disciplinary tribunal. The prisoner must be called back into the room and informed on the record of the disciplinary tribunal's decision. The prisoner must be informed verbally, on the record, of the opportunity to appeal and the obligation to give notice of intention to appeal under 22 AAC 05.480 and must be provided a form, upon request, to facilitate an appeal.

## **5. Defense Witnesses and Evidence at Disciplinary Hearing<sup>695</sup>**

The accused prisoner may present witnesses and other evidence in the accused prisoner's defense, if written notice of the witnesses to be called or evidence to be admitted is given to the disciplinary tribunal no later than 24 hours before the hearing, unless good cause is shown why this time requirement cannot be met.

The superintendent shall allow the accused prisoner or advocate to have a reasonable opportunity to interview witnesses, collect statements, or compile other evidence, if that action would not create a risk of reprisal or undermine security. The accused prisoner must use a staff advocate to help in this task if either the prisoner or the witness is being held in segregation or the witness to be interviewed is a staff member.

The hearing officer or chairperson, as applicable, of the disciplinary tribunal may decline, for compelling reasons, to call a witness that the accused prisoner or advocate has requested to appear and may restrict the introduction of other evidence to avoid repetitious or irrelevant evidence or to avoid a risk of reprisal or undermining of security. The hearing officer's or chairperson's reason for declining to call a witness or admit evidence must be noted orally for the record. If the prisoner is found to have committed an infraction, the hearing officer or committee chairperson shall file a report, to be attached to the completed disciplinary tribunal report, listing all persons the prisoner requested to appear but were not called to testify or other evidence sought to be introduced, which was not admitted. This report must contain a brief statement of the reasons why the persons were not called or the evidence was not admitted.

## **6. Prisoner's Opportunity to Confront Accusers in a Disciplinary Hearing<sup>696</sup>**

If the accused prisoner or advocate requests the disciplinary tribunal to call as a witness the member of the facility staff who wrote the disciplinary report, the staff member shall appear as a witness. If the staff member is temporarily unavailable, the hearing officer or chairperson shall postpone the proceedings until the staff member is available to appear. If any other staff member who is called as a witness is temporarily unavailable, the hearing officer or chairperson may postpone the hearing until the staff member is available to appear.

If the charge is based in whole, or in part, upon information supplied by another prisoner, an unidentified informant, or other witness, the hearing officer or chairperson of the disciplinary committee shall allow the accused prisoner to be present while the witness testifies, unless it would create a risk of reprisal or undermine security. The hearing officer or chairperson may exclude the accused prisoner from the hearing while the witness testifies, but the hearing officer's or chairperson's reasons for denying confrontation must be noted orally for the record. If the accused is found to have committed an infraction, the chairperson shall file a report listing the persons the accused was not allowed to confront, the reasons for the action, the extent to which that testimony was relied upon, and facts upon which the disciplinary tribunal could have reasonably concluded that the person was credible and spoke with personal knowledge, or gave reliable information.

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<sup>695</sup> 22 AAC 05.430.

<sup>696</sup> 22 AAC 05.435.

## **7. Examination of Witnesses in Disciplinary Hearings<sup>697</sup>**

The hearing officer or members of a disciplinary committee and the prisoner's advocate may direct questions to the accused prisoner and other witnesses. The accused prisoner may question any witness but must direct questions through the hearing officer or chairperson. The hearing officer or chairperson 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. If the prisoner is found to have committed an infraction, the hearing officer or chairperson shall file a report, to be attached to the completed committee report, listing the reasons why the prisoner was prevented from examining a witness.

## **8. Punishment<sup>698</sup>**

A. Only a disciplinary tribunal may impose punishment for an infraction. The disciplinary tribunal shall impose at least one, and may impose all, of the following penalties if the prisoner is found guilty of an infraction:

1. reprimand;
2. suspension of participation in activities described, and except as limited 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;
3. confinement in punitive segregation, 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;
4. restitution for the amount of property damage, theft, or, in the case of an injury, for the amount of medical care and related costs, or for costs incurred from a violation of 22 AAC 05.400(d) (19), including the placement of a hold on the prisoner's work compensation payments, withdrawal of money from the prisoner's account, or requiring the prisoner to work without benefit of compensation; and
5. except as provided in 22 AAC 05.473, forfeiture of up to 90 days statutory good time for a low-moderate, up to 180 days statutory good time for a high-moderate and up to 365 days statutory good time for a major infraction.

B. Participation in the following activities is automatically suspended during the period the prisoner is placed in punitive segregation and may otherwise be suspended for the periods described above, except that participation in the activities described in (a) – (d) below for a prisoner who is not in punitive segregation may be suspended for no more than 15 days unless the infraction is directly related to the particular activity:

- a. participation in education programs or group religious services;
- b. contact visiting;
- c. secure visitation other than with immediate family members (i.e., spouse, parents, children, or siblings);
- d. telephone calls except those to an attorney;

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<sup>697</sup> 22 AAC 05.445.

<sup>698</sup> 22 AAC 05.470.

- e. use of radio, tape recorder, phonograph, television, or games;
- f. recreation, except for one hour of exercise per day;
- g. reading material, except for religious or legal matter, or educational materials if the prisoner is enrolled in a course;
- h. eating in a community dining area; and
- i. use of commissary.

C. If justice requires, the penalties imposed may be suspended for a period not to exceed one 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, after a hearing, reimpose the penalties.

D. If the prisoner is found guilty of committing more than one infraction arising out of a single transaction or occurrence, penalties imposed must run concurrently unless the disciplinary tribunal finds that separate and distinct correctional interests exist which clearly justify penalties running consecutively.

## **F. Prison Food Standards<sup>699</sup>**

Except for Saturdays, Sundays, and holidays, each facility shall provide prisoners with three meals every 24 hours, of which at least two must be served hot. On Saturdays, Sundays, and holidays, the facility shall provide two hot meals no more than 14 hours apart. A registered nutritionist or dietician shall review all menus to ensure that prisoners' diets comply with nationally recommended food allowances.<sup>700</sup>

The Department will adopt procedures for the provision of special meals to accommodate cultural preference or religious, vegetarian, and medical diets.<sup>701</sup> The contents of special, religious, and vegetarian meals must approximate the cost, quantity, quality, and nutritional adequacy of meals provided for the general population.

### **1. Definitions**

Within this section, the following definitions apply:

**Approved:** Foods and/or food items under the surveillance of the State of Alaska, USDA, or FDA, which are certified as acceptable for preparation and consumption based upon conformance with appropriate standards and good public health practices.

**Contamination:** Contact by food and/or food items with dust, insects, rodents, unsanitary equipment or utensils, coughs or sneezes, flooding, drainage, leakage, or any substance, organism, or entity, which may threaten public health or the health of prisoners, visitors, or staff of an institution.

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<sup>699</sup> 22 AAC 05.115

<sup>700</sup> DOC Policy # 805.01, Food Service Standards.

<sup>701</sup> DOC Policy # 805.03, Special and /or Religious Diets or Meals.

**Potentially Hazardous Foods:** Food that consists in whole or in part of wild mushrooms; bivalve shellfish such as clams and mussels (except from an approved source); the meat and/or organs of bear, fox, walrus or other wild marine or land animals (except fresh fish, whale, seal, beaver, moose, caribou, or reindeer from a lawful source); fermented vegetable, meat, seafood, or egg products; home canned foods or non-commercially vacuum packed foods; non-commercial smoked fish products; rendered oil; or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.

**Potlatch:** A cultural theme special meal comprised of traditional foods, food items, or the like consumed in a group setting and in an atmosphere of celebration; Alaska Native festival meal sometimes associated with gift giving in conjunction with the meal.

**Religious Coordinator:** An employee of the institution designated by the Superintendent and assigned the responsibility of reporting, reviewing, and scheduling in co-operation with the Chaplaincy Coordinator, all religious programs in the institution.

**Religious Diet:** A prescribed allowance or selection of food for consumption with reference to a particular recognized religious belief.

**Special Meals:** Meals or food prepared for special occasions, e.g. holiday or potlatch meal, that may accommodate cultural preferences; "finger-foods" prescribed for a prisoner who requires especially prepared foods and/or extraordinary limits on access to utensils due to suicidal, assaultive, or other conduct abusive to self, others, or items to which the prisoner has access.

**Therapeutic Diet:** Special meals or food prescribed by a physician, dentist, or other health care staff as part of a patient's treatment.

**Vegetarian Diet:** Meals prepared from vegetable sources or a combination of plant food and dairy products, exclusive of meat to sometimes include eggs.

## **2. Food Policy<sup>702</sup>**

- A. Special meals and diets for prisoners will be accommodated to the extent reasonably possible within Department institutions.
- B. Therapeutic diets will be provided when prescribed by health care staff. The diet will be prepared and served according to the instructions of the health care staff. The practitioner responsible shall:
  - 1. explain the diet and its importance to the prisoner's condition or health;
  - 2. explain other diet restrictions with regard to commissary or provisions of the special diet;

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<sup>702</sup> The information in this section comes directly from DOC Policy # 805.03, Special and/or Religious Diets or Meals.

3. establish the duration of the diet and the procedure for renewal, if necessary;
4. document all therapeutic diet orders in the medical record; and
5. write diet orders in duplicate with one copy to the Food Service Supervisor and the other copy to be placed in the medical file. The diet order shall contain the following information:

- a. name of prisoner;
- b. OBSCIS number;
- c. housing status;
- d. expiration date of order;
- e. title of special diet;
- f. known food allergies; and
- g. amount of nutrients, calories or other information necessary to clarify the order.

C. Religious diets will be made available subject to certification and instructions by the Religious Coordinator with the approval of the superintendent.

1. A request for a religious diet must be channeled through the Religious Coordinator who will review the request and make recommendations to the superintendent.
2. The superintendent will approve or disapprove the diet request. The verified needs of the requesting prisoner and the resources of the institution will be considered in the determination of a religious diet.
3. If the diet is approved, the Food Service Supervisor must be notified in writing of the specifics for provision of the diet.
4. Regular menu food items consistent with the religious diet (e.g., no pork) will be used unless otherwise approved by the Superintendent.

D. Vegetarian diets will be made available in accordance with a selected category of non-meat items identified by food service personnel. Requests for vegetarian diets must be approved by the superintendent or designee on a case-by-case basis.

E. Special meals and/or foods may be served at the discretion of the Superintendent or designee. The Superintendent must approve all such meals for consumption within the institution and ensure that potlatch special meals utilizing traditional wild and/or native foods are prepared and served in conformance with the following guidelines:

1. Food service regulations, including the Department of Environmental Conservation (DEC) regulation 18 AAC 31.010, Supplies, require that food used in food service facilities such as correctional centers be obtained from approved sources.

2. Traditional wild and native foods and/or food items such as wild game or fish are not normally produced or obtained under inspected circumstances and therefore cannot be considered approved unless they are inspected and approved by a DEC agent on behalf of this Department.

NOTE: There is a DEC Sanitarian stationed in close proximity to every correctional facility except those in Bethel and Nome. The local state Sanitarian must be contacted at least one week in advance of receipt or utilization of wild or native foods to schedule a date and time for inspection of wild or native foods for approval prior to their being utilized by institutional food service personnel. For the Yukon-Kuskokwim Correctional Center in Bethel, the Chief Sanitarian for DEC in Juneau (465-2628) must be contacted at least two weeks in advance of the scheduled inspection in order to arrange for the Federal Sanitarian stationed in Bethel to assist state DEC and complete the inspection. For the Anvil Mountain Correctional Center in Nome, the Norton Sound Health Corporation Sanitarian (443-5411) is under contract with DEC and will complete the inspection on their behalf.

3. If there is reasonable assurance that the food item has been lawfully obtained by the donor, has been dressed, butchered, and stored without contamination or loss of quality as outlined below and the food item has been inspected and approved by a OEC agent, certain wild and native foods, exclusive of potentially hazardous foods, may be obtained, processed, prepared and served within an institution in connection with an authorized special meal.
4. At least once a year, when appropriate to the mission of the institution., the superintendent shall authorize a potlatch or other Alaska Native cultural theme special meal in accordance with DOC Policy # 805.01, Menu Planning and Meal Service, with the following guidelines:
  - a. potentially hazardous foods as defined and applied in this policy are prohibited for institutional preparation and use;
  - b. certain wild and native foods such as fresh fish, whale, seal, beaver, reindeer, caribou, and moose, which are approved by DEC or its designee or acquired from an approved source may be utilized for food service providing the following conditions are met:

NOTE: Wild and native foods directly procured under the auspices of this Department such as the salmon obtained through the prisoner work program subsistence fishery in Bethel are exempt from the inspection but are subject to handling and service requirements.

## **G. Living Conditions for Prisoners<sup>703</sup>**

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<sup>703</sup> AS 33.30.015.



The Department of Corrections may not provide in a state correctional facility operated by the state:

- a. living quarters for a prisoner into which the view is obstructed; however, the commissioner is not required to renovate a facility to comply with this subparagraph if the facility is being used as a correctional facility on August 27, 1997 or if the facility was already built before being acquired by the department;
- b. equipment or facilities for publishing or broadcasting material, the content of which is not subject to prior approval by the department as consistent with keeping order in the institution and prisoner discipline;
- c. cable television service other than a level of basic cable television service that is available as a substitute for services that are broadcast to the public in the community in which a correctional facility is located;

The Department of Corrections may not allow a prisoner held in a state correctional facility operated by the state to:

- a. possess in the prisoner's cell a cassette tape player or recorder, a video cassette recorder (VCR), or a computer or modem of any kind;
- b. view movies rated "R," "X," or "NC-17";
- c. possess printed or photographic material that (i) is obscene as defined by the commissioner in regulation; (ii) could reasonably be expected to incite racial, ethnic, or religious hatred that is detrimental to the security, good order, or discipline of the institution or violence; (iii) could reasonably be expected to aid in an escape or in the theft or destruction of property; (iv) describes procedures for brewing alcoholic beverages or for manufacturing controlled substances, weapons, or explosives; or (v) could reasonably be expected to facilitate criminal activity or a violation of institution rules;
- d. receive instruction in person or by broadcast medium or engage in boxing, wrestling, judo, karate, or other martial art or in any activity that, in the commissioner's discretion, would facilitate violent behavior;
- e. possess or have access to equipment for use in the activities listed in (d) of this paragraph;
- f. possess or have access to free weights;
- g. possess in the prisoner's cell a coffee pot, hot plate, appliance, or heating element for food preparation or more than three electrical appliances of any kind;
- h. possess or appear in a state of dress, hygiene, grooming, or appearance other than as permitted as uniform or standard in the correctional facility;
- i. use a computer other than those approved by the correctional facility; the use of a computer under this subparagraph may be approved only as part of the prisoner's employment, education, or vocational training and may not be used for any other purpose;
- j. smoke or use tobacco products of any kind.

The commissioner may determine whether the provisions of this section shall apply to correctional facilities that are not operated by the state and may negotiate with a provider of services for the detention and confinement of persons held under authority of state law under contract or agreement whether the living conditions set out in of this section shall apply to persons held under authority of state law at a facility operated under contract or agreement.

The Department may not allow a prisoner to possess a television in the prisoner's cell if the prisoner is classified as maximum custody under AS 33.30.011(2). But, a prisoner who, under AS 33.30.011(2), has been classified as other than maximum custody may be allowed to possess a television in the prisoner's cell if the prisoner:

1. either is incapable of obtaining or has attained a high school diploma or general education development diploma or the equivalent;
2. is actively engaged in an educational, vocational training, or employment program;
3. has satisfied or is on a regular and current payment schedule for all restitution orders entered by the court as part of the prisoner's sentence and, if applicable, is actively engaged in a treatment plan or counseling, psychiatric, or rehabilitation program ordered by the court or the Department as part of the prisoner's sentence; and
4. pays for the expense of providing the television and, in addition to the utility service fee required by AS 33.30.017, pays for the expense of providing any cable television service.

## **H. Prisoner Housing<sup>704</sup>**

DOC shall provide separate female and male housing units. Requirements for individual cells, segregation units, and dormitory housing for new and existing units include:

### **A. General**

1. Except as required by law, the Department will not admit anyone to a facility who is unconscious or in immediate need of medical attention until the person receives appropriate medical attention and the treating physician or other health care personnel approves the prisoner's admission into the facility.
2. The Superintendent shall isolate those prisoners from the general population who:
  - a. are under the influence of alcohol or drugs;
  - b. are currently violent;
  - c. request and have a valid reason for isolation; or
  - d. are a substantial and immediate threat to themselves or others.
3. The Department shall provide separate female and male housing units.

### **B. Misdemeanor Housing**

The Superintendent shall house sentenced misdemeanants and felons separately, as resources permit. The Department may provide separate cells in a modular living unit for misdemeanants and felons or separate the prisoners by modular living unit if facility resources or facility design permit.

The following prisoners are considered sentenced felons for the purposes of this policy:

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<sup>704</sup> DOC Policy # 808.09, Prisoner Housing.

- a. a prisoner incarcerated for a combination of felony and misdemeanor offenses or for a probation or parole revocation where the underlying offense was a felony; and
- b. a prisoner presently incarcerated for a misdemeanor who was incarcerated for a felony or was under probation or parole supervision following incarceration for a felony within three years preceding the present incarceration.

#### C. Pretrial Detainees

The Department shall house pretrial detainees and sentenced felons separately. The department may provide separate cells in a modular living unit or separate the prisoners by modular living unit if facility resources or design permit.

1. Once a pretrial detainee has been convicted of a felony offense, the Superintendent may house the convicted felon, pending sentencing, in any appropriate housing based upon available resources and sound correctional management.
2. Pretrial detainees may waive their right to be housed separately from sentenced felons.

#### D. Nonsmoking Preference

The institution shall give a nonsmoking prisoner preference to be housed in a cell with another nonsmoking prisoner when resources permit.

#### E. Toilet, Bathing, and Laundry Facilities

1. Each cell, room, or housing unit must have a sink with hot and cold running water unless the cell is specifically designed for short-term housing of prisoners who are considered a danger to themselves or others. In such a case, the institution shall ensure that each prisoner in a locked cell is given reasonable access to running water and toilet facilities upon request.
2. Showers must be located near the housing units.
3. The institution shall maintain water temperatures at 100-120 degrees Fahrenheit.
4. Each cell or housing unit must have an adequate working toilet facility. The institution may design special toilets to minimize possible physical injury to prisoner living in specially designed housing units.
5. The institution shall use privacy screens to separate toilet facilities from the living area in all dormitories.

#### F. Bedding

Each prisoner shall be provided with:

1. a clean and intact mattress;
2. a pillow that conforms to applicable fire and safety codes;
3. two sheets;

4. a pillowcase;
5. a sufficient number of blankets to provide comfort under existing temperature conditions, unless documented individual health or safety concerns (e.g., suicide risk) dictate otherwise; and
6. a bed off the floor, unless documented individual health or safety concerns dictate otherwise.

## **I. Prisoner Hygiene, Grooming, And Sanitation<sup>705</sup>**

Prisoners have the freedom to groom and dress as they wish as long as their appearance does not conflict with an institution's requirements for safety, security, identification, and hygiene. Prisoners whose grooming and personal hygiene habits threaten their health or the health of others will be referred to medical staff.

### **A. Hair Care**

1. Prisoners must have clean and properly groomed hair.
2. The superintendent shall ensure that prisoners wear hair nets or head coverings if they work in the kitchen, dining room, or near machinery.<sup>706</sup> The superintendent also may designate other areas where prisoners must use a hair net or head covering.
3. Staff shall routinely search prisoners' hair for contraband.
4. If a prisoner greatly alters his or her outward appearance, e.g., changing hair length or color, shaving, or growing a beard or mustache, the individual shall be re-photographed for purposes of identification.<sup>707</sup>
5. Superintendents of large institutions shall designate a specific room as a hair care facility. Prisoners may use a multipurpose room for hair care in smaller institutions.
  - a. Prisoners shall cut hair under sanitary conditions and in an area where institutional staff may supervise.
  - b. Staff shall store barber and beautician's equipment in a secure area when not in use.
6. Prisoners need not wear a particular hair style unless the superintendent requires a certain hair style for program, security, safety, or hygiene requirements in the institution.<sup>708</sup>

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<sup>705</sup> The information contained in this section comes directly from DOC Policy # 806.02, Prisoner Hygiene, Grooming and Sanitation.

<sup>706</sup> 22 AAC 05.180(b).

<sup>707</sup> 22 AAC 05.180(d).

<sup>708</sup> 22 AAC 05.180(c).

## B. Bathing

Showers and bathing facilities must be made available at least three times per week unless ordered otherwise by facility health care personnel. Prisoners assigned to special jobs such as food service, health care services, sanitation, or maintenance must shower daily.

## C. Bedding and Linen

1. Each institution shall keep more linen and bedding in stock than necessary for the maximum prisoner capacity so that lost, destroyed, or worn out items can be replaced.

2. Correctional personnel shall record and issue to prisoners, at a minimum, the items below (except for prisoners who have a certain status or are assigned to a specific area because of extraordinary circumstances such as intoxication holds, suicide watch, medical isolation, etc.):

- a. one clean and intact mattress;
- b. two blankets; the Department shall provide additional blankets if necessary for comfort under cold temperature conditions, unless documented individual health or safety concerns (e.g., suicide risk) dictate otherwise;
- c. two sheets;
- d. one pillow which conforms to fire and safety codes;
- e. one pillow case;
- f. one towel; and
- g. one wash cloth.

3. Each facility shall maintain or have access to a means of cleaning mattresses and pillows.

4. Prisoners may exchange their linen on a one-for-one basis at least twice per week (towels at least three times per week) or more frequently as resources allow. Prisoners shall be held accountable for the linen they are issued.

## D. Personal Hygiene Items

1. When admitted to the institution, the Department shall give each prisoner, at a minimum, a toothbrush, toothpaste or powder, a comb, and feminine hygiene items for women. The Department shall provide soap and toilet paper within the housing unit.<sup>709</sup>

2. If a prisoner is transferred after admission and the Department does not transfer the items listed within twelve hours of the prisoner's arrival at the new facility, the Department immediately shall provide these items to the prisoner at the receiving facility's expense.

3. Each superintendent shall establish procedures for prisoners to purchase or, in the case of indigent prisoners, to obtain hygiene items through the commissary.

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<sup>709</sup> 22 AAC 05.180(a). See also DOC Policy #811.05, Prisoner Personal Property.

4. The Department shall provide prisoners a daily opportunity to use an individual razor.

## **J. Institutional Design Standards<sup>710</sup>**

Work and living conditions for staff and prisoners must comply with all federal, state and local building and safety codes. All facilities constructed after January 1, 1991 must conform to all applicable codes and the policy below. Requirements include:

### **A. Housing.**

#### **1. Individual Cells.**

Each assigned prisoner housing unit must include an above floor level bunk (unless documented individual health or safety concerns dictate otherwise), desk, clothing hooks or closet space, a stool or other seating, adequate lighting, and a personal grooming area with a toilet and sink with hot and cold water. The Department may design and provide special toilets to minimize possible physical injury for prisoners living in specially designed housing units. If a cell is specifically designated for short-term housing of persons who are considered a danger to themselves, water must be readily available to the prisoner.

#### **2. Space Requirements**

In all future facilities, general population cells or rooms must have a minimum of 60 square feet for one prisoner, 80 square feet for two prisoners, and 140 square feet for three prisoners. Cells for prisoners locked down more than 10 hours per day must have a minimum of 80 square feet for one prisoner, 90 square feet for two prisoners, and 150 square feet for three prisoners.

#### **3. Segregation Units**

Living conditions must approximate in size those provided to the general population. All future segregation cells shall comply with the space standards for prisoners locked down for more than ten hours per day.

#### **4. Dormitory Housing**

Dormitories may not provide for the housing of prisoners except for minimum custody level in facilities, minimum custody housing, or misdemeanor housing. Dormitories will have no more than 36 beds each, with a minimum of 40 square feet per prisoner in the sleeping area, not including bathroom and day room space, and a clear floor-to-ceiling height of at least eight feet. Each dormitory must include toilets, wash basins with hot and cold water, and closet space for each prisoner.

#### **5. Showers**

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<sup>710</sup> The information in this comes directly from DOC Policy # 801.01, Institutional Design Standards, Facility Modifications & New Construction.

Showers must be located near the housing units.

B. Day Rooms or Leisure Areas.

All facilities must have a minimum of 35 square feet of day room space or leisure area for each prisoner in the facility, in addition to cell or room space.

C. Exercise/Recreation Areas

Each housing facility must have an outside exercise/recreation area for prisoner use. In all future facilities, sufficient gymnasiums and recreation areas must be available for the number of inmates to be housed in the facility, given the location and security level of the facility. All activity areas will have lavatories easily accessible to prisoners using the area.

Adequate recreational opportunities include indoor and outdoor individual and team sports where appropriate (e.g., basketball, softball, etc.), fixed or movable indoor exercise equipment (e.g., exercise bicycles and weight training equipment), and space for calisthenics, jogging, track, or other similar individual activities.<sup>711</sup>

D. Program Areas

In all future facilities, adequate space must be provided for health care and other rehabilitation programs. All activity areas will have lavatories easily accessible to prisoners using the area.

E. Visiting Areas.

In future facilities, adequate space must be provided for contact visitation by prisoners. Prisoners limited to non-contact visits must have a secure visiting area. Both types of visiting areas must have (1) an area for screening visitors; (2) an area for searching prisoners before and after visits; and (3) space for storing visitors' property not allowed in visiting area.

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<sup>711</sup> 22 AAC 05.165 provides:

(a) Each facility must develop and maintain programs of recreation and exercise compatible with security of the facility and the custody levels of prisoners.

(b) A prisoner must be offered outdoor recreation for a minimum of seven hours a week, weather permitting, unless security considerations require limitations.

(c) Indoor recreation and exercise may be substituted for outdoor activities if weather conditions make those activities inappropriate.

(d) A prisoner who is in administrative segregation for a period longer than three days has the right to recreation as set out in (b) of this section unless the prisoner is an escape, smuggling, or security risk, as determined by the superintendent. Such a prisoner may be restricted to indoor recreation in a gymnasium or exercise room. During the first three days in administrative segregation, a prisoner must be permitted at least one hour a day outside his or her cell for purposes of limited exercise.

(e) A prisoner in punitive segregation for a period longer than three days must be allowed the opportunity to exercise for at least one hour per day, and must be allowed access to large-muscle-group exercise equipment in an area sufficiently large enough to reasonably accommodate the equipment. During the first three days in punitive segregation a prisoner must be permitted at least one hour per day outside his or her cell for purposes of limited exercise.

F. Commissary

Department shall provide commissary space or services at each facility where prisoners can purchase personal items.

G. Food Service Areas

The Department shall provide food service areas, community dining space (except where safety or security concerns justify otherwise), food service equipment, and storage facilities. Food service personnel and prisoners must have access to toilets and sinks in the vicinity of the food preparation area.

H. Administrative Area

New facilities must incorporate administrative space needed for administrative, custodial, professional, and clerical staff. In each new facility, the Department shall, whenever possible, provide an area to accommodate staff briefing, training, and breaks, as well as lavatories.

I. Handicapped Access

Persons with disabilities must be provided reasonable access to the appropriate areas of each institution. Persons with disabilities must have housing and facilities that accommodate security, safety, and medical needs in each institution; reasonable accommodations should be made in lieu of such access. Public areas of each institution will comply with the Americans with Disabilities Act's Architectural Barriers Act of 1968. In existing facilities, programmatic accommodations will be provided even if facility modifications have yet to be accomplished.

J. Housekeeping

Adequate space must be provided for janitorial closets accessible to living and activity areas. The closets must have a sink and cleaning implements.

K. Clothing and Supply Storage

Space must be provided in the institution to store and issue clothing, bedding, cleaning supplies, paper supplies and other items required for daily operations.

L. Prisoner Personal Property

Space must be provided for storing prisoner personal property.

M. Mechanical Equipment

Space shall be provided for the storage of mechanical and electrical equipment.



N. Law Library.

The law library must be large enough to accommodate two or more inmates at one time. In all future facilities, the Department shall ensure that the law library is large enough to meet the requirements in policy #814.01, General Library.

O. Attorney-Client Rooms.

The Departments shall ensure that all future facilities have enough rooms for private attorney-client meetings. Each room must have adequate seating and a table. The facility's size, location, and type of prisoners shall help determine how many rooms the facility needs.

# **ALASKA PRISONERS' RIGHTS GUIDE**


## **October 2010 Addendum**

**ACLU of Alaska  
P.O. Box 201844  
Anchorage, AK 99520  
907-646-8612**

## **Guide Addendum: Miscellaneous Forms and Protocols of the Alaska Department of Corrections**

This is a brief list of some publications of the Alaska Department of Corrections relevant to prisoners. The documents with letters following the document identification number (e.g., DOC 807.14d) are forms for use by prisoners and others. The other documents are statements from the Alaska Department of Corrections about the department's policies and procedures.

1. DOC 760.01 [Classification Appeal; Policy and Procedures](#)
2. DOC 760.01a [Classification Appeal; Appeal of Classification Form](#)
3. DOC 807.14 [Health Care Services; Health Examinations Procedures](#)
4. DOC 807.14d [Health Care Services; Health Examinations; Physical Examination Form](#)
5. DOC 808.01 [Prisoners Rights; Legal Rights of Prisoners; Policy and Procedures](#)
6. DOC 808.02 [Prisoners Rights; Prisoner Media Contact](#)
7. DOC 808.02a [Prisoners Rights; Release and Permission for Media Contact Form](#)
8. DOC 808.03 [Prisoners Rights; Prisoners Grievances; Policy and Procedure](#)
9. DOC 808.03a [Prisoners Rights; Prisoners Grievance Screening Form](#)
10. DOC 808.03b [Prisoners Rights; Resolved Filed Grievance Form](#)
11. DOC 808.03c [Prisoners Rights; Prisoners Grievance Form](#)
12. DOC 808.03d [Prisoners Rights; Prisoners Grievance Appeal Statement](#)
13. DOC 808.11 [Prisoners Rights; Communication between Prisoners and Staff](#)
14. DOC 808.11a [Prisoners Rights; Request for Interview Form](#)
15. DOC 810.01 [Communication, Mail, and Visiting; Prisoner Access to Telephone](#)
16. DOC 810.03 [Communication, Mail, and Visiting; Prisoner Mail, Publications, and Packages](#)
17. DOC 811.05 [Reception and Orientation; Prisoner Property; Policy and Procedures](#)
18. DOC 811.05a [Reception and Orientation; Declaration of Valuable Property Form](#)
19. DOC 811.05b [Reception and Orientation; Release of Liability Form](#)
20. DOC 811.05c [Reception and Orientation; Report of Lost or Damaged Property Form](#)
21. DOC 811.05d [Reception and Orientation; Personal Property Inventory Form - Jail](#)
22. DOC 811.05e [Reception and Orientation; Personal Property Inventory Form - Prison](#)
23. DOC 811.05f [Reception and Orientation; Property Inventory Transfer Form](#)
24. DOC 811.05g [Reception and Orientation; Personal Property Disbursement](#)
25. DOC 811.05[A] [Attachment A – List of Approved Prisoner Property](#)
26. DOC 814.02 [Library Services; Law Library Policy and Procedures](#)
27. DOC 814.02a [Library Services; Law Library Request Form](#)

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	760.01	<b>Page 1 of 5</b>	
		<b>Effective:</b>	08/24/07	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	08/09
	<b>Chapter:</b>	Classification			
	<b>Subject:</b>	Appeal Procedures			

I. Authority

In accordance with 22 ACC 05.155, the Department of Corrections shall develop and adopt policies and procedures that are consistent with laws for the guidance, government and administration of correctional facilities, programs and field services.

II. References

Alaska Statutes

AS 33.30.011

Alaska Administrative Code

22 AAC 05.260

Standards for Adult Correctional Institutions 4<sup>th</sup> edition 2003

No pertinent standards apply

Standards for Adult Local Detention Facilities 3<sup>rd</sup> edition 1991

3-ALDF-4B-02

III. Purpose

To establish policy and procedure to ensure that prisoners receive the appropriate information regarding the process by which classification actions may be appealed.

IV. Application

To all employees.

V. Definitions

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

A. Appeal

A process by which a prisoner may have a classification action reviewed at an administrative level higher than that at which the original action was taken and by someone not previously involved in the decision under appeal.

B. Classification

A process that systematically subdivides a prisoner population into groups based on security and custody matrix scoring, and individual prisoner programs needs.

C. Hearing Officer/Classification Committee

An individual or group of individuals tasked to review and assess a prisoner's security, custody, and program needs and make a classification recommendation as regards the prisoner.

D. 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 "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.

VI. Policy

It is the policy of the Department that a prisoner may appeal any action resulting from a classification hearing, except initial un-sentenced prisoner staff classification and sentenced prisoner designation, to the next level of administrative review, upon proper submission of an Appeal of Classification Action (form 760.01A) within established time and procedural parameters.

VII. ProceduresA. Notice of Procedural Opportunity to Appeal

1. Un-sentenced prisoners shall receive a copy of the "Classification Form for Un-sentenced Prisoners," (form 705.01A) following the prisoner classification review as set out in 735.03. "Classification Form for Un-sentenced Prisoners" shall include a description of the classification appeal process.
2. The copy of the "Initial Classification Form for Sentenced Prisoners" (form 735.03A) or the Classification Review Form for Sentenced Prisoners (form 745.01A) that the prisoner receives following the classification action (as set out in 735.03 "Initial Classification") shall include a description of the classification appeal process.
3. The Classification Form will inform the prisoner that:
  - a. For an un-sentenced prisoner:
    - (1) The initial un-sentenced prisoner classification is without administrative appeal;
    - (2) Subsequent classification committee action may be appealed to the Director of Institutions;
  - b. For a sentenced prisoner:
    - (1) Sentenced prisoner designation is without administrative appeal;
    - (2) Hearing Officer/Classification committee action not referred to nor modified by the Superintendent may be appealed only to the Superintendent, and no higher;
    - (3) Hearing Officer/Classification committee action referred to or modified by the Superintendent, except for transfer, may be appealed to the Director of Institutions;
    - (4) Hearing Officer/Classification committee action regarding transfer may be appealed directly to the Deputy Commissioner for Operations;
  - c. Forms to facilitate an appeal will be provided by institutional staff upon request by a prisoner;
  - d. An appeal must be routed through the institutional staff member designated for the purpose of receiving and forwarding classification appeals; and
  - e. Any classification action may be commenced pending an appeal, except a transfer to an out-of-state facility.

B. Appeal of Hearing Officer/Classification Committee Decision

1. A Classification action which does not require review by the Superintendent may be appealed only to the Superintendent unless the
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Superintendent has exercised discretionary authority to modify the classification action, in which case the decision may be appealed to the Director of Institutions per 2. below or to the Deputy Commissioner for Operations per 3. below;

2. Except as provided in 3. below, a classification action by a Superintendent may be appealed only to the Director of Institutions, except for a denial of or removal from a furlough, which may be appealed to the Deputy Commissioner for Operations if the Director of Institutions denies the appeal;
3. Notwithstanding 2. above, the result of a classification hearing, the purpose of which was the consideration of a transfer of a prisoner, may be appealed only to the Deputy Commissioner for Operations;
4. The "Appeal of Classification Action" (form 760.01A) must be submitted within five working days after the prisoner receives notice of the decision or, in the case of transfer, within five working days after the prisoner arrives at the transfer destination, whichever occurs first. If a valid reason for delay is stated by the prisoner, and verified by the institutional staff member designated to receive classification appeals at the holding institution, the five working day time limit for filing may be extended for an additional reasonable time period. However, an extension of time to file an appeal is an exception and must be accompanied by justification sufficient to support the exception to the prescribed time parameters;
5. Except as provided in 6. below for out-of-state and contract facility placement prisoners, an appeal must be filed on the "Appeal of Classification Action" (form 760.01A) and must be submitted through the institutional staff member designated by the Superintendent for the purpose of receiving, reviewing, and forwarding classification appeals, as follows:
  - a. The designated staff member receiving the appeal shall review the appeal for form and content appropriateness;
  - b. The staff member shall prepare a cover memorandum, addressed to the appropriate official, summarizing the process to date; and
  - c. Shall prepare the packet of supporting documentation to accompany the appeal, to include:
    - (1) The classification form(s) upon which the appeal is based;
    - (2) A completed "Appeal of Classification Action," (form 760.01A);

Note: A separate "Appeal of Classification Action" must be prepared for each level of appeal; i.e., the appeal statement/form prepared for the Director of Institutions containing his or her response will be appropriate for appeal of that decision to the Deputy Commissioner for Operations. However, the lower-level appeal response must accompany an appeal to the next higher level.
    - (3) The tape recording of the classification hearing; and
    - (4) The cover memorandum of explanation certifying that the appeal has been routed through institutional staff;

6. A prisoner in out-of-state placement or in-state contract facility placement who is appealing a classification decision made in accordance with 750.03, "Classification Review Team," and/or 750.04, "Return of Prisoners From Out-Of-State Placement," may appeal the decision in writing directly to the Deputy Commissioner for Operations within 10 working days after receiving written notice of the decision;
7. For purposes of appeal, a prisoner must have access to the tape recording of a related disciplinary hearing or the classification hearing being appealed, except that any portion of the tape which contains the testimony of an informant must be summarized in as much detail as possible while not placing the informant in danger, and the summary made available to the prisoner. The tape remains the property of the Department. A tape containing informant testimony may be transcribed in summary, and the summary transcript made available to the prisoner in lieu of the actual recording; and
8. With the exception of a transfer to an institution outside of Alaska, a classification action may be commenced pending an appeal.

C. Appeal Procedures

1. Once an appeal has been filed and received, a response must be made, as follows:
    - a. Appeal to Superintendent – response within five working days;
    - b. Appeal to Director of Institutions – response within 15 working days; and
    - c. Appeal to Deputy Commissioner for Operations – response within 15 working days;
  2. The appropriate official may grant the appeal, grant the appeal and modify the classification decision, deny the appeal, or refer the matter back to the committee/hearing officer for re-hearing;
  3. The official responding to the appeal shall enter his or her decision on the "Appeal of Classification Action" or, in the case of out-of-state or contract facility placed prisoner appeals per B.6. above, prepare a letter of response on official letterhead, and sign the response in the appropriate space;
  4. The appropriate official's failure to respond within the time limits set out in 1. above must be considered a denial of the appeal. However, a late response to an appeal is valid;
  5. The prisoner must be informed of the official's decision by receipt of the appeal response within the time frames set out in 1. above. A copy of the response should be sent to the Superintendent, the prisoner's case record, and the prisoner's case manager/institutional probation officer at the holding facility; and, in the case of a transfer appeal, Central Classification should receive a copy of the response as well.
  6. Prisoners who appeal an out-of-state placement shall be notified in a written decision that the decision is the last level of appeal and that they have thirty days to submit an appeal to the Superior Court.
-

D. Harmless Error

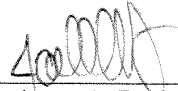
Failure of a staff member to follow the procedures set out in this Chapter does not invalidate a decision absent a showing of prejudice by the prisoner.

VIII. 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 within 14 days. All local policies and procedures must conform to the contents of this document and any deviation from the contents of this document must be approved in writing by the Commissioner or designee.

8/10/07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

Forms Applicable to this Policy.

760.01A – Appeal of Classification Action and Instructions



## APPEAL OF CLASSIFICATION ACTION

Institution: \_\_\_\_\_ Date: \_\_\_\_\_

Prisoner's Name: \_\_\_\_\_  
*Last First Middle Initial*

Action Being Appealed:

<input type="checkbox"/>	Initial Classification	Received by: _____
<input type="checkbox"/>	Classification Review	Date: _____ Time: _____ AM/PM
<input type="checkbox"/>	Other: _____	

(Enter what is being appealed, if different from initial or review classification.)

The institutional probation officer or the Shift Supervisor may be contacted for explanation of how to complete this form and/or the appeal procedures in accordance with 760.01, Appeal Procedures. The appeal must be submitted through the institutional staff member designated to receive classification appeals, who is:

APPEAL STATEMENT:\_\_\_\_\_  
Prisoner's Signature Date

(Use back of this sheet, if more space is needed.)

DECISION ON APPEAL:\_\_\_\_\_  
Signature of Official Making Decision\_\_\_\_\_  
Title of Official Date

## APPEAL OF CLASSIFICATION ACTION INSTRUCTIONS

22 AAC 05.260 APPEALS PROCEDURES. (a) A classification action by a committee which does not require a review by the Superintendent may only be appealed to the Superintendent.

(b) Except as provided in (c) of this Section and Sections .251(f) and .226(e) of this Chapter, a classification action by a Superintendent may only be appealed to the Regional Director, except in the case of a denial of a furlough, which may be appealed to the Deputy Commissioner for Operations if the Regional Director denies the appeal.

(c) Notwithstanding (b) of this Section, a classification action resulting in a prisoner being transferred may only be appealed to the Deputy Commissioner for Operations. The appeal must be made within five working days after the prisoner receives notice of the decision or after the transfer, whichever occurs first.

(d) Except as provided in (c) of this Section and Sections .251(f) and .256(e) of this Chapter, all appeals must be submitted by a prisoner within five working days of receiving notice of the decision. Where a valid reason for delay is stated by a prisoner, this time limit may be extended. With the exception of a transfer to an institution outside Alaska, any classification action may be commenced pending an appeal.

(e) Once an appeal has been filed and received, a response will be made as follows:

- (1) Appeal to the Superintendent – response within five working days;
- (2) Appeal to the Regional Director – response within 15 working days;
- (3) Appeal to the Deputy Commissioner for Operations – response within 15 working days.

(f) Failure to respond within the time limits set out in (3) of this Section is considered a denial of the appeal; however, a late response granting an appeal is valid. Failure of a staff member to follow the regulations set out in this Chapter does not invalidate a decision, absent a showing of prejudice by the prisoner.

(g) For purposes of appeal, a prisoner may have access to the tape recording of any disciplinary or classification hearing, except that portion of any tape which contains the testimony of any informant, in which case the informants' testimony must be summarized in as much detail as possible, so as not to place the informant in danger, and given to the prisoner.

## Policy

The Department shall complete health care screening for all prisoners and Title 47 detainees within 24 hours of admission to assess their physical health, promote physical well being, and prevent the spread of disease. Prisoners shall receive periodic physical examinations during their incarceration at the times set forth in this policy.

Health care staff shall encourage continuity of health care between facilities by preparing for the transfer and by reviewing a prisoner's health care needs when receiving the prisoner from another institution.

## Procedures

### A. General

1. Intake Evaluation. Before booking, health care or security staff shall visually inspect each prisoner to assess apparent immediate need for health care and identify serious health problems.
2. Health Screening. Health care staff shall do a structured evaluation of a prisoner's health and mental status within 24 hours of the prisoner's admission to a correctional institution.
3. Health Appraisal. Health care staff shall offer a health appraisal of a prisoner within 14 days of the prisoner's initial admission to a correctional institution.

### B. Arrival at the Institution

1. Intake Evaluation. Health care staff (or security staff if health care staff are not on duty or are unavailable due to a medical emergency) shall visually inspect each prisoner during the reception process before the Department accepts the prisoner for booking. Staff shall complete the pre-remand section of the Intake Screening form on Form 807.14(A) for criminal holds or on Form 807.14(B) for Title 47's.
  - a. If the prisoner is unconscious or in need of immediate medical attention, staff shall direct the remanding officer to an outside medical provider, such as an emergency room physician, for assessment. 22 AAC 05.005(a).
    - (1) Conditions that require immediate medical attention include potentially life-threatening, serious, or communicable health conditions.
    - (2) The Department is not responsible for providing medical care or arranging transports prior to booking a prisoner or prior to accepting a Title 47 hold.
    - (3) Security staff may renew the admitting process after a responsible medical authority has assessed the prisoner. (Intake Screening Form section B.) Health care staff must be promptly notified when the remand returns to the facility.
  - b. Staff shall inspect the prisoner for obvious injuries or illnesses and inquire about any medical problems or recent use of medication. As soon as practical, staff shall medically attend to a prisoner who appears to be ill, injured, or incapacitated by alcohol, narcotics, or similar agents, but not in immediate need of medical attention. 22 AAC 05.005(b).
2. If a healthcare screening is not done right away, then staff shall fill out the Post-Remand Screening section of Form 807.14(A) or 807.14(B), as appropriate.

## C. Admission

Health care staff shall perform a health screening for each new prisoner if staff are available at the time of remand and if the prisoner is cooperative. In any event, health care staff shall screen the prisoner within 24 hours of initial admission. This may be conducted by use of telenursing per the Inmate Health Telenursing protocol if no medical staff is on site during the first 24 hours of the prisoner's admission or if the prisoner is in need of medical care before medical staff comes on duty.

### 1. Health Screening.

- a. The health screening must include a mental health status screening, to be performed by health care staff who are trained to identify mental illness or the need for immediate mental health care.
- b. The health screening must also include a physical assessment, documented by completing form 807.14(A) or 807.14(B).
- c. The Institutional Health Care Officer shall periodically monitor health care screenings for the purpose of ensuring quality assurance.
- d. Abnormal health care screenings must be referred to the IHCO.
- e. New prisoners shall be kept in admissions housing, where feasible, pending examination by health care personnel. The Department shall assign the prisoner to appropriate housing after staff complete the examination.

### 2. Remand Medications see Policy 807.05.

3. Health Care Referral. Health care staff shall refer a prisoner who is in need of medical care or continuing medications after remand, to the IHCO or the on-call practitioner. If the institution cannot provide the necessary health care, then a referral must be made to a provider outside the institution. See Policy #807.02, Access to Health Care Services. Staff shall promptly refer prisoners who are a suicide risk or who show signs of mental illness, to a clinical psychologist, psychiatrist, or a qualified mental health professional acting under the supervision of a clinical psychologist or psychiatrist. The clinical psychologist or psychiatrist shall review the mental health professional's diagnosis and treatment either on-site or telephonically within 72 hours of the diagnosis, excluding weekends and holidays.

## D. Health Appraisal

Health care staff shall offer to perform a health appraisal for each prisoner within 14 days of the initial incarceration unless the prisoner has received a health appraisal within the previous 90 days and health care personnel at the receiving facility do not recommend or require a new appraisal. 22 AAC 05.120(b).

### 1. The exam must include:

- a. a review of the earlier received screening;
- b. laboratory tests including TB screening, Form 807.14 F, and any other tests that are clinically indicated;
- c. HIV test if requested by the prisoner;
- d. all items on the Physical Examination/Health History form except those items that are declined by the prisoner.
- e. for female prisoners:
  - (1) a history of menstrual cycle, problem with menses, pregnancies, etc.;

- (2) birth control history, including current method, if any;
      - (3) pelvic examination, unless declined;
      - (4) breast examination (visual and manual), unless declined; and
      - (5) pregnancy test, as indicated;
    - f. for male prisoners over 40, a rectal digital examination, unless declined;
    - g. initiation of therapy when appropriate; and
    - h. development and implementation of a treatment plan, as appropriate. The treatment plan is to include recommendations concerning housing, job assignments, and program participation, as needed.
  2. Staff shall record the exam results on the Physical Examination/Health History form (807.14D).
- E. Prior to the transfer of a prisoner, on-duty health care staff shall:
1. complete the Medical Summary for Prisoner Transfer Form 807.14E;
  2. put the prisoner's medical record and all prescription medication into a marked envelope to give to the transporting officer; and
  3. notify the receiving facility's medical staff of any necessary medical concern that is urgent or unusually complicated.
- F. Health Care Evaluation upon Transfer Arrival
1. Health care or health-trained staff shall review the Medical Summary for Prisoner Transfer Form. This form includes information about the prisoner's medical, dental or mental health conditions currently being evaluated or treated, the prisoner's current medications, including the name, dosage, and method of distribution, and any allergies. Staff shall document that the review occurred in the appropriate section of the Prisoner Transfer Form.
  2. Health care or health-trained staff shall evaluate all prisoners upon arrival, utilizing form 807.14(E). If medical staff are not on duty at the time of the arrival, and if the prisoner appears to be in need of medical attention, then the health-trained staff shall contact the telenurse.
  3. If an arriving prisoner uses prescribed medications and is not authorized to participate in a self-medication program or self-medication is not utilized at the incoming facility, and if medical staff will not be on duty at the next medication time, then security staff shall notify the telenurse, who shall contact the on-call health practitioner for direction.
- G. Periodic Examinations
- The Department shall ensure that each prisoner has the following periodic examinations throughout his or her incarceration:
1. Prisoners assigned to work in the food service section of the institution must be given a health appraisal before beginning work and annually thereafter to ensure they are free from communicable diseases. See also policy #805.02, Food Service Safety and Sanitation.
  2. Female prisoners must be offered a routine pelvic (PAP) and breast examination periodically according to community standards.

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	Chapter: Health Care Services	

3. Prisoners over 50 years of age must be offered a health appraisal annually. Younger prisoners must be offered a health appraisal every two years.
4. Prisoners who are not physically mature (e.g., 12 to 19 years old) must be offered an annual physical examination. Staff shall document the prisoner's growth and development.
5. Prisoners in sentenced facilities must be offered an examined within one year of release.

H. Segregation for Medical Reasons

The Institutional Health Care Officer, with the approval of the Superintendent, shall resolve all prisoners' needs for special housing for medical treatment.

1. Refusal to Cooperate. The Department may place a prisoner in administrative segregation for medical reasons if the prisoner refuses to cooperate during the health screening or health appraisal. This includes refusal of TB screening. The prisoner must remain in segregation until the examination is complete.
2. Communicable Disease.
  - a. The Institutional Health Care Officer shall recommend segregation for the prisoner if the health appraisal reveals a communicable disease that requires segregation to protect the staff and prisoners. 22 AAC 05.485. See also policy #807.02, Access to Health Care Services.
  - b. The Institutional Health Care Officer shall notify the Superintendent or designee, in writing, when health care staff clear the prisoner to return to the general prisoner population.
3. Confidentiality. Staff may not post the reason for the prisoner's segregation in public view, whether segregated for medical or other administrative reasons. If a prisoner is suspected of having TB, a sign must be posted on the door saying "Respiratory Isolation; masks must be worn."

1-12-01  
Date

William A Worrall MD  
William Worrall MD  
Department of Corrections

January 18, 2001  
Date

Margaret M. Pugh  
Margaret M. Pugh, Commissioner  
Department of Corrections

Authority:

Cleary Final Order, 3AN-81-5274 CIV, Sept. 1990  
22 AAC 05.005  
22 AAC 05.120

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	Chapter: Health Care Services	

22 AAC 05.485

Forms Applicable:

- 807.14 A, Remand Screening
- 807.14 B, Title 47 Remand Screening
- 807.14 D, Physical Examination
- 807.14 E, Medical Summary for Prisoner Transport
- 807.14 F, TB Screening Form

## Health History

Prisoner Name \_\_\_\_\_

OB# \_\_\_\_\_

HAVE YOU EVER		YES	NO	DO YOU?		YES	NO	
Lived with anyone who had TB				Wear glasses or contact lenses				
Coughed up blood				Have vision in both eyes				
Bled excessively after injury				Wear a brace or back support				
Attempted Suicide				Wear dentures or other prosthetic				
HAVE YOU EVER HAD OR HAVE YOU NOW?	YES	NO	DON'T KNOW	HAVE YOU EVER HAD OR HAVE YOU NOW?	YES	NO	DON'T KNOW	
Asthma				Night Sweats				
Tuberculosis				Tumors, cysts or growths				
Cancer or Tumor				Cramps in your legs				
Diabetes				Rupture or hernia				
Emphysema				Recent gain or loss of weight				
Ear, nose or throat trouble				Frequent indigestion				
Hearing loss				Stomach trouble or ulcer				
Chronic or frequent colds				Hepatitis or jaundice				
Hay fever				Gall bladder trouble				
Severe tooth or gum trouble				Hemorrhoids or rectal trouble				
Shortness of breath				Head injuries				
High blood pressure				Epilepsy or seizures				
Pain or pressure in heart				Frequent or severe headaches				
Pounding heart				Loss of memory or amnesia				
Arthritis or bursitis				Periods of unconsciousness				
Fractures (broken bones)				Paralysis, numbness, weakness				
Bone, joint, or other deformity				Dizziness, fainting spells				
Painful or trick shoulder				Nervous problem of any type				
Foot trouble				Alcoholism				
Recurrent back trouble				Syphilis, gonorrhea				
Swollen or painful joints				Drug allergies				
Kidney trouble				Lumps, pain, discharge on breast				
Frequent or painful urination				Change in menstrual pattern				
Blood in urine				Pregnancy/abortion/miscarriage				
Recurrent infections				Treated for female disorder				
Rheumatic fever				Thyroid trouble				
YOUR PRESENT DOCTOR'S NAME (address, phone)				Have you ever been a patient or received treatment in a hospital? (surgery/injuries); state where, when, why & address				
Have you ever been treated for a mental condition (If yes, state reason and give details)				Have you ever taken narcotics? (If yes, state what kind, when you last took it, and if you are in a treatment program)				
Do you have any current health problems?				Have you ever been incarcerated in this jail before? (If so, when?)				
How would you describe your health?								
						YES	NO	DON'T KNOW
Do you use or have you used IV drugs?								
Have you even had an operation/surgery?								
Are you heterosexual, bisexual, or gay?								
Have you ever had sex with an IV drug user?								



**STATE OF ALASKA**

**DEPARTMENT OF CORRECTIONS**

Prisoner's Name: \_\_\_\_\_

OB#: \_\_\_\_\_

Blood Pressure:		Pulse Rate:	Pulse Rhythm:	Respir. Rate:	Respir. Rhythm:
Height:		Weight:	Temp.:	Visual Activity:	Ocular Tension:
General Appearance:		<input type="checkbox"/> Healthy <input type="checkbox"/> Unhealthy			
PARTS OF THE BODY			OBSERVATION		
1)	Head, face, scalp				
2)	Skin	(a) lesions, ulcers, jaundice (b) lacerations, tracks			
3)	Eyes	(a) pupils (b) conjunctive, sclera			
4)	Ears	(a) pinnae, canals, drums (b) gross hearing			
5)	Nose				
6)	Mouth	(a) teeth/dentures (b) throat			
7)	Neck	(a) lymph nodes (b) masses (c) thyroid			
8)	Chest Wall				
9)	Breasts				
10)	Lungs				
11)	Heart	(a) rate (b) murmurs			
12)	Abdomen (appearance)				
13)	Liver	(a) size (cm) (b) tenderness (c) edge			
14)	Spleen				
15)	Groin	(a) nodes (b) lesions (c) hernias			
16)	Back	(a) pain (b) range of motion			
17)	Extremities	(a) clubbing (b) tracks			
18)	Flanks				
19)	Joints	(a) deformity (b) range of motion			
20)	Neurological	(a) reflexes (b) gross touch (c) gait (d) oriented (e) speech			
21)	Rectal/Prostate				
22)	MALES: penis, scrotum, testes				
23)	FEMALES:	(a) vulva, vagina (b) cervix (c) uterus, adnexa			
Laboratory Results		PPD or time		U.A.	

## Physical Examination (Continued)

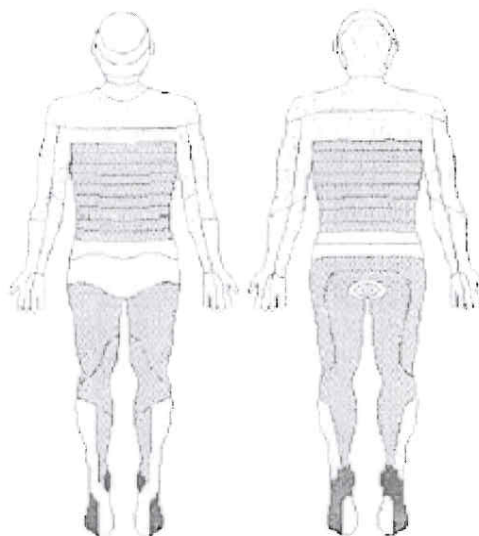
Prisoner's Name \_\_\_\_\_


OB# \_\_\_\_\_

## Injuries and Identification Marks on Admission

Mark with a numbered arrow location of the following:

1. Bruise
2. Cut
3. Swelling
4. Sore
5. Amputation
6. Bandage
7. Cast
8. Scar
9. Tattoo
10. Birthmark
11. Sensory Change (describe)

\_\_\_\_\_  
Signature of Examiner\_\_\_\_\_  
Date

	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b>	808.01	<b>Page 1 of 3</b>	
			<b>Effective:</b>	6/26/07	<b>Reviewed:</b>	
			<b>Distribution:</b>	Pubic	<b>Due for Rev:</b>	6/09
	<b>Chapter:</b>	Prisoner Rights				
	<b>Subject:</b>	Legal Rights of Prisoners				

I. Authority

In accordance with AS 44.28.030, AS 33.30.021 and 22AAC 05.155, the Department of Corrections will establish and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the Department.

II. Reference

Alaska Statutes

12.25.150, 33.30.011, 33.30.031, 33.30.221, 44.28.030

Alaska Administrative Code

22AAC 05.545

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

3ALDF 3D-18, 3E-01, 3E-02, 3E-03, 5D-06

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003

4-4268, 4274, 4275, 4276

III. Purpose

To establish procedures enabling prisoner contact and communication with their attorney, the courts, and access to legal materials.

IV. Applications

All employees and prisoners

V. Definitions

Working Day

Monday through Friday except for legal holidays

VI. Policy

The Department will ensure that prisoners have access to privacy and a telephone to communicate with their attorney or legal representatives. Prisoners also must have access to the court for transmitting correspondence and documents. Department staff may not penalize prisoners for seeking judicial relief.

VII. Procedures

A. Visitation by Attorneys and Legal Representatives. (See also policy #810.02, Visitation.) Attorneys and legal representatives may visit a prisoner at the institution between 8 AM and 10 PM daily or at any time during the initial 24 hours of a client's incarceration except at meal times or while the institution conducts a population count. 22 AAC 05.545(a)

1. An attorney entitled to practice law in Alaska has the right to visit the prisoner immediately after arrest if the prisoner, a relative, or a friend so requests. A.S. 12.25.150(b); 22 AAC 05.545(b)

2. Attorneys and legal representatives must show proper identification and sign the Professional Visitor's Log when they arrive at the correctional facility. See policy #810.02, Visitation 22 AAC 05.545.

3. Each institution shall provide private and secure attorney-client interview space with adequate seating and a writing table or desk.

a. The institution shall ensure that the attorney or attorney's representative can speak privately with the prisoner and exchange or review legal documents without interference from correctional staff, except for a search for contraband.



- b. The institution may not monitor conversations between an attorney or attorney's representative and a prisoner except upon Court order.
    4. An attorney's representative has the same right to access prisoners as the attorney unless the Superintendent has reason to believe that the representative threatens the security of the institution. The Superintendent may require the attorney to specify in writing the identity of the representative and the prisoner to be interviewed. 22 AAC 05.545
    5. The institution shall make every effort to ensure that an attorney or attorney's representative is able to see his or her client within a reasonable time after a request.
  - B. Telephone Calls after Arrest. See also policy #810.01 Prisoner Access to Telephone. Immediately after arrest, a prisoner has the right to telephone or otherwise communicate with an attorney and any relative or friend. A.S. 12.25.150(b)
    1. An officer shall pat-search each prisoner for weapons before allowing the prisoner to use the telephone. The pat-search is limited to external probing of body and clothing for possible signs of weapons. The officer may not remove a prisoner's clothing or search their pockets without probable cause. *Gray v. State*, 798 P.2d 346 (Alaska App. 1990)  
Note: This limited search only applies to a prisoner who has not been booked and admitted into the facility.
    2. The prisoner must call collect or otherwise pay for all long distance telephone calls.
    3. The shift supervisor shall allow combative and incapacitated prisoners to use the telephone only when they are under control.
  - C. Access to Law Library and Material. The Department shall ensure that each prisoner, including a prisoner in either punitive or administrative segregation, is provided regular access to a facility law library and legal materials. Absent unusual circumstances, the Department shall provide a prisoner access to the law library within one *working day* of the prisoner's request. See policy #814.02 Law Library.
  - D. Legal Correspondence. The Department may not restrict or censor a prisoner's legal correspondence; all legal mail to or from a prisoner is privileged mail. See policy #810.03 Prisoner Mail. Prisoners (except *indigents*) shall pay all postage costs.
    1. The Department may open and search legal correspondence for contraband only in the presence of the prisoner.
    2. Each institution shall provide first class postage for *indigent* prisoners to mail legal correspondence to any court or attorney. See policy #810.03 Prisoner Mail, for postage limits.
  - E. Legal Faxes may be sent to the prisoner by an attorney.
    1. These messages may be delivered with the next scheduled mail call or may be delivered directly to the prisoner as determined by local standard operating procedures. In any case the fax shall be delivered to the prisoner by the next working day after it is received.
    2. The delivery of a legal fax may be expedited with the approval of a CO III or higher authority.
    3. Legal Faxes are limited to two pages including the cover page. Legal faxes in excess of two pages shall be forwarded to the facility standards officer who will return the fax to the sender by
-

- mail with an explanation for its non-delivery. The prisoner shall be notified verbally or in writing within 24 hrs of non-delivery.
4. The subject matter of a legal fax is limited to legal matters. Suspected abuse shall be reported to the Superintendent. When abuse is substantiated, the privilege may be suspended or revoked by the Superintendent.
  5. Prisoner requests to fax material to an attorney or other party shall be denied.
- F. Prisoners shall have access to notary public services.

VIII. Implementation


This policy and procedure is effective 14 days following 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 Director of Institutions.

6-26-07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b>	808.02	<b>Page 1 of 3</b>	
			<b>Effective:</b>	10/10/07	<b>Reviewed:</b>	
			<b>Distribution:</b>	Public	<b>Due for Rev:</b>	10/09
	<b>Chapter:</b>	Prisoner Rights				
	<b>Subject:</b>	Prisoner/Media Contact				

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

44.28.030

Alaska Administrative Code

22 AAC 05.525

Standards for Adult Correctional Institutions; 4th Edition 2003

4-4019, 4021, 4279, 4429

Standards for Adult Local Detention Facilities; 3<sup>rd</sup> Edition 1991

3-ALDF-1A-19, 3E-07

III. Purpose

To establish procedures for media contact with prisoners.

IV. Application

To all employees and prisoners.

V. Definition

As used in this document, the following definition shall apply:

A. Media

Any agency or agent that gathers and reports news for a general circulation newspaper, news magazine, internet news service, national or international news service, or radio or television news program for stations holding a Federal Communications Commission License.

VI. Policy

- A. With approval of the Director of Institutions, media representatives may visit institutions to conduct interviews or prepare reports on programs and activities. The Superintendent has a responsibility to protect the privacy and other rights of employees and prisoners.
- B. Media representatives will be afforded the same opportunities to tour an institution or to visit prisoners as is afforded other persons in accordance with Policy 105.03, Tours and Events within Institutions; and Policy 810.02, Visiting.
- C. Prisoners will be afforded reasonable opportunities to contact or correspond with media representatives. Absent treatment plans to the contrary, disabled prisoners shall not be discriminated against in the provision of media access.

VII. Procedures

- A. Representatives of the news media shall be permitted access to facilities and allowed to interview prisoners in accordance with established procedures. The news media have no greater right to institutional access than other private citizens.

B. Institutional Visits

Institutional visits by news media representatives for the purpose of interviewing prisoners must be approved in advance by the Director of Institutions who will in turn

inform both the Deputy Commissioner for Operations and the Special Assistant for Communications. Media visits will be coordinated through the host Superintendent. All media inquiries received at the institution regarding prisoners must be referred to the Superintendent. The Superintendent shall provide for:

1. Media access to specified areas;
2. Employee and prisoner rights to privacy;
3. Factual representations made about the institution, staff, and prisoners;
4. Media awareness of facility rules regarding custody and security; and
5. Victim notification as provided under 1000.01, Procedures 9. a and b.

The Superintendent may suspend or cancel media visits for administrative or security reasons.

**C. Interviews with Prisoners**

If the identity of a prisoner to be interviewed might be disclosed, or might be evident from the published version of an interview, the Superintendent or designee must secure the written consent of the prisoner before the interview. Personal interviews with prisoners must be conducted within the following guidelines:

1. News media or other visitors to an institution may not possess or use cameras, tape recorders, or other sound or visual recorders while in the institution without the prior approval of the Superintendent;
2. Interviews are normally conducted during business hours, Monday through Friday, 8:00 a.m. to 4:30 p.m.;
3. The location for an authorized interview will be selected by the Superintendent;
4. News media representatives shall not be permitted an interview off institutional grounds, except upon direct authorization through the Superintendent by the Commissioner or designee;
5. Disabled prisoners shall not be discriminated in the provision of access to the media however, the Superintendent, in consultation with the health care staff, may limit media access to a prisoner if the prisoner's medical or mental health treatment plan makes visitation inappropriate;
6. Prisoner contact with the news media is voluntary. The prisoner has a right not to be interviewed, photographed, or recorded by the news media. The prisoner shall sign a Release and Permission for News Media Contact (Form 808.02) prior to being interviewed or photographed; and
7. All interviews must be "one-on-one." A press conference with more than one prisoner is not permitted unless specifically authorized by the Commissioner.

**D. Prisoner Information Provided to the Media**

1. Upon request by media representatives for prisoner information, a booking officer or higher authority shall provide factual information as set out below:
    - a) Name
    - b) Age
    - c) Race
    - d) Place of incarceration and previous movements via transfer
    - e) Charges and bail information; and
    - f) Conviction and sentencing date.
-

2. A Department photograph (mugshot) of a convicted prisoner shall be released to the media by the Superintendent upon request. A Department photograph (mugshot) of a pretrial prisoner may be released by the Superintendent to the media when a public safety concern justifies such a release. Reasons would include an escape, the posting of "wanted" information or an attempt to elicit information from the public in regards to an ongoing law enforcement investigation. If additional information is sought, the media inquiry will be referred through the Superintendent to the Commissioner's designee for public affairs..

VIII. Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each Manager shall incorporate the directions outlined in this document into local policy and procedure. All local policies and procedures must conform to these directions; any deviation must be approved in writing by the Division Director

9/26/07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections



Release and Permission for News Media Contact

I, \_\_\_\_\_, a prisoner in \_\_\_\_\_ ,  
herby grant \_\_\_\_\_ permission to (initial item(s))

\_\_\_\_\_ Interview

\_\_\_\_\_ Photograph

\_\_\_\_\_ Electronically Record

with regard to the following subject matter: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I grant this permission freely and voluntarily. I understand that I have the right to decline being interviewed, recorded, or photographed. Further, I fully understand that anything I say during the interview is subject to being printed or broadcast in the news media and may be used against me in court, at a future time. Finally, I reserve the right to end the interview at any time.

\_\_\_\_\_  
Signature of Prisoner

\_\_\_\_\_  
Date


\_\_\_\_\_  
Time

\_\_\_\_\_  
Signature of Witness  
(*Superintendent or Designee*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

This contact was initiated by: \_\_\_\_\_  
Name of Interviewer News Media Represented

	<b>State of Alaska</b> <b>Department of Corrections</b> <b>Policies and Procedures</b>	<b>Index #:</b> 808.03	<b>Page</b> 1 of 12
		<b>Effective:</b> 10/13/06	<b>Reviewed:</b>
		<b>Distribution:</b> Public	<b>Due for Rev:</b> 10/08
	<b>Chapter:</b> Prisoner Rights		
	<b>Subject:</b> Prisoner Grievances		

#### 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 Administrative Codes

Standards for Adult Correctional Institutions, 1990

Standards for Adult Local Detention Facilities, 1991

#### III. Purpose

This policy establishes an internal prisoner grievance and appeal system that promotes proper and effective communication between staff and prisoners in efforts to resolve issues at the lowest possible level.

#### IV. Application

All staff and prisoner population.

#### V. Definitions

##### A. Emergency Grievance

Emergency grievances involve issues that threaten life or the security of the facility, or may cause harm to any individual.

##### B. Excessive Grievances

Excessive grievances are the filings of more than five grievances in a week and/or 20 in 180 consecutive days.

##### C. Facility Manager

The Facility Manager is the Superintendent or Warden of the institution.

##### D. Frivolous Grievance

A frivolous grievance addresses information or circumstances that are trivial, lacking in seriousness, irresponsible, self-indulgent, or that have already been addressed.

##### E. Grievance Abuse

Grievance abuse is the repeated abuse of the grievance process through:

1. The filing of frivolous and/or excessive grievances;
2. The appeal of a grievance settled in the prisoner's favor;
3. The filing of grievances concerning issues not grievable; or
4. The filing of emergency grievances that are not emergencies.

##### F. Health Care

Health care includes the fields of medical, dental, psychiatric, and mental health.

##### G. Institutional Health Care Officer

The Institutional Health Care Officer is the chief departmental health care officer in a correctional facility.

H. Medical Advisory Committee

The Medical Advisory Committee shall include, but is not limited to, the Medical Director, the Clinical Director, and the Health Practitioner with the Psychiatrist, Quality Assurance Nurse, and Contract Dentist as ad hoc members.

I. Retaliation

Retaliatory action could include any form of discipline, placement in administrative segregation, transfer, other adverse classification action, or harassment that is imposed upon a prisoner for the prisoner's filing or pursuit of a grievance. It does not include transfers that are in the best interest of the institution or the Department.

J. Request for Interview Form

The Request for Interview Form (Form 808.11A) is the Department form used to attempt to informally resolve a grievance or to appeal a screened grievance.

K. Screened Grievance

A screened grievance is a grievance that is rejected or returned for correction due to content or completion deficiencies.

L. Standard Grievance

A standard grievance is a formal attempt to resolve a general issue regarding the Department's alleged violation of regulations, statutes, or policy. Separate procedures apply to the processing of emergency and health care grievances and grievances against staff.

M. Working Days

Unless otherwise stated, all processing timelines describe working days. A working day is a 24-hour period of which no portion includes a Saturday, Sunday, or holiday.

1. Computation of a working day as prescribed or allowed in this policy begins with the day after the act or event beginning the computation unless it is a Saturday, Sunday, or holiday.
2. The last day of the time period is to be included unless it is a Saturday, Sunday, or holiday.
3. In institutions where a working day includes weekends and holidays, the facility SOPs and prisoner handbook will specify this exception.

VI. Policy

A. Grievance and Appeal System

The Standards Administrator and the Director of Institutions shall develop, implement, and monitor the Department's prisoner grievance system that promotes dispute resolution through effective and timely communication. The Facility Manager at each institution shall monitor the grievance process.

B. Standard Grievance Procedures

All prisoners, staff, and reviewing authorities shall follow the procedures in this policy when filing and responding to a grievance unless otherwise specified under special grievances outlined below. Special procedures apply to:

1. Emergency grievances;
  2. Health care grievances; and
  3. Grievances against staff.
-

C. Grievance Appeal Procedures

1. The Department shall establish uniform procedures for processing prisoner grievance appeals.
2. The Department may deny any prisoner's appeal that does not follow these appeal procedures.

D. Communication Continuum

The prisoner grievance and appeal system promotes open communication between prisoners and staff to resolve disputes and issues. The Department encourages informal face-to-face communication as the first step towards resolution. The prisoner is required to then seek written informal resolution through the Request for Interview Form (Form 808.11A) or another appropriate Department form before filing a formal grievance.

E. Scope of a Grievance

1. What can be grieved
  - a. A prisoner may grieve any alleged action violating the Department's regulations, statutes, policies, or procedures stated in the prisoner handbook that does not already have a separate appeal process.
  - b. A prisoner may only file a grievance in his or her own behalf if directly affected by or a party to the alleged action being grieved.
  - c. A prisoner may file a health care grievance regarding treatment that pertains to the provision or denial of essential health care services. This includes applications of policy stated in the Prisoner Health Plan (807.02 Attachment A).
2. What cannot be grieved
  - a. Classification decisions addressing security or custody levels, facility placement, work and program eligibility and assignments, or furlough.
  - b. Disciplinary decisions.
  - c. Medical charge disputes (see Policy 807.07).
  - d. Administrative transfers.
  - e. Any other administrative procedure which has its own appeal process.
  - f. Alaska Parole Board procedures or decisions.
  - g. Court procedures or decisions.
  - h. Claims on a continuing issue the prisoner is actively litigating in the courts.
  - i. Decisions on whether or not an emergency grievance is an emergency.
  - j. Unrelated issues that should be submitted in separate grievances.

F. Grievance System Abuse

1. A prisoner may be found to abuse the grievance system who:
  - a. Files more than five grievances in a week;
  - b. Files more than 20 grievances in any 180 consecutive days; and/or
  - c. Demonstrates a pattern of abuse of the system by filing frivolous or repetitious grievances, or by filing false statements.
2. A prisoner found to abuse the grievance system may be subjected to both a restriction on filing grievances and/or disciplinary action.
3. The Facility Manager shall determine abuse of the grievance system.

G. Prisoner Responsibilities

1. A prisoner is expected to participate in good faith in the grievance process.
-

2. A prisoner who has difficulties understanding or following the procedures in this policy must request assistance.

#### H. Staff Responsibilities

1. The Facility Manager shall assign an appropriate staff member as the Facility Standards Officer. In matters pertaining to the grievance process, the Facility Standards Officer answers directly to the Facility Manager.
2. The Facility Manager shall make locked boxes available near each of the institutional housing units.
3. The Facility Manager shall ensure that staff inform and instruct prisoners, all new commitments, and transfers about the grievance process through the prisoner handbook and prisoner orientation.
4. The Facility Manager shall inform all prisoners through the prisoner handbook and/or prisoner orientation of the institution's policy on providing them copies of completed Request for Interview Forms (Form 808.11A).
5. Staff will make this policy accessible in the institutional law library.
6. Staff will explain the grievance procedure to the prisoner, through an interpreter, if necessary, and provide assistance for special needs prisoners.
7. Department staff will respond to appropriate verbal and written attempts to informally and formally resolve grievances in a professional and timely manner.
8. Staff may not take retaliatory action against any prisoner for the filing or pursuit of a grievance. Claims about retaliation will be reviewed and processed as grievances alleging staff misconduct.

### VII. Procedures

#### A. Standard Grievances

##### 1. Prisoner Responsibilities

###### a. Filing Time Frames

- (1) A prisoner must try to informally resolve an issue as soon as possible after the action or incident.
- (2) Within 30 calendar days from the date the incident occurred or from when the prisoner has knowledge of the incident, a prisoner must file a grievance (Form 808.03C).

###### b. Informal Resolution

- (1) A prisoner must try to resolve an issue informally before filing a formal grievance.
- (2) The prisoner should first attempt to speak directly with the staff member aware of or directly involved with the incident.
- (3) If verbal communication attempts fail to resolve the problem informally, the prisoner must complete a Request for Interview Form (Form 808.11A) to address the issue and place it in the appropriate locked box.
- (4) If the response on the Request for Interview Form does not resolve the issue, the prisoner may then choose to submit a formal grievance.

###### c. Formal Grievance Packet Completion (Level 1)

- (1) A prisoner must fully complete page one of the Prisoner Grievance Form (Form 808.03C).
  - (2) The prisoner may attach up to two additional pages of narrative.
-

- (3) If the facility provides the inmate with a copy of the response to the Request for Interview Form (Form 808.11A), the form showing attempts to resolve the issue informally must be attached to the grievance.
  - (4) If the facility does not provide the inmate with a copy of the response to the Request for Interview Form (Form 808.11A), the prisoner must write on the grievance form with whom and when he or she tried to initially resolve the issue informally, and state the results of that communication.
  - (5) The prisoner must place the grievance packet in the appropriate locked box.
- d. Withdrawn Grievances
- (1) A prisoner can request in writing to withdraw a grievance at any time in the grievance process.
  - (2) If an issue is easily resolved through the Facility Standards Officer prior to a grievance investigation and decision, the Resolved Filed Grievance Form (Form 808.03B) must be filled out completely and properly signed by the prisoner and the Facility Standards Officer.
  - (3) If the prisoner is released from custody, within five working days of release the prisoner must notify the Facility Standards Officer in writing and leave a contact address if he or she wants the grievance process to continue. Otherwise, the Facility Standards Officer will close the grievance unless the Facility Manager chooses to continue processing the grievance.
- e. Screened Grievances
- (1) If a prisoner can correct the deficiency that caused a grievance to be screened, the prisoner shall be permitted to resubmit the grievance. The grievance shall be considered timely if resubmitted within two working days of receipt of the screening form.
  - (2) If the prisoner believes that a grievance screening decision is incorrect, the prisoner may appeal the Screened Grievance. The prisoner must state in writing on the Request for Interview Form (Form 808.11A) why the screening is incorrect and attach it to the grievance and the screening form, and return it to the Facility Standards Officer within two working days after receiving the screening decision.
- f. Grievance Appeal (Level 2)
- (1) A prisoner may appeal a Facility Manager's/Director's grievance decision.
  - (2) Within two working days after receiving the Facility Manager's/Director's decision, the prisoner must complete and file a Prisoner Grievance Appeal Statement (Form 808.03D) with the Facility Standards Officer.
  - (3) This statement must only address the subject and relief sought in the initial grievance. No additional information may be submitted.
  - (4) The prisoner must place the completed Prisoner Grievance Appeal Statement Form in the appropriate locked box.
- g. Standards Administrator Review (Level 3)
- A prisoner who believes a grievance was not handled consistent with policy may seek review by the Standards Administrator after the Director renders a decision.
- (1) Within 20 working days after receiving the Director's decision, the prisoner must request a review by writing a letter not to exceed two pages and send it in a sealed envelope directly to the Standards Administrator.
-

- (2) The review by the Standards Administrator serves as the final administrative action of the Department on the grievance.

## 2. Staff Responsibilities

- a. The Facility Standards Officer shall make sure that an adequate supply of grievance forms and Request for Interview Forms are available.
- b. Within one working day of a request, staff shall provide the forms necessary for filing a grievance.
- c. Initial Grievance Processing (Level 1)

Each working day, the Facility Standards Officer or staff designated by the Facility Manager will:

- (1) Check the locked boxes;
- (2) Forward Request for Interview Forms appealing screened grievances through the Facility Standards Officer to the Facility Manager; and
- (3) Record the grievance packet and its subject matter in the grievance log and/or the grievance database.

## d. Initial Grievance Review

- (1) The grievance process begins when the Facility Standards Officer receives, records, and files the formal grievance.
- (2) The Facility Standards Officer shall promptly review all grievances to see if they should be screened, easily resolved, or processed further.

## (3) Screened Grievances

The Facility Standards Officer must complete the Grievance Screening Form (Form 808.03A) and provide copies of the form and the grievance to the prisoner with instructions for proper completion. Grievances will be screened if:

- (a) The action or decision being grieved is not a grievable issue as specified in VI.E. above;
  - (b) The grievance is not within the institution's or Department's jurisdiction;
  - (c) The issue grieved was not first addressed informally;
  - (d) The issue was already grieved by the prisoner or by another prisoner and resolved;
  - (e) The grievance is submitted on behalf of another prisoner who is able to file his or her own grievance;
  - (f) The form is not filled out completely;
  - (g) The grievance is not filed within 30 calendar days of the action or incident;
  - (h) The grievance is grieving an action not yet taken;
  - (i) The grievance contains inappropriate use of obscene or profane words;
  - (j) The grievance is factually incredible or clearly devoid of merit;
  - (k) The specific relief sought is unclear;
  - (l) The grievance raises unrelated issues that should be presented in separate grievances;
  - (m) The grievance is against the Facility Manager, but is not for action taken directly by the Facility Manager.
-

- (n) The grievance is on an issue the prisoner is currently litigating in the court system.
  - (4) Easily Resolved Grievances  
If the grievance is easily resolved, the Resolved Filed Grievance Form (Form 808.03B) must be filled out completely and properly signed by the prisoner and the Facility Standards Officer.
  - (5) Grievance Assignment and Transfers
    - (a) Grievances that are not screened or easily resolved are either sent to the Facility Standards Officer of the facility where the incident occurred or assigned to an impartial investigator.
    - (b) If the Department transfers a prisoner while it is processing the prisoner's grievance, the Facility Standards Officer shall continue the grievance process in coordination with the Facility Standards Officer of the receiving institution unless the prisoner's transfer resolves the issue.
  - e. Screened Grievance Appeals
    - (1) The Facility Standards Officer shall record the appeal and forward it to the Facility Manager. If the screened grievance concerns an action taken by the Facility Manager, it will be forwarded to the Director of Institutions.
    - (2) The Facility Manager/Director has 10 working days after receipt of the appeal to complete the review and issue a written decision through the Facility Standards Officer to the prisoner.
    - (3) If the prisoner does not receive a response within the 10 working days, the appeal is considered denied. However, a late response granting an appeal is valid. The screened grievance appeal review is the final administrative action by the Department on the grievance.
  - f. Grievance Investigation
    - (1) If the grievance is not screened, easily resolved, or withdrawn after its initial filing, the Facility Standards Officer must either investigate or assign another staff member to investigate the grievance.
    - (2) The Facility Standards Officer shall assign an objective staff member that is not involved in the subject of the grievance to investigate the grievance and issue a recommendation.
    - (3) The investigator will interview the appropriate staff and/or prisoner(s) in order to fully and equitably examine the issue.
    - (4) Within 10 working days after receiving the assignment, the investigator shall forward a clear and concise written statement of findings and recommendations (Form 808.03C, Part Two) to the Facility Manager through the Facility Standards Officer.
  - g. Formal Grievance Decision
    - (1) Within five working days after receiving the investigator's findings, the Facility Manager/Director will issue a determination. The decision must include a copy of the investigator's findings and recommendations, include sufficient findings and conclusions to provide for further review, and note any corrective action.
    - (2) The Facility Manager/Director shall, through the Facility Standards Officer, give the prisoner the written response (Form 808.03C).
-



h. Record Keeping

- (1) The Facility Standards Officer shall promptly log the completed grievance and make and distribute copies of the grievance.
- (2) The Facility Standards Officer or designee shall have the prisoner sign the completed grievance and/or document its delivery to the prisoner.
- (3) The Facility Standards Officer shall place the completed original grievance in the prisoner's institutional or medical file, as appropriate.

i. Grievance Appeal (Level 2)

- (1) If the appeal results from the decision of the Facility Manager, the Facility Standards Officer shall record and immediately send an appeal packet consisting of the appeal form and a copy of the grievance to the Director.
- (2) If the appeal results from the decision of the Director, the Facility Standards Officer shall record and immediately send the appeal packet to the Standard's Administrator as a Level 3 review.
- (3) The Director shall respond to the prisoner in writing through the Facility Standards Officer within 15 working days after receiving the appeal. The original must be sent to the Facility Standards Officer with a copy to the prisoner. The Director shall either affirm or reverse the Facility Manager's decision, note any corrective action, and set out findings and conclusions sufficient to permit further review. If the prisoner does not receive a response within 15 working days, the appeal is considered denied. However, a late response granting the appeal is valid.

j. Standards Administrator Review (Level 3)

The Standards Administrator shall respond in writing directly to the prisoner within 20 working days. This decision is the final administrative action by the Department on the grievance.

B. Health Care Grievances

1. Prisoner Responsibilities

Prisoners shall follow the standard procedures in VII.A.1.a.-e. and VII.A.2.a.-e. above when filing grievances regarding health care.

2. Staff Responsibilities

- a. The Facility Standards Officer, in consultation with health care staff that is not involved in the subject of the grievance, shall promptly decide if the grievance should be screened or could be easily resolved.
  - b. If the grievance cannot be screened or easily resolved, the Facility Standards Officer shall assign and forward the grievance to the Institutional Health Care Officer through the facility manager for investigation and response.
    - (1) Within 15 working days after receiving the grievance, the Institutional Health Care Officer shall investigate the grievance, compile copies of all relevant medical records, and issue a written decision containing a clear and concise statement of findings (on Form 808.03C) to the Facility Manager through the Facility Standards Officer.
    - (2) The Facility Manager shall promptly review and route the grievance to the Facility Standards Officer.
    - (3) The Facility Standards Officer shall promptly log the decision, make and distribute copies of the grievance, and place the original grievance in the prisoner's medical file.
-

- c. If the grievance is against the Institutional Health Care Officer, the Facility Standards Officer shall ask the Anchorage Central Office Health Care Administrator to assign an impartial investigator.
  - 3. Health Care Grievance Appeals
    - a. Prisoner Responsibilities
      - (1) If a prisoner is not satisfied with the response to the grievance, the prisoner may file an appeal.
      - (2) Within two working days after receiving the decision, the prisoner must complete the Prisoner Grievance Appeal Statement (Form 808.03D) and place it in the appropriate locked box.
    - b. Staff Responsibilities
      - (1) The Facility Standards Officer shall record and forward the grievance appeal and the copies of grievance and relevant medical records to the Medical Advisory Committee.
      - (2) The Health Care Administrator shall promptly assign an impartial investigator.
      - (3) Within 10 working days of receipt of the grievance, the assigned investigator shall investigate the matter and provide the Medical Advisory Committee with a written statement of findings and recommendations.
      - (4) Within 5 working days of receipt of the investigator's statement of findings and recommendations, the Medical Advisory Committee shall review the documentation and issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
      - (5) The decision will be sent to the prisoner through the Facility Standards Officer who will promptly log the grievance decision.
      - (6) The Medical Advisory Committee shall send copies of all appeal decisions to the Standards Administrator.
      - (7) If the appeal involves a health care decision made by the Medical Director, within 10 working days of receipt of the investigator's statement of findings and recommendations, the Medical Advisory Committee shall review the investigator's written recommendations and issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
      - (8) The decision of the Medical Advisory Committee is the final administrative action on the grievance by the Department.
  - C. Grievances Against Staff
    - 1. Allegations of Staff Misconduct
      - a. Prisoner Responsibilities
        - (1) If a prisoner files a grievance alleging staff misconduct, the prisoner does not need to try to resolve the grievance informally with the staff member who is the subject of the grievance.
        - (2) If a prisoner alleges retaliation resulting from filing or pursuing a grievance, the prisoner shall address the grievance as an allegation of staff misconduct.
        - (3) A prisoner must complete and submit a formal grievance packet as stated in VII.A.1.c above.
        - (4) A prisoner may appeal the decision of the Facility Manager/Director according to VII.A.1.e-f above.
-

b. Staff Responsibilities

- (1) If a grievance alleges staff violations of the ethical code or standards of conduct as defined by Policy 202.01, the Facility Standards Officer shall record and forward the grievance directly to the Facility Manager.
- (2) After receiving the grievance, the Facility Manager shall either:
  - (a) Within 15 working days investigate the grievance and provide a written decision to the prisoner through the Facility Standards Officer; or
  - (b) Promptly return the grievance to the Facility Standards Officer for informal resolution or assignment to an investigator according to VII.A.2.f-g above.

2. Grievances Against the Facility Manager

a. Prisoner Responsibilities

- (1) Before a prisoner files a grievance against action taken directly by the Facility Manager, the prisoner must first try to resolve the issue informally with the Facility Manager according to VII.A.1.a-b above.
- (2) The prisoner must complete and submit a formal grievance packet according to VII.A.1.c above to the Director of Institutions through the Facility Standards Officer.
- (3) The prisoner may appeal the decision of the Director to the Standards Administrator according to VII.A.1.g above. This review will be the final administrative action on the grievance by the Department.

b. Staff Responsibilities

- (1) If the grievance is filed against the Facility Manager, the Facility Standards Officer shall forward it to the Director of Institutions for investigation or assignment to an impartial investigator.
- (2) If the investigation is assigned, within 10 working days after receiving the assignment, the investigator shall forward a clear and concise written statement of findings and recommendations (Form 808.03C, Part Two) to the Director of Institutions.
- (3) Within five working days after receiving the investigator's findings, the Director will issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
- (4) The decision will be sent to the prisoner through the Facility Standards Officer who will promptly log the grievance decision.
- (5) If the prisoner appeals the Director's decision, within 20 working days after receiving the appeal, the Standards Administrator will issue a determination in writing directly to the prisoner.
- (6) The review by the Standards Administrator is the final administrative action within the Department on the grievance.

D. Emergency Grievances

1. Prisoner Responsibilities

- a. A prisoner may file an emergency grievance by notifying the Facility Standards Officer, the Facility Manager, or the Facility Manager's designee (e.g., Shift Supervisor during nights, weekends and holidays) verbally or through completion of a written grievance according to the procedures set out in this policy.
-

- b. The prisoner does not need to seek to informally resolve an emergency grievance.
- c. The prisoner cannot appeal the Department's determination as to whether the issue grieved is an emergency.

2. Staff Responsibilities

- a. If a prisoner files an emergency grievance, staff shall immediately notify the Facility Manager.
- b. The Facility Manager shall consult with the Institutional Health Care Officer, if necessary, and promptly determine whether the issue grieved is an emergency.
- c. If the Facility Manager is unavailable, the Facility Manager's designee through immediate consultation with the Facility Manager (and Institutional Health Care Officer, if necessary) shall determine whether the issue grieved is an emergency.
- d. If the grievance is found to be an emergency, the Facility Standards Officer, Facility Manager, the Facility Manager's designee, or the Institutional Health Care Officer shall investigate and resolve the emergency grievance the same day or before the end of the shift.
- e. The Facility Manager, the Facility Manager's designee, or the Institutional Health Care Officer shall send a written decision to the prisoner through the Facility Standards Officer as soon as practicable. The Facility Standards Officer will log and document the grievance in accordance with the procedures set out in this policy.
- f. If the grievance is not found to be an emergency, the Facility Manager or designee will inform the Facility Standards Officer in writing of the decision. The Facility Standards Officer will process the grievance according to VII.A.-C. above.
- g. The prisoner who provides false information regarding the emergency grievance may be disciplined pursuant to 22 AAC 05.400.

E. Grievance System Abuse

1. Prisoner Responsibilities

- a. A prisoner who receives a written caution regarding abuse of the prisoner grievance system is expected to correct the action(s) that resulted in the warning.
- b. The prisoner cannot appeal the initial grievance system abuse restriction.
- c. The prisoner can appeal the consecutive extensions of a restriction to the Director of Institutions according to VII.A.1.f.
- d. The prisoner can file one non-emergency grievance per week during the restriction. This limit may only be exceeded if other grievances filed during the week are emergency grievances.
- e. The prisoner who continues to abuse the grievance system and/or provide false statements may be subjected to both continued restrictions on filing grievances and/or disciplinary action pursuant to 22 AAC 05.400.

2. Staff Responsibilities

- a. If a prisoner demonstrates a pattern of abusing the prisoner grievance system, the Facility Manager shall send a written caution to the prisoner stating:
  - (1) The specific reasons for the caution, and
  - (2) The continued pattern may result in restricted use of the grievance system.

- b. If a prisoner continues a pattern of grievance abuse, the Facility Manager may issue a written restriction limiting the use of the grievance system that:
  - (1) Specifies the reason(s) for the restriction,
  - (2) Specifies the length of the restriction, which shall not exceed 90 calendar days,
  - (3) Limits the filing of grievances to one per week, and
  - (4) Is not subject to appeal.
- c. If the grievance system abuse continues, the Facility Manager may continue to extend restrictions not to exceed 90 calendar days by issuing additional written determination(s).
- d. If the prisoner appeals the restriction extension, within 15 working days after receiving the appeal, the Director shall respond in writing to the prisoner through the Facility Standards Officer in accordance with the procedures set out in this policy. This decision is the final administrative action within the Department on the grievance.

F. Records and Accountability

- 1. The Facility Standards Officer shall keep records of all individual prisoner grievances and any relevant documents at the institution for at least three years after the final resolution of each grievance.
- 2. The Facility Standards Officer shall maintain and keep a permanent grievance log (see Policy 1208.11).
- 3. The Standards Administrator shall periodically audit grievance records to ensure that all grievances are properly logged and handled in accordance with this policy.
- 4. The Standards Administrator shall report annually to the Commissioner about the disposition and the handling of grievances by the Department during the reporting period.

VIII. Implementation

This policy and procedure is effective 14 days following 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. The Division Director must approve in writing any deviation from the contents of this document.

September 29, 2006

Date



Marc Antrim, Commissioner  
Department of Corrections

Forms Applicable:

808.03A  
808.03B  
808.03C  
808.03D

## GRIEVANCE SCREENING FORM

To: Prisoner's Name:  
 Offender Number:  
 DIO Grievance #:  
 FSO Grievance #:  
 Institution:

<b>Your grievance is being returned to you for one or more reasons below:</b>	
a.	The action or decision being grieved is not a grievable issue as specified in section VI.E. of DOC Policy #808.03.
b.	The grievance is not within the institution's or the Department's jurisdiction.
c.	The issued grievance was not first addressed informally.
d.	This issue was already grieved by the prisoner or by another prisoner and resolved.
e.	The grievance was submitted on behalf of another prisoner who is able to file his or her own grievance.
f.	The grievance form is not filled out completely.
g.	The grievance was not filed within 30 days of the action or incident.
h.	The grievance is grieving on action not yet taken.
i.	The grievance contains inappropriate use of obscene or profane words.
j.	The grievance is factually incredible or clearly devoid of merit.
k.	The specific relief sought is unclear.
l.	The grievance raises unrelated issues that should be presented in separate grievances.
m.	The grievance is against the Facility Manager, but is not for action taken directly by the Facility Manager.
n.	The grievance is on an issue the prisoner is currently litigating in the court system.
o.	The above noted reason (s) for screening your grievance is not self-explanatory. The following written explanation is provided to clarify the above noted screening decision. <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>

You have two options in response to a screened grievance. (See Policy 808.03.)

1. You can correct the deficiency that caused a grievance to be screened and resubmit the grievance within two working days of receipt of the screening form; or
2. You may appeal the Screened Grievance if you believe the screening decision is incorrect. You must state in writing on the Request for Interview Form (Form 808.11A) why the screening is incorrect, attach it to the grievance and the screening form, and return it to the Facility Standards Officer within two working days after receiving the screening decision.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Facility Standards Officer

Distribution: Original to Prisoner Case File  
 Facility Standards Officer  
 Prisoner

**RESOLVED FILED GRIEVANCE FORM**

I, \_\_\_\_\_, a prisoner at \_\_\_\_\_,  
agree to voluntarily withdraw my grievance log number \_\_\_\_\_  
based upon the following reason(s) (see checked line applicable below):

- \_\_\_\_\_ 1. The grievance issue I raised in this logged formal grievance has been resolved since the grievance was filed.
- \_\_\_\_\_ 2. The appropriate Department staff has been contacted and the necessary action needed to resolve and rectify this matter to my satisfaction is being taken.
- \_\_\_\_\_ 3. I have thought about this matter and I determined that this is not the appropriate process to address my concern or the issue.

4. Other:

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I take this action freely. I am not under any form of duress or coercion, nor has there been any expressed or implied threats of retaliation if I do not seek this withdrawal. Also, I am fully aware of the fact that I have the option to re-file this grievance within 30 days from the date on this withdrawal form.

\_\_\_\_\_  
Prisoner's Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Facility Standards Officer's Signature

\_\_\_\_\_  
Date Signed

Distribution:      Original to Prisoner's Case File  
                         Facility Standards Officer  
                         Prisoner

## DEPARTMENT OF CORRECTIONS

## PART ONE

Page 1 of 2



## PRISONER GRIEVANCE

## PART TWO

PRISONER NAME	Offender #	FSO LOG #	DIO LOG #

## INVESTIGATOR'S FINDINGS AND RECOMMENDATIONS:

INVESTIGATION: I met with grievant on \_\_\_\_\_ at \_\_\_\_\_ hours.

INVESTIGATOR'S

SIGNATURE:

DATE:

## FACILITY MANAGER'S FINDINGS AND DETERMINATION:

FACILITY MANAGER'S

SIGNATURE:

DATE:

## PRISONER'S RESPONSE:

☐ I AM SATISFIED WITH THIS RESPONSE.☐ I AM NOT SATISFIED WITH THIS RESPONSE,☐ BUT **DO NOT** WISH TO APPEAL.☐ AND **DO INTEND** TO APPEAL TO THE Director of Institutions OR the Medical Advisory Committee.I UNDERSTAND THAT MY COMPLETED STATEMENT OF APPEAL FORM MUST BE SUBMITTED TO THE Facility Standards Officer **WITHIN TWO WORKING DAYS OF THIS DATE.**

PRISONER'S SIGNATURE:

DATE:

FORM DELIVERED TO PRISONER  
BY OFFICER \_\_\_\_\_

(PRINT NAME/SIGNATURE)

(DATE/TIME)

Page 2 of 2


Distribution: Original to Prisoner's Case/Medical File  
Facility Standards Officer  
Prisoner

## DEPARTMENT OF CORRECTIONS

PRINT NAME	INSTITUTION/MODULE	OFFENDER NUMBER	FSO LOG NUMBER	DIO LOG NUMBER

I acknowledge receipt of this grievance appeal statement and have logged it with the appropriate initially filed grievance.	
DATE FILED IN STANDARDS' OFFICE:	FACILITY STANDARDS OFFICER'S SIGNATURE:

Distribution: Original to Prisoner Case File  
Facility Standards Officer  
Prisoner

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	808.11	<b>Page 1 of 2</b>	
		<b>Effective:</b>	4/13/08	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	4/10
	<b>Chapter:</b>	Prisoners' Rights			
	<b>Subject:</b>	Communication Between Prisoners and Staff			

I. Authority

In accordance with 22AAC 05.155, the Department of Corrections shall develop and adopt policies and procedures that are consistent with laws for the guidance, government and administration of correctional facilities, programs and field services.

II. References

Alaska Statutes

33.30.011, 44.28.030

Alaska Administrative Code

22AAC 05.155

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003  
4-4016

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

No Relevant Code

III. Purpose

To establish a standard procedure for verbal and written communication between prisoners and staff.

IV. Application

To all Department employees

V. Definition

None

VI. Policy

It is the Department's policy to promote and facilitate open channels of communication between employees and prisoners. Effective verbal and written communication promotes more efficient operations.

VII. Procedures

A. Each Superintendent shall establish SOPs which facilitate communication between employees and prisoners by:

1. Reinforcing the benefits of appropriate interactions and communications;
2. Insuring that Request for Interview forms (808.11) are readily available, and that they are responded to in a timely manner by the staff member responsible for the activity or program addressed.
  - a. If the addressee is not the most appropriate person to respond, the employee will forward the request to the most appropriate person for response, and so note on the form;
  - b. Written communications directed to a staff member may be sealed by the prisoner for privacy. This form of communication is not considered prisoner mail and is not subject to confidential requirements of policy 810.03, Prisoner Mail, Publications and Packages;
  - c. Locked boxes shall be provided for the deposit of all written prisoner communication;
  - d. Communications deposited in the boxes will be picked up and distributed by a person designated by the Superintendent; any Request for Interview form containing profanity, vulgarity, or statements that are intended to be insulting and/or degrading will be returned to the prisoner without action;

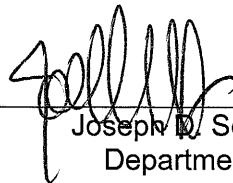
- e. The staff reply to a request for interview may be delivered verbally or in writing. When the reply is delivered verbally it shall be noted on the Request for Interview prior to filing;
- f. Except as noted below, a completed Request for Interview will be filed in the prisoner's permanent record. Routine requests such as haircuts, cleaning supplies, etc., need not be filed.
- 3. Distributing or posting up-to-date written descriptions of programs, procedures, meetings and other pertinent information for prisoners.
- 4. Ensuring that those prisoners who require assistance in understanding written or verbal communication due to a reading or language difficulty are provided appropriate assistance.
- 5. Whenever possible, program/treatment staff offices shall be located in close proximity to the prisoner population.

**VIII. Implementation**

This policy and procedure is effective 14 days following 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.

3/31/08

Date



Joseph R. Schmidt, Commissioner  
Department of Corrections

**Authority:**

AS 44.28.030

AS 33.30.021

22 AAC 05.155

**Forms Applicable to this Policy:**


808.11 Request for Interview

## DEPARTMENT OF CORRECTIONS

Name:		Institution:		Date:	
OTIS#		Mod/Quad:			

Final Action Taken:	
	Employee Signature: _____
	Date: _____

Distribution: Original to Case Record  
*Department of Corrections, Form 808.11A*  
*Rev. 04/08*

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	810.01	<b>Page 1 of 4</b>	
		<b>Effective:</b>	7/16/07	<b>Reviewed:</b>	7/07
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	7/09
	<b>Chapter:</b>	Communication, Mail, and Visiting			
	<b>Subject:</b>	Prisoner Access to Telephone			

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 12.25.150, AS 33.30.011, AS 33.30.021, AS 44.28.030

Administrative Code

22AAC 05.015, 22AAC 05.530, 22AAC 05.400

Standards for Adult Correctional Institutions; 4th Edition 2003

4-, 4429, 4271, 4272, 4472, 4497, 4497-1

Standards for Adult Local Detention Facilities; 3<sup>rd</sup> Edition 1991

3ALDF 3D-21, 3D-21-1, 3D-22, 3D-23, 3E-02, 5D-09

III. Purpose

To establish uniform procedures within the Department for prisoner access to telephones.

IV. Application

All staff and prisoners.

V. Definitions

None

VI. Policy

- A. Prisoners shall have reasonable access to a telephone. The Department may limit, monitor, or record prisoners' telephone calls to preserve security and order in the institution and to protect the public. Accommodations shall be made to ensure access to telephone communication by disabled prisoners.
- B. The Commissioner may ban prisoner use of certain types of telephone calls or telephone features that threaten facility security, the safety of a person, or the protection of the public, such as conference calls or call-forwarding, so long as reasonable telephone access is maintained. If a particular type of telephone call or telephone feature is banned, such a prohibition should not be construed to prohibit use of that type of call or feature at any Court or agency hearing in which a prisoner participates as a party or witness when the use of that type of call or feature is authorized by the judge.

VII. Procedures

A. Access and Use of Telephone

1. Access and Limiting Access

Prisoners in open population and administrative segregation shall have reasonable telephone access as determined by the Superintendent. Accommodations shall be made to ensure disabled prisoners have access to telephone communications. Upon request, Telecommunication Device for The Deaf (TTD) or similar equipment shall be made available to prisoners with hearing/speech disabilities. An open population or



administrative segregation prisoner's telephone access may be limited or suspended by:

- a. A disciplinary tribunal as punishment for a disciplinary infraction;
- b. The Superintendent, based upon an individualized determination that reasonable grounds exist to believe that the prisoner's telephone use threatens facility security, the safety of a person, the protection of the public, or otherwise constitutes telephone abuse;
- c. A Court order or condition of probation/parole restricting contact with an individual or class of individuals;
- d. Prisoners whose telephone access has been limited or suspended must still be allowed telephone calls to an attorney, the Courts for scheduled hearings, and the Ombudsman's Office; and
- e. A prisoner whose telephone privileges are limited or suspended in connection with placement in administrative segregation or disciplinary action may challenge those restrictions only in the administrative segregation or disciplinary appeal process, as applicable. A prisoner whose telephone privileges are limited or suspended based upon an individualized determination may challenge the restrictions only by filing a grievance pursuant to policy 808.03 Prisoner Grievances.

## 2. Prohibited Phone Calls

- a. Except as specifically authorized by the Superintendent (e.g., telephonic Court or administrative agency hearings where the judge or hearing officer authorizes the inmate to participate telephonically from prison), prisoners are prohibited from making phone calls that use, directly or indirectly, the following features:
  - (1) Three-way calls (telephone calls where there are initially two parties to the call and then third or subsequent parties are added by means of a conference or similar feature);
  - (2) Call-forwarding, whether permanent or temporary;
  - (3) Collect long-distance calls made through an operator rather than through the automated phone system in place;
  - (4) Calls to toll-free numbers, except as authorized by the Superintendent;
  - (5) Calls to 900 or similar numbers for which special, additional charges apply;
  - (6) Calls using calling cards or Personal Identification Numbers (PINs) not issued directly by the facility;
  - (7) Calls billed to credit cards or third parties.

## 3. Administrative Segregation

Prisoners in administrative segregation must request to use the telephone in accordance with institutional Standard Operating Procedures.

## 4. Punitive Segregation

Prisoners in punitive segregation are limited to telephone calls to attorneys, the Courts for scheduled hearings, and the Ombudsman's Office. The Superintendent may approve other calls for compelling reasons. Prisoners in punitive segregation must request to use the telephone in accordance with institutional Standard Operating Procedures.

## 5. Prisoner-to-Prisoner Calls

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Prisoner-to-prisoner telephone calls are prohibited. The Superintendent may authorize calls between family members at his or her discretion.

6. Long Distance Calls

The Department is not required to pay for long-distance telephone calls. Prisoners must call all long distance numbers collect unless otherwise authorized by the Superintendent.

7. Coinless Pay Phones

The Department may install coinless pay phones with caller identification for all local and long distance calls.

B. Telephone Calls to Legal Representatives

The Department shall ensure that telephone calls to attorneys can be made during normal office hours. The Department may not restrict the number of attorneys a prisoner may call. The Department shall implement a system by which attorneys may leave messages for prisoners via facsimile. These messages shall be posted in an area accessible to all prisoners or delivered to the appropriate prisoner within 24 hours of receipt, except on weekends and holidays. These messages are not confidential. Except as authorized by the Superintendent; facsimile messages are limited to two pages.

C. Telephone Calls after Arrest

Immediately after arrest, a prisoner has the right to telephone or otherwise communicate with an attorney and any relative or friend.

1. The prisoner must call collect or otherwise pay for all long distance telephone calls.
2. The shift supervisor shall allow combative and incapacitated prisoners to use the telephone only when their conduct does not threaten themselves, others, or the safety and security of the institution.

D. Monitoring and Recording of Calls

1. Except as noted below, all calls may be monitored and recorded at any time.
  2. Calls between a prisoner and an attorney, or the Office of the Ombudsman, may not be monitored or recorded, except when authorized by court order. Calls to other designated privileged organizations may not be monitored and recorded, except when authorized by the Commissioner. The Commissioner shall designate organizations which are privileged for purposes of monitoring and recording of calls. Each Superintendent will ensure that the prisoner handbook lists procedures for calling attorneys, the Ombudsman or other designated privileged organizations to avoid recording or monitoring. Designated organizations are listed below:
    - a. Alaska Human Rights Commission
    - b. Alaska legislators
    - c. Any Court in the United States
    - d. Attorney General of Alaska
    - e. Chairman, Alaska Board of Parole
    - f. Commissioner, Department of Corrections
    - g. Division of Occupational Licensing
    - h. Department of Corrections Grievance and Facility Standards Administrator
    - i. Governor of Alaska
    - j. Members of the U. S. Congress for Alaska
-



- k. Physician of record for the prisoner
  - l. State of Alaska Americans with Disabilities Act Coordinator (Division of Rehabilitation, Department of Labor)
  - m. The prisoner's foreign consulate
  - n. The Office of Victim's Rights (when the prisoner also qualifies as a "victim" under Alaska Statute.)
  - o. Any organization, such as the American Civil Liberties Union, National Prison Law Project, or Alaska Legal Services Corporation, that assists persons in the exercise of their legal rights.
3. Notice that all calls may be monitored and recorded must be posted near each prisoner telephone.


#### VIII. 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.

7/2/07  
Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	810.03	<b>Page 1 of 8</b>	
		<b>Effective:</b>	7/16/07	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	7/09
	<b>Chapter:</b>	Communication, Mail & Visiting			
	<b>Subject:</b>	Prisoner Mail, Publications, and Packages			

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

22 AAC 05.400

22 AAC 05.510

22 AAC 05.520

Standards for Adult Correctional Institutions, 4th Edition 2003

4-4487, 4-4488, 4-4489, 4-4490, 4-4491, 4-4492, 4-4493, 4-4494, 4-4495, 4-4496

Standards for Adult Local Detention Facilities, 3<sup>rd</sup> Edition 1991

3-ALDF-5D-02, 5D-03, 5D-04, 5D-05, 5D-06, 5D-07, 5D-08

III. Purpose

To establish uniform procedures within the Department for prisoner mail, publications, and packages.

IV. Application

All staff and prisoner population.

V. Definitions

none

VI. Policy

- A. Prisoners may correspond with anyone except those persons and business limited by this policy.
- B. Each institution shall make an effort to ensure conscientious handling of prisoner's mail to prevent theft, tampering, delay, or other interference. The Department is not liable for mail, which the U.S. Postal Service or any other officially recognized mail or package courier system mishandles or losses.
- C. Prisoners may receive publications and packages except as limited in this policy.

VII. Procedures

- A. Superintendent's Duties
  1. Standard Operating Procedures (SOP)  
Each Superintendent shall develop SOP to carry out this policy. The Superintendent shall review the procedures annually and update them when necessary. The SOP must cover:
    - a. Prisoner's receipt of mail;
    - b. Accepting, handling, and distributing packages in an institution (including procedures for general mail in section D.2., and procedures for processing package contents in section I of this policy);
    - c. Removing cashier's checks and money orders from incoming mail in accordance with policy 302.12; and
    - d. Forwarding prisoner mail (including instructions in section G of this policy).
  2. Staff

The Superintendent or designee shall assign staff to review prisoner's mail and carry out the procedures in this policy.

B. General

1. The Department divides mail into three categories:
    - a. This category is defined as incoming and outgoing correspondence with the persons or organizations listed below as privileged, if the individuals are acting in their official capacities and the mail is properly marked "privileged":
      - (1) Alaska Human Rights Commission;
      - (2) Alaska legislators;
      - (3) Any attorney licensed to practice in the United States;
      - (4) Any court in the United States;
      - (5) Attorney General of Alaska;
      - (6) Chairman, Alaska Board of Parole;
      - (7) Commissioner, Department of Corrections;
      - (8) Division of Occupational Licensing;
      - (9) Department of Corrections Grievance and Standards Administrator;
      - (10) Governor of Alaska;
      - (11) Members of the U.S. Congress for Alaska;
      - (12) Ombudsman for the State of Alaska;
      - (13) Physician of record for the prisoner;
      - (14) State of Alaska Americans with Disabilities Act Coordinator (Division of Rehabilitation, Department of Labor; and
      - (15) Any organization, such as the American Civil Liberties Union, National Prison Law Project, or Alaska Legal Services Corporation, that assists persons in the exercise of their legal rights.
    - b. Prisoner-to-Prisoner Mail  
Prisoner-to-prisoner includes all mail between prisoners.
    - c. General Mail  
General mail includes all mail other than privileged or prisoner-to-prisoner mail.
  2. A prisoner may send or receive any amount of first, second, or third class mail, except that limitations may be placed on the mail to conduct or operate a business. Prisoners do not need the Superintendent's approval to receive or send mail to a particular individual.
  3. Informational fourth class mail, such as mail from a public agency, and subscription fourth class mail shall be delivered to prisoners, but fourth class mail sent by private entities for the purpose of merchandising need not be delivered to prisoners and shall instead, be discarded.
  4. Gifts  
The Superintendent may require family or friends to take the following steps before mailing a gift to a prisoner:
    - a. Verify with the Superintendent or other institution staff that the gift to be sent to a prisoner is on the approved prisoner property list; and
    - b. Notify the institution when the gift will be sent;
-



- c. The Superintendent shall record this information to ensure that the prisoner receives the gift upon delivery. However the gift will not be delivered to the prisoner without being inspected beforehand by institutional staff.
  5. Staff shall distribute and deliver prisoners' incoming mail (except packages) within 24 hours from the time the institution receives it; and staff shall pick up prisoners' outgoing mail within 24 hours (excluding weekends and holidays). Staff must distribute packages to prisoners within 48 hours of receipt after examination for contraband (excluding weekends and holidays).
  6. Mail shall be delivered to prisoners in such a manner as to ensure it is received by the intended recipient only. A prisoner may never distribute mail or look through mail to find his or her mail.
  7. Prisoners may not enter into credit agreements, installment purchase arrangements, or other contracts without the approval of the Superintendent or designee. The Superintendent has the discretion to approve special transactions such as selling property, college loans, etc.
  8. Prisoners may not represent any business firms or conduct any type of business operation without the approval in accordance with policy 815.05 Prisoner Business.
  9. A prisoner must obtain the Superintendent's or designee's approval before ordering or buying any item (other than publications in section H below) from a commercial vendor or supplier for delivery to an institution.
    - a. Only the Superintendent may approve items not on the approved prisoner property list. (Attachment A to policy 811.05 Prisoner Personal Property.)
    - b. If the Superintendent has not pre-approved the item, staff shall return the unopened item to the sender, or, if opened, return the item at the prisoner's expense.
  10. A prisoner may purchase or receive electronic equipment only through the commissary.
- C. Outgoing Mail
1. Collection  
Prisoners shall have access to secured mailboxes. Staff shall collect outgoing mail at least once each day, Monday through Friday, excluding holidays.
  2. Return Address  
Prisoner must use the return address format below or staff shall return the mail to the prisoner:  
Prisoner's Name  
Name of institution (spelled out in full)  
Address of institution  
City, State, and Zip Code
  3. Postage  
Prisoners shall pay for all outgoing mail.
    - a. The Superintendent shall make postage available for prisoners to purchase.
    - b. Indigent prisoners may mail, at the Department's expense, up to five pieces of mail per week, legal or otherwise, weighing up to one pound each. The Superintendent may consider requests for heavier pieces of mail. This policy does not apply to shipping
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excess personal property. See policy 811.05 Prisoner Personal Property.

- c. Certified or registered mail shall be provided at the discretion of the Superintendent and only when necessary such as for purposes of service of the summons and complaint in a legal proceeding. The Superintendent may confer with legal council to determine if certified or registered mail is necessary.

D. Inspection/Reading of Mail

1. Privileged Mail

The Department may not restrict or censor a prisoner's legal correspondence. All legal mail to or from a prisoner is privileged mail. Prisoners (except indigent prisoners) shall pay all postage costs. If there is doubt as to whether or not mail is in fact privileged, such as mail received from an unknown organization, the mail may be opened in the presence of the prisoner and scanned to determine whether it is privileged mail.

a. Outgoing

Staff may not read or search outgoing privileged mail for contraband. However, staff may verify, in the prisoner's presence, that the intended recipient of the mail is the same person as the privileged addressee.

b. Incoming Mail

Staff shall search incoming privileged mail for contraband in the presence of the prisoner. Staff may not read this mail, unless, after opening it, staff discovers that it is not privileged.

- c. Privileged mail may be read only after consultation with the Department of Law.

2. General Mail (excluding packages)

Staff may scan and inspect general mail for contraband outside the prisoner's presence. Staff may read the mail for content (except as provided in b. below) if policy prohibits that type of mail. In that case:

- a. The Superintendent or designee shall give the prisoner written notice within two working days reflecting that the prisoner's mail was read and stating the specific reason(s) why the mail was read.
- b. The Superintendent or designee may delay giving the prisoner notice if he or she has reason to believe that the notice will hamper an investigation of criminal activity referred to in the communication. In that case, the Superintendent or designee may delay providing the notice until the investigation is completed, so long as an adequate record is made of the reason for delaying notice.

3. Prisoner-to-Prisoner Mail

- a. The Department may not restrict mail between prisoners unless an individual's safety (e.g., victim of a prisoner) or the security of the facility requires a restriction.
  - b. The Superintendent may restrict prisoner-to-prisoner mail only on a case-by-case basis. The restriction must be no broader than necessary to address the safety or security concerns.
  - c. Mail received by a prisoner from another prisoner may be read by the Department prior to delivery. In the first instance when a
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prisoner's mail to another prisoner is read, the Department shall provide to the prisoner recipient written notice stating that the prisoner's mail was read due to its status as prisoner-to-prisoner mail, and that future reading of that prisoner-to-prisoner correspondence may occur without notice. This initial written notice must be provided to the prisoner recipient within two working days, subject to any delay required by an investigation of criminal or prohibited activity.

**E. Prohibited Mail**

The Department shall prohibit any mail that:

1. Contains plans or threats of physical harm or other criminal activity;
2. Contains contraband, plans for sending contraband in to or out of the institution, or indicates other activities prohibited under 22 AAC 05.400, Prohibited Conduct For Prisoners;
3. Is written in a code that the reader cannot understand;
4. Shows frontal nudity. Frontal nudity includes either the exposed female breast(s) and/or the genitalia of either gender;
5. Solicits gifts, money, credit, or contractual purchases without the approval of the Superintendent or designee;
6. Contains information that, if communicated, would create a risk of mental or physical harm to a person;
7. Contains material that could reasonably be expected to aid an escape, or incite or encourage any form of violence;
8. Contains audio or video tapes;
9. Is in violation of a court order or probation/parole condition prohibiting contact with an individual or class of individuals; or
10. Has been banned for cause following an individualized determination by the Department, (e.g., the intended recipient is a victim who has requested no contact with the prisoner or is a minor whose guardian has requested no contact with the prisoner).

**Note:** The Department also may restrict certain publications, musical compact discs or electronic games. See section H below.

**F. Disposition of Prohibited Material**

1. **Prisoner's Case File**  
A prisoner may be subject to disciplinary proceedings for attempting to mail prohibited material. Staff shall place a reproduction of the prohibited material from outgoing mail into a prisoner's case file and give the prisoner written notice of this within two working days.
2. **Contraband**  
Staff shall dispose of contraband or return it to the sender in accordance with policy 803.08 Searches of Prisoners and Institutional Areas.
3. **Non-Delivery of Mail**  
If staff opens mail and decides that it is prohibited, staff shall give notice to the affected persons as set forth below (except as specified in sections D.3.a. and D.3.c., above). The Department may delay notice if notice interferes with an investigation of criminal activity. See section D.2.b, above.
  - a. **Incoming Mail**  
Staff shall send the prisoner and the sender (other than a publisher of printed material) written notice within two working days after receiving the prohibited mail, that states the specific

reason(s) why the mail was not delivered to the prisoner. The Superintendent or designee must sign the notice.

b. Outgoing Mail

Staff shall send the prisoner a written notice within two working days of receipt by the institutional mailroom, which states why the institution did not send the mail. The Superintendent or designee must sign the notice.

G. Forwarding Mail

The institution shall forward prisoner's mail as follows:

1. First, Second and Third Class Mail

The institution shall forward first, second and third class mail to prisoners housed in Alaska D.O.C. facilities, and contract facilities to include prisoners housed in contract facilities outside of Alaska. The institution shall return to sender first, second and third class mail for prisoners who have been released and federal prisoners who have been transferred to a federal facility. Third class mail not stamped "Forwarding and Return Postage Guaranteed" shall be discarded.

2. Fourth Class Mail

Fourth-class mail is normally considered bulk mail. The institution shall discard fourth-class mail if the person is not at the address written on the article. Informational fourth class mail, such as mail from a public agency, and subscription fourth class mail shall be delivered to prisoners, but fourth class mail sent by private entities for the purpose of merchandising need not be delivered to prisoners and may, instead, be discarded.

H. Publications, Musical Compact Discs, and Electronic Games

The institution may not limit or restrict a prisoner's receipt of paperback books and magazines from family and friends through the mail except as set out in 3., below. However, the Department may limit the number of books and magazines that a prisoner keeps in his or her living area for fire, safety, security, or health reasons. See policy 811.05 Prisoner Personal Property.

1. Purchase

Prisoners do not need advance approval to purchase or subscribe to books, magazines, or newspapers through the mail. The prisoner, prisoner's family, or friends must pay for all orders in advance.

2. Review

The Superintendent shall designate staff to review all incoming publications, electronic games, and musical compact discs addressed to prisoners. Superintendents may not establish an excluded list of publications. Staff must review individual publications prior to rejection. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

3. Rejection

Staff shall reject an electronic game, musical compact disc, or a publication, in whole or part if it:

a. Contains material that could reasonably be expected to aid in escape, incite violence, theft, or destruction of property in the facility;

b. Contains instructions or illustrations on how to construct or use weapons, ammunitions, bombs, explosives, incendiary devices, handguns, or rifles;



- c. Depicts or describes procedures for brewing alcoholic beverages or making or cultivating drugs or poisons;
- d. Contains obscene material:
  - (1) Contains words, gestures, language, books, newspapers, periodicals, or other written or pictorial materials that the average person, applying contemporary community standards, would find depicts or describes, in a patently offensive way, ultimate sexual acts, masturbation; excretory functions, lewd exhibition of the genitals, or sexual sadomasochistic activity;
  - (2) The work, taken as a whole, appeals to the prurient interest; and
  - (3) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value;
- e. Shows frontal nudity. Frontal nudity includes either the exposed female breast(s) and/or genitalia of either gender.
- f. Is written in code that the reader cannot understand;
- g. Depicts, describes, or encourages activities that could reasonably be expected to lead to the use of physical violence or group disruption; or
- h. Specifically prohibited are musical media that have an affixed parental advisory label indicating "explicit content", and electronic games rated Adults Only, Mature or otherwise labeled with descriptors indicating the inclusion of content that is unacceptable as defined above. Musical compact discs or electronic games withheld under these restrictions are to be handled under section H.4.a.-d.

Note: Prisoners are already prohibited by statute from viewing video movies rated X, R, or NC-17.

- 4. Withholding a Publication
  - a. Staff shall give the prisoner written notice within 30 days when withholding a publication from a prisoner. The notice must include:
    - (1) The reason for withholding the publication; and
    - (2) A statement that the prisoner may challenge the decision by filing a grievance within 15 days.
  - b. If the prisoner does not file a grievance, the prisoner may request, at his or her option, that the institution dispose of the publication in one of the following ways within 15 days:
    - (1) Mail the publication to a party specified by the prisoner;
    - (2) Return the publication to the publisher for a refund; or
    - (3) Discard the publication.
  - c. The prisoner must pay the postage for any publication that he or she chooses to return to the publisher or send to another party.
  - d. If the prisoner files a grievance, the facility must keep a copy of the rejected publication as evidence for two years.
- 5. All publications must be stored in the prisoner's property box.

I. Packages

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The Superintendent's Standard Operating Procedures shall include the following instructions for processing packages in the institution:

1. Delivery  
Staff shall deliver packages to prisoners within 48 hours of receipt, excluding weekends and holidays.
2. Search and Inventory  
Prior to delivery, staff shall:
  - a. Search the contents of the package for contraband (staff need not open packages in the prisoner's presence); and
  - b. Inventory the contents, other than correspondence, and give the prisoner a receipt, or place the package in the prisoner's stored personal property. See policy 811.05 Prisoner Personal Property. Staff shall process any contraband in accordance with section F., above.
3. Unacceptable Items
  - a. Staff shall return the package to the sender if the package contains unacceptable items. Staff also shall send a written explanation of why the items were rejected and the prisoner's new address (if applicable).
  - b. Staff shall send a letter to the prisoner requesting an address to forward the package if the package does not have a return address. Postal Service charges for forwarding will be billed to the prisoner. Staff shall dispose of the package if the prisoner does not respond within 30 days.
4. Forwarding  
If the institution receives a package for a prisoner who was transferred to another institution within the Department, the institution shall:
  - a. Forward the package to the new institution within three working days of receipt;
  - b. Keep a record to show where and when the institution forwarded the package.

J. Filing a Grievance


A prisoner may file a grievance regarding any action that the Department takes concerning this policy. Prisoners must follow the procedures in policy 808.03 Prisoner Grievances, except for the shortened time period for publications in section H.4.a.(2), above.

VIII. Implementation

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

7/2/07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b>	811.05	<b>Page 1 of 13</b>	
			<b>Effective:</b>	07/16/08	<b>Reviewed:</b>	
			<b>Distribution:</b>	Public	<b>Due for Rev:</b>	07/10
	<b>Chapter:</b>	Reception and Orientation				
	<b>Subject:</b>	Prisoner Personal Property				

I. Authority

In accordance with 22 AAC 05.155, the Department of Corrections will establish and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the Department.

II. References

Alaska Statutes:

18.65.340, 33.30.021, 33.30.251 .261, 44.28.030

Alaska Administrative Code:

22 AAC 05.035, 22AAC 05.125

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003

4- 4164, 4285, 4293, 4294

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

3ALDF 2E-11, 4A-04

Standards for Adult Probation and Parole Field Services 3<sup>rd</sup> Edition 1998

3-3177

III. Purpose

To establish the amount and type of personal property maintained in a prisoner's possession; the volume of property institutions will maintain in secure storage; and to describe procedures for the safekeeping, storage, access to and disposal of prisoner personal property. Additionally, this Policy and Procedure is to establish procedures for Division of Probation/Parole Offices in the handling of offender property either seized by DPP personnel or abandoned by offenders.

IV. Application

To all Department employees.

V. Definitions

A. Contraband

Items not authorized for receipt, retention, or use in an institution.

B. Personal Property

A prisoner's property authorized for retention, including hobby craft items, in possession or facility storage during the period of incarceration or offender's property held by a field probation office. Personal property does not include cash or negotiable checks (P&P 302.12). Personal property also does not include food or other consumables.

C. Property Storage Container

A box, drawer, closet, locker, etc., provided by the facility for prisoner personal property storage. The container will provide at least the cubic inches available in a 10.5" x 12" x 15" box.

D. Property Transfer Box

A cardboard box with a detachable lid measuring 10.5" x 12" x 15".

E. Jail

A facility or component of a facility normally used for the holding or detention of persons facing criminal charges, pending probation or parole revocation, and persons remanded according to AS 47.30.700 (mental health) or AS 47.37.170 (intoxicated).

F. Prison

An institution or component of an institution, normally used for the confinement of sentenced felons.

G. Dual Function Institution

An institution whose functions include those associated with both a jail and a prison (i.e., AMCC, YKCC, LCCC, FCC, KCC). Those institutions which have designated living units for long-term sentenced prisoners, provided space is available, will allow these individuals to possess property prescribed for prisoner facilities (form 811.05E).

H. Standardized Personal Property List - Jail/Dual Function Institution

List of the basic items authorized for prisoner retention (barring individualized security assessment) in any jail or dual function institution which does not have designated living units for long-term sentenced prisoners.

I. Standardized Person Property List - Prisoner Facility

List of the basic items authorized for prisoner retention in every sentenced program facility. There may be exceptions in some institutions based upon a prisoner's custody level or status, housing configuration, and space requirements, for specific items such as TVs, radios, etc.

J. Working Day

8:00 a.m. through 5:00 p.m. Monday through Friday excluding any State-recognized holiday.

K. Transient Status

The status of a prisoner in transit being held temporarily at an interim institution pending actual placement at a designated facility.

L. Field Office

A business office within the Division of Probation and Parole.

M. Offender

A person subject to supervision by the Division of Probation and Parole.

VI. Policy

The provisions of this policy shall be strictly followed, including type, quantity, size, and methods of acquisition of prisoner personal property. Superintendents and Chief Probation Officers shall develop standard operating procedures (SOPs) for the access, inventory, and disbursement of prisoner/offender personal property. Superintendents shall ensure adequate space is provided for the safe and secure storage of prisoner property. Exceptions to this policy MAY ONLY be granted by the appropriate Director. Unauthorized or abandoned personal property will be disposed of in accordance with established procedures.

- A. The Department will allow reasonable types and amounts of prisoner personal property while ensuring that institutional order and security are not compromised.

- B. Each prisoner, upon admission to an institution, shall be advised in writing of the personal property items permitted or allowed for retention. Unsentenced prisoners who are housed in a prison will be authorized personal property as if they were in a jail.
- C. A receipt shall be given to each prisoner for the following:
  - 1. All personal property items authorized for retention;
  - 2. Any personal property seized as contraband or not authorized for retention;
  - 3. All personal property accepted for storage;A copy of each receipt is to be placed in the prisoner's case record.
- D. Superintendents are authorized, when space and funds are available, to make provisions for prisoner personal storage facilities in housing units such as wall lockers, drawers, foot lockers, or other suitable storage facilities approved by the State Fire Marshal's office.
- E. Prisoners will not be allowed to transfer ownership or possession of property from one prisoner to another. Property transferred in violation of this policy shall be deemed contraband and will be confiscated and disposed of in accordance with established procedures.
- F. Each facility is responsible for establishing a prisoner personal property accounting system that tracks property remanded with the prisoner, property acquisitions, disbursements, seizures and lost property claims. These records shall be maintained no less than 1 year from the prisoner's transfer or release from the facility. A copy of this record will be supplied to a requesting facility within 24 hrs, excluding weekends and holidays.

VII. Procedures

A. Property Inventory

All prisoners remanded to the custody of the Department shall be booked in accordance with policy 811.02, Booking. During the booking process, inventory of all the prisoner's clothing and property must be accomplished in the following manner:

- 1. Any property or funds taken into institutional custody will be inventoried immediately to:
  - a. accurately establish the property inventory list,
  - b. determine what items are authorized for retention by the prisoner,
  - c. determine what property is acceptable for storage, and
  - d. take necessary steps to dispose of unauthorized property.
- 2. The prisoner shall sign an itemized receipt, or a receipt must be signed by admitting staff should a prisoner be unable or unwilling to sign. The prisoner shall be provided a copy of the inventory receipt.
- 3. All jewelry in possession of the prisoner at the time of booking must be photocopied:
  - a. Jewelry not allowed to be kept in prisoner's possession must be placed in the property container, or a locked unit such as a safe, and recorded in the Safe Log according to Policy 803.11, Permanent Records Logs.
  - b. Authorized jewelry items which do not exceed the value limit of

\$100.00 include:

- 1). A wedding band that must be of plain metal or other material such as ivory, with no gemstone or imitation gemstones.
- 2). No more than two (2) religious necklaces constructed from plain metal, beads, string or braided material, with no gemstones or imitation gemstones. Necklace(s) must have apparent religious significance, such as attached crucifix, Star of David, etc. The attached emblem may not exceed two inches in length, diameter, depth, or width.
- 3). Prisoners will be allowed to possess a medicine bag (size: 2.5 inches long and 2.5 inches wide) which must be attached to a necklace constructed of the same materials as noted in 2, above. Medicine bags are subject to inspection by having the prisoner empty the contents of the bag into the open palm of his or her hand. The prisoner shall hold the bag open, which will allow staff to inspect inside with a flashlight. Refusal of a prisoner to allow staff to search the medicine bag will result in the loss of this privilege. In the absence of the prisoner, a medicine bag may be handled, in a respectful manner, by staff for storage and inspection purposes.
  - b. A Declaration of Valuable Property (811.05A) must be completed for all jewelry the prisoner has that is valued more than \$100.00.
  - c. Valuables such as rings, watches, and other jewelry will be sealed in a plastic bag or envelope, with the prisoner initialing across the sealing flap, then placed in the property container or a locked unit such as a safe. All jewelry items that have an estimated value beyond the established limit of \$100.00 must be disbursed as set forth in section N. of this policy.
4. If a prisoner is incapacitated and the property cannot be inventoried immediately (e.g., prisoner intoxication), it shall be packed, sealed, and placed in a designated secure area with documentation identifying the officer(s) who packed the property.
5. Regardless of the items authorized for retention, the officer who inventories incoming items of personal property must ensure that each item is free of contraband.
6. A prisoner will not be allowed to retain money, driver's license, credit or debit cards, social security card, other identification cards, or valuable documents. Non-cash financial instruments such as debit or credit cards must be listed on the inventory and secured in the property container or a locked unit such as a safe.
7. All medications or medical equipment/devices will be inventoried at the time of intake and the following action taken:
  - a. Medications will be delivered to medical staff who will decide whether to continue the medications;
  - b. All medications brought with the prisoner will be documented in the prisoner's medical record by medical personnel;

- c. Loose medications, not immediately needed, will be destroyed by medical staff. The destruction will be witnessed by another member of the staff and documented in the medical record; and
  - d. Medical equipment/devices not authorized by medical staff will be disposed of in the same manner as any other unauthorized property.
- 8. Food items, tobacco products, hygiene items, etc., in possession of a prisoner at the time of remand will not be authorized for retention and must be disposed of when the prisoner is not going to be promptly released.
  - 9. A numbered property container will be provided for property storage at the time of property inventory and the number(s) entered on the booking record.

**B. Storage of Prisoner Personal Property**

The intent of the Department is to provide temporary secure storage for items not authorized for personal retention. Items not authorized for personal retention must be disbursed within ninety (90) days of receipt, except for a limited amount of property that may be stored with approval of the Superintendent. Such items as personal identification may be stored for extended periods of time. Other items such as checkbooks, credit or debit cards, or other personal finance devices shall be stored for pre-sentenced prisoners. These items may be stored for a sentenced prisoner with less than 1 year to release. Finance devices not authorized for retention shall either be disbursed to friend or family or destroyed in the prisoner's presence at the discretion of the prisoner. Secure storage may not be used as a means to rotate items, such as CDs, etc. The only exception will be legal materials whose rotation must be approved by the Correctional Officer IV or higher authority. Storage procedures for each facility must comply with the following:

- 1. Firearms, ammunition, knives, explosives, combustible liquids, etc., will not be accepted and will be turned over to the remanding authority at the time of admission. Firearms and other weapons seized by field probation staff shall be stored in a secure location.
- 2. Each facility and field office shall maintain a separate room or secure area for the storage of prisoner property. The area shall have restricted access and other safeguards to ensure accountability.
- 3. Personal property that may be retained in temporary storage at a holding institution will normally be limited to the contents of one property storage container per prisoner according to C., below. However, property storage volume limits may vary from one institution to another, depending upon the institutional mission, thus permitting more than one box at some institutions.
- 4. Staff will inventory and store prisoner's personal property when a prisoner's housing status temporarily changes (e.g., segregation, hospital, program participation, or court appearances).
- 5. Law Enforcement Inspection of Property

Once the prisoner's/offender's property has been received into Departmental custody, the property is not available for inspection or

seizure by law enforcement agents without a search warrant; however, the property inventory sheet may be reviewed without a search warrant.

C. Authorized Personal Property

All prisoner personal property must be acquired through a vendor approved by the Director of Institutions. Advance approval is not required for the purchase of subscriptions to books, magazines or newspapers received by mail. Individuals who wish to mail any other gift to a prisoner must first verify that the item is authorized for retention, then obtain the Superintendent's permission to purchase the item from an approved vendor. Any gift purchased in this manner may not be removed from the vendor's premises, and must be sent by the vendor directly to the institution. Electronic equipment, including TVs, cassette players, stereos, etc., will not be accepted; however, family or relatives who wish to send funds to a prisoner for the purchase of such items must send either a certified cashier's check and/or a money order to the institution. These funds will be deposited in the prisoner's account and once posted will be available for the prisoner's use to purchase items noted on the approved commissary list. Prisoners may not be allowed to purchase personal property from mail order catalogs without the prior approval of the Superintendent. The Superintendent will have final authority to approve or disapprove hobby craft and club functions.

1. Prisoners housed in jail/prison facilities shall be authorized personal property items as outlined in forms 811.05 D and E based on security considerations, housing configurations, and program needs.
2. Personal property in possession of a prisoner is the responsibility of that prisoner and not the institution. A Prisoner Release of Liability (form 811.05B) must be completed and forwarded to the property officer, prior to disbursal to the prisoner.
3. When property is taken from a prisoner by institutional staff, other than during emergency situations, the prisoner shall receive a completed receipt for property seized within 48 hours, utilizing Property Seizure Report/Receipt (form 1208.08A).
4. During emergency situations, such as when mass shakedowns are necessary:
  - a. the property seized will be tagged, separated, and preserved; and
  - b. receipts will be given after the emergency has ceased.

D. Authorized Clothing

Prisoners are required to dress in accordance with the security standard of their assigned institution. Dress regulations will be established by Superintendents on the basis of institutional mission, program, safety, security, identification, and hygiene. The following shall be incorporated into institutional SOPs:

1. Pre-trial detainees, except those in punitive segregation or administrative segregation pending disciplinary action, are allowed to wear approved personal clothing in their living area. Institutional

SOPs shall specify allowed personal clothing.

2. Prisoner clothing:

- a. At least one full set of clean and reasonably well-fitting clothing will be supplied to each prisoner at the time of booking, or after arraignment, if the prisoner requests.
- b. Each prisoner shall be provided at least two sets of institutional clothing per week, or conduct a clothing exchange at least two times per week; however, three sets of underwear and socks shall be provided per week.
- c. Special protective clothing will be issued as applicable to work assignments and as authorized by the Superintendent.
- d. Prisoners will be responsible for all clothing issued:
  - (1) In facilities where prisoners are not provided washers and dryers, State-issued clothing will be replaced on a direct exchange basis (one clean for one soiled); and
  - (2) Procedures are to be established by Superintendents for determining responsibility for lost, destroyed, or stolen items.
- e. The cost of replacing unauthorized altered or missing pieces of State issue clothing will be at the prisoner's expense, as determined under d.(2), above.

E. Acquisition of Property

It is the responsibility of the prisoners to request permission from appropriate institutional staff when additional property is desired. If approved and acquired, the additional items will be added to the prisoner's inventory list. A prisoner may not purchase or trade property from or with another prisoner.

F. Hobby Craft Materials

Superintendents shall develop SOPs dealing with arts and crafts projects and the storage of such, if such programs are permitted. Approved hobby craft items will be used and stored in a designated use area. Hobby craft items shall be stored in such a manner that they are secure and do not present a fire, sanitation, security, or housekeeping hazard. (See Policy 815.04, Arts and Craft Programs.) Hobby craft items may only be transferred between facilities having hobby craft programs and only after specific approval by the receiving facility. Absent conditions listed in the previous sentence, the prisoner has 60 days in which to disburse the hobby craft materials after which they will be treated as abandoned property under R. of this policy.

G. Restricted Use of Property

1. Superintendent may restrict the use of certain personal and institutional property items (e.g., radios, cassette players, televisions, typewriters, and musical instruments) to certain times and locations to ensure orderly administration of the institution.



2. The number of electrical appliances and the overall use of electrical power within a prisoner's living area shall be controlled by the Superintendent for safety, security, and orderly administration of the institution.
- H. Property of Prisoners on Escape Status
- Property of any prisoner who escapes will be considered abandoned and will be disposed of in accordance with this Policy.
- I. Property of a Deceased Prisoner
1. Immediately upon the death of a prisoner, the shift supervisor shall order the prisoner's property to be inventoried and secured until investigating law enforcement personnel collect the property.
    - a. If property is removed from a facility by law enforcement personnel, a notation shall be made on the prisoner's property inventory list identifying the officer and agency taking possession of the property.
    - b. In all other cases, the property shall be held at the facility until disposed of per instructions from the Chaplain's Office at Anchorage Central Office.
  2. The Superintendent shall direct claimants to the deceased's property to the Chaplain's Office at Anchorage Central Office.
    - a. The chaplain's Office shall direct the claimant to execute an "Affidavit for Collection of Personal Property of Decedent" (Probate Form P-110) and submit it along with a notarized copy of the Death Certificate to the Chaplain's Office after the mandatory minimum of 30 days, per AS 13.16.680.
    - b. After the 30-day period expires; and upon receipt of the notarized copies of the "Affidavit for Collection of Personal of Decedent;" and the death certificate, the Chaplain shall forward a copy of these documents to both the appropriate Superintendent and the Offender Trust Account Manager with instructions to release the deceased's property and account balance. Checks shall be made payable to "the estate of" and the name of the deceased.
    - c. The original notarized documents shall be maintained in a file for that purpose in the Department Chaplain's Office in Anchorage.
    - d. If the deceased's property is released directly to the claimant, the claimant shall sign for all property received. If the deceased's property is mailed to the claimant it shall be by a shipping method requiring return receipt and a delivery signature from the recipient only. Copies of the signed inventory or proof of delivery shall be placed in the prisoner's

file. The originals shall be sent to the Department Chaplain's Office and maintained in a file there.

3. If there is no claim filed for the deceased prisoner's property within 90 days, the property shall be disposed of in accordance with N., below.

J. Repair of Personal Property

1. Required servicing and maintenance of personal items such as typewriters, televisions, radios, cassette players, watches, or musical instruments, shall be at the prisoner's expense.
2. Superintendents shall develop procedures governing the way a prisoner may have such articles repaired.

K. Replacing Lost/Damaged Personal Property

1. If a prisoner claims that property is lost or damaged:
  - a. The Superintendent shall have reports of lost/damaged property investigated, utilizing form 811.05C.
  - b. Substantiated claims in excess of \$1000 will be submitted to the Division of Risk Management for disposition, as well as written notification to the Director of Institutions as to circumstances of the claim.
2. The institution has twenty (20) working days to investigate a report of lost/damaged property. If the investigation involves another institution, the time period may be extended an additional thirty (30) days before a final resolution must be made.
3. A copy of all lost/damaged property reports must be maintained at the institution where the claim originated and/or was settled.
4. The resolution, reimbursement, or settlement of a lost/damaged property claim will be concluded by the claimant prisoner on the original Report of Lost or Damaged Property form (form 811.05C) at the time of receipt, replacement, or reimbursement.

L. Transfer of Prisoner Personal Property

1. Prisoner personal property in the prisoner's possession or held by the facility shall be transferred with the prisoner at the time of transfer, as long as it fits within one transfer box.
2. If the amount of personal property exceeds one box and if time allows, the prisoner shall be allowed to decide which items he or she wants in the transfer box.
3. Unsealed or unwrapped food items, drinks or other perishables will be not be shipped or mailed in a transfer box. Items will not be taped to the outside of the box. Sealed food items, particularly that food purchased in commissary and that is sealed in a wrapper or container, will be allowed for transfer.
4. Transfer boxes shall be clearly marked with the prisoner's name, OB#, and contain a complete inventory.
5. For prisoners transferred from a regional jail, property in excess of clothing being worn by the prisoner, wallet items including identification, and hygiene items will not be accepted.

6. Property in excess of the above:
    - a. The prisoner has ten (10) working days from his or her arrival at the designated facility to make arrangements for the shipment (at his or her expense) or pickup of all property remaining at the sending institution. The prisoner may request an extension of up to 80 days in order to make arrangements to have the property picked up at the facility or to obtain funds for mailing.
    - b. Property remaining at the facility 90 days after transfer shall be considered abandoned and will be handled according to section N. of this policy.
    - c. Exceptions to the use of property transfer boxes (regarding mailing purposes only) will be limited to those authorized items which will not fit (e.g., TV, radio, typewriter). Odd-sized boxes shall not be used as travel boxes for the actual transport.
    - d. Any property that is mailed will be sent at the least expensive rate available unless the prisoner requests and pays for higher priority service. It shall be insured and return receipt requested, unless the prisoner specifies First Class Mail. (See section M. below, regarding legal material.)
  4. Transporting or escorting officers will not accept prisoner personal property for transport in excess of one box unless authorized by the Director of Institutions. When transporting prisoners, Transportation Officers shall not accept property for prisoners not being moved.
- M. Handling of Legal Material
1. Due to the volume limitation (one box) allowed at the time of transfer, a prisoner will have to determine which legal papers are needed immediately upon arrival at his new destination. If the prisoner is not willing to decide which legal papers to take, staff will fill the transfer box as they see fit. Indigent prisoners may have one additional box of legal material shipped to them at state expense. Exceptions to this limit must be approved by the Correctional Officer IV or higher authority.
  2. The prisoner has 10 working days from his or her arrival at the designated facility to make arrangements for the shipment (at his or her expense) or pickup of legal material in excess of that described under M.1., above. The prisoner may request an extension of up to 80 days in order to make arrangements to have excess legal materials picked up at the facility or to obtain funds for mailing. Any legal material remaining at the sending facility after 90 days will be considered abandoned property and handled under section N. of this policy.
- N. Disposal of Excess, Unauthorized and/or Abandoned Personal Property
1. Property determined to be in excess, held at a correctional facility, must be mailed to friends, relatives, or other designated persons at

the prisoner's expense, or arrangements made to have said property picked up at the institution within 90 days. The Prisoner Property Disbursement, (form 811.05G) must be used for this purpose. When notification or shipment of property is attempted via U.S. Mail, return-receipt shall be used. The property officer shall maintain a record of all attempts at notification and/or shipment.

2. Offender personal property held at a Probation/Parole Field Office shall be mailed to the offender or to a third person as directed in writing by the offender. With approval of the office supervisor, property may also be picked up at the field office. Such property shall not be mailed to a correctional facility without prior approval of the property officer or higher authority at that facility. Attempted notification and/or shipment of property by U.S. Mail shall be return-receipt. The Field Office Supervisor shall ensure a record is maintained of all attempts at notification.
3. Property held at an institution or field office that has not been disbursed in accordance with 1 and 2 above will be considered abandoned.
4. Abandoned personal property shall be disposed of as follows:
  - a. Institutional program staff shall be notified when textbooks, library books, equipment, and supplies that might be of use in an institutional program are declared abandoned.
  - b. Items with re-sale value such as electronic equipment, jewelry, furniture, tools, hobby crafts, stamps, suitcases, pocketknives, etc., shall be sent to the Surplus Property Warehouse accompanied by an "Interdepartmental Property Transfer" (TAR) form. Contact shall be made to the Surplus Warehouse prior to any items being shipped. (Phone: Anchorage 1-907-279-0596; Juneau 1-907-465-2172.) The Departmental Property Officer is available at 1-907-465-3337 to answer questions and assist in completing the TAR.
  - c. Items with little or no re-sale value such as clothes, linens, towels, personal hygiene items, food, legal and/or personal papers, etc., will not be sent to the Surplus Warehouse. Clothing in a serviceable condition may be donated to a local charity. Personal and legal paperwork shall be shredded. All other items shall be thrown out. In no case is disposed personal property to come into the possession of a Department employee.
5. Firearms  
Offender firearms that come into possession of the Department which may not be returned to the offender or rightful owner, if known; and are no longer held as evidence, shall be disposed of in accordance with AS 18.65.340.

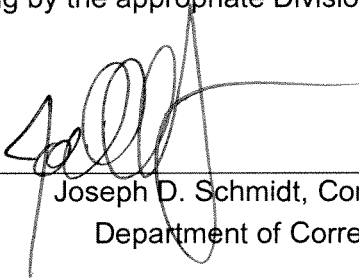
- a. The Supervising P.O. or property officer shall contact the Division of General Services' Surplus Property Warehouse Firearm Property Custodian at 1-907-561-1092 x 222 for instructions. Firearms will not be accepted by the Firearm Property Custodian without an Interdepartmental Transfer (TAR) #02-0622 form accompanied by a court order establishing the State of Alaska's right to dispose of the firearm. AS 18.65.340.
  - b. Firearms that cannot be disposed of, as in the case where a chain of evidence or other tracking paperwork does not exist, in accordance with a., above, shall be referred to the appropriate Division Director who, in consultation with the Department of Law, will issue written instructions as to the method of the firearm's destruction and related record keeping.
- O. Release. All personal property held by the institution or in personal possession of the prisoner shall be turned over to the prisoner upon release. The institution may require the prisoner to mail out property in excess of one (1) box if DOC transport is necessary to return to place of arrest.

#### VIII. Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each manager shall incorporate the contents of this document into local Standard Operating Procedures. All local Standard Operating Procedures must conform to the contents of this document and deviation from the contents of this document must be approved in writing by the appropriate Division Director.

7/2/08

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

Attachments to this policy

Attachment A List of Approved Prisoner Property

Forms Applicable to this Policy:

811.05A	Declaration of Valuable Property
811.05B	Prisoner Release of Liability
811.05C	Report of Lost or Damaged Property
811.05D	Jail & Dual Function Institutions whose primary function is Jail – Personal Property Inventory
811.05E	Prison or Dual Function Institution whose primary function is Prison – Personal Property Inventory
811.05F	Property Transfer Inventory
811.05G	Prisoner Property Disbursement

**Declaration of Valuable Property****Institution:** \_\_\_\_\_**Date:** \_\_\_\_\_**Prisoner Name:** \_\_\_\_\_**OBSCIS No.:** \_\_\_\_\_

The following property items with an estimated value of over \$100 are being temporarily held in safekeeping.

**Description of Property and Estimated Value:**Statement of Responsibility to Safeguard Property

The State of Alaska shall provide a safe area with appropriate security to protect your property.

At the time of your release or disbursal of property, it is your responsibility to check property against your receipt. If any of your property is missing, notify the releasing officer and request a Report of Lost or Damaged Property (form 811.05C). You are not required to sign the property release section of your booking sheet for items reported lost or damaged.

\_\_\_\_\_  
Prisoner's Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Staff Signature (Witness)\_\_\_\_\_  
Date

Distribution: Property File; Inmate Case Record; Inmate

Prisoner Release of Liability

Personal property retained in the possession of a prisoner is the responsibility of the individual. The Department of Corrections shall not be responsible for the repair or replacement of retained personal property lost, stolen, damaged or destroyed. Furthermore, in the absence of negligence the department shall not be liable for damage to personal property which may result from staff inspection of such property, notwithstanding any other provisions in this form. If the personal property is a computer, the prisoner agrees that the State of Alaska, Department of Corrections and State employees and contractors are not responsible for any loss or damage of the work product stored on the computer or computer disks. When a prisoner is required to relinquish control of personal property to the department, the department shall become responsible for safekeeping of the property.

**I have read this release and I agree not to hold the State of Alaska or its employees responsible for those items of personal property which I voluntarily bring into the institution for my personal use while incarcerated.**

\_\_\_\_\_  
Prisoner's initials entered by prisoner

**Description of Item(s):**

\_\_\_\_\_  
Prisoner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature (Witness)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Institution

Distribution:    Property File  
                      Inmate Case Record  
                      Inmate



Report of Lost or Damaged Property

Institution: \_\_\_\_\_

Prisoner's Name: \_\_\_\_\_ OTIS#: \_\_\_\_\_

Reported to Officer: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

ITEMS LOST OR DAMAGED: (Must include size and complete description)	Estimated Value
Total Estimated Value	\$

Property Officer's Findings. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Attachments \_\_\_\_\_

Recommend Claim Approved \_\_\_\_\_ Recommend Claim Disapproved \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Superintendent's Action:

☐ Approved ☐ Denied

Replacement Date: \_\_\_\_\_

By: \_\_\_\_\_

Reimbursement Date: \_\_\_\_\_

By: \_\_\_\_\_

I hereby acknowledge I have received the Lost or Damaged item(s) listed on this form, or replacement item(s) of like value, or reimbursement for value and have **NO FURTHER CLAIM TO THE ITEM(S) LISTED AS LOST OR DAMAGED ABOVE:**

\_\_\_\_\_  
Claimant/Prisoner's Signature\_\_\_\_\_  
Staff Signature (Witness)      Date

Distribution:

Cc:

Superintendent

Prisoner Record

Prisoner

Risk Management (for claims having a total value in excess of \$1,000)

811.05C 11/07

**Jail & Dual Function Institutions (not including designated long-term living units)\***

**PERSONAL PROPERTY INVENTORY**

**(See Policy 811.05 for details)**

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeliners pencil	2		STATIONARY		
						Eye shadow	2		Address book	1	
						Eye wash – no Visine	1		Books – paperback	5	
			Battery, dry cell	6		Athlete's Foot Powder	1		Dictionary – pocket	1	
						Hair Spray – no aerosol	2		Colored pencil set (10)	1	
						Hair curlers – foam set/20	1		Education Material	**	
Handkerchief - white	3					Hair dressing	2		Envelopes – pack	1	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – with clasp	10	
						Lip Balm	1		File folders	10	
						Lipstick	2		Magazine/newspaper	5	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Paper - notebook	200	
Skirts/dresses	3		Calculator, pocket (non-electric)	1		Mouthwash	1		Paper – tablet	2	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Pen – felt tip	6	
Shoes – shower (thongs)	1					Plastic hair Bags	2		Pencil – wood	12	
Slips	1					Poli-Grip cream	1		Personal Letters	20	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Photo album – no metal	1	
Support Athletic	1					Shampoo /Conditioner	2		Photos – looses	5	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Postage Stamps	25	
Sweat band – wrist	2					Skin cream/oil	1		Sketch Pad – 9 x 12"	1	
Sweat suits – pants/jacket	1		Dentures	1		Soap – bar	2		Writing Tablet	2	
Gym shorts	1		Eyeglasses	**		Soap dish – plastic	1				
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	1		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
Thermal Underwear	1										
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted by medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
4. **The limit of the property stated above is the amount which will fit one property transfer box provided by the institution, unless approved by the superintendent.**
5. **HOBBY CRAFT** is limited to one property box for hobby craft tools – **if authorized by superintendent.**

Officer, \_\_\_\_\_, Personally inventoried the above list on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above list of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**

**Jail & Dual Function Institutions (not including designated long-term living units)\***

**PERSONAL PROPERTY INVENTORY**

**(See Policy 811.05 for details)**

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeliners pencil	2		STATIONARY		
						Eye shadow	2				
						Eye wash – no Visine	1		Address book	1	
			Battery, dry cell	6		Athlete's Foot Powder	1		Books – paperback	5	
						Hair Spray – no aerosol	2		Dictionary – pocket	1	
						Hair curlers – foam set/20	1		Colored pencil set (10)	1	
Handkerchief - white	3					Hair dressing	2		Education Material	**	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – pack	1	
						Lip Balm	1		Envelopes – with clasp	10	
						Lipstick	2		File folders	10	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Magazine/newspaper	5	
Skirts/dresses	3		Calculator, pocket (non-electric)	1		Mouthwash	1		Paper - notebook	200	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Paper – tablet	2	
Shoes – shower (thongs)	1					Plastic hair Bags	2		Pen – felt tip	6	
Slips	1					Poli-Grip cream	1		Pencil – wood	12	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Personal Letters	20	
Support Athletic	1					Shampoo /Conditioner	2		Photo album – no metal	1	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Photos – looses	5	
Sweat band – wrist	2					Skin cream/oil	1		Postage Stamps	25	
Sweat suits – pants/jacket	1		Dentures	1		Soap – bar	2		Sketch Pad – 9 x 12"	1	
Gym shorts	1		Eyeglasses	**		Soap dish – plastic	1		Writing Tablet	2	
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	1		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
Thermal Underwear	1										
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted by medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
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Officer, \_\_\_\_\_, Personally inventoried the above list on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above list of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**

**Prison or Dual Function Institutions (including designated living units for long-term prisoners)\***

**PERSONAL PROPERTY INVENTORY**

(See Policy 811.05 for details)

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyelinier pencil	2		STATIONARY		
Belt	2		Battery charger	1		Eye shadow	2		Address book	1	
Belt Buckle – 2" max	2		Battery, dry cell	6		Eye wash – no Visine	1		Books – paperback	10	
Handkerchief – no red /blue	2		Calculator, pocket (non-electric)	1		Athlete's Foot Powder	1		Dictionary – pocket	1	
Jacket (1 light, 1 heavy)	3		Cassette, clear plastic	20		Hair Spray – no aerosol	2		Colored pencil set (10)	1	
			Clock	2		Hair curlers – foam set/20	1		Education Material	**	
Shirts/Blouses	7		Computer	1		Hair dressing	2		Envelopes – pack	1	
Skirts/dresses	5		Computer Disks	20		Hair pick - plastic	1		Envelopes – with clasp	10	
Shoes- every day/dress/work	3		Curling Iron	1		Lipstick	2		File folders	10	
Shoes – shower (thongs)	1		Fan – 1 to 12" plastic blades	1		Magic Shave	2		Magazine/newspaper	10	
Shorts (GYM)	1		Hair Dryer	1		Mirror, plastic handle	1		Paper - notebook	200	
Socks – pair	7		Headphones - pair	1		Mouthwash	1		Paper – tablet	2	
Suit	1		Musical Instrument	**		Nail clipper – no file	1		Pen – felt tip	6	
Slips	2		Radio, 12x18" max			Plastic hair Bags	2		Pencil – wood	12	
Sweat band – head	2		headphones req. unless approved	1		Poli-Grip cream	1		Personal Letters	20	
Sweat band – wrist	2		Razor, electric	**		Remover – MAKE-UP	1		Photo album – no metal	2	
Sweat suits – shorts/pants/coat	2		Reading Lamp	1		Sanitary Napkin/Tampons-box	2		Photos – looses	25	
Thermal Underwear – top/bottom	2		Typewriter – without memory	**		Shampoo /Conditioner	2		Postage Stamps	50	
Trousers/pants – no khaki or gray	5		TV – up to 13", no remote/VCR	**		Shaving cream	1		Sketch Pad – 9 x 12"	1	
Undershirts/ T-shirts	7		MEDICAL ITEMS			Skin cream/oil	1		Writing Tablet	2	
Undershorts/panties	3		Dentures	1		Soap – bar	2				
Bras	3					Soap dish – plastic	1				
Hosiery	3					Toothbrush	2				
Nightgown	2		Eyeglasses	**							
Robe	1		Prosthetics	**		Toothbrush tube	1				
Slips	3		Other:	**		Toothpaste	2				
			HYGENE ITEMS, ETC.								
						RECREATIONAL AND ENTERTAINMENT ACCESSORIES					
			Air Freshener, solid	2		Athletic supporter	1				
			Blusher	1		Board games	1				
			Brush – 6" maximum length	1		Chess set	1				
JEWELRY AND PERSONAL ACCESSORIES			"Care Free" activator	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
Bible/Koran	1		"Care Free" moisturizer	1		Weight belt	1		No hobby material will be transferred between institutions. If additional space is needed, attach list to this form.		
Cup/Mug – plastic 12oz.	1		Comb – plastic	1		Weight gloves - pair	1				
Ear Rings (Females)	2 pr		Contact lens solution	2							
Hangers - plastic	10		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
Watch	1		Deodorant	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
4. The limit of the property stated above is the amount which will fit one property transfer box provided by the institution, unless approved by the superintendent.

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**

# PROPERTY TRANSFER INVENTORY

(See Policy 811.05 for details)

**NOTE: When transferred, only one property box will be allowed to go with the Prisoner that must include legal material as stated within Policy 811.05**

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeliner pencil	2		STATIONARY		
						Eye shadow	2		Address book	1	
						Eye wash – no Visine	1		Books – paperback	5	
			Battery, dry cell	6		Athlete's Foot Powder	1		Dictionary – pocket	1	
			Computer	1		Hair Spray – no aerosol	2		Colored pencil set (10)	1	
			Computer disks	20		Hair curlers – foam set/20	1		Education Material	**	
Handkerchief - white	3					Hair dressing	2		Envelopes – pack	1	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – with clasp	10	
						Lip Balm	1		File folders	10	
						Lipstick	2		Magazine/newspaper	5	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Paper - notebook	200	
Skirts/dresses	3					Plastic hair Bag	2		Paper – tablet	2	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Pen – felt tip	6	
Shoes – shower (thongs)	1					Mouthwash	1		Pencil – wood	12	
Slips	1					Poli-Grip cream	1		Personal Letters	20	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Photo album – no metal	1	
						Shampoo /Conditioner	2		Photos – looses	5	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Postage Stamps	25	
Sweat band – wrist	2					Skin cream/oil	1		Sketch Pad – 9 x 12"	1	
			Dentures	**		Soap – bar	2		Writing Tablet	2	
			Eyeglasses	**		Soap dish – plastic	1				
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	2		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
			Air Freshener, solid	1							
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**PRISONER PROPERTY DISBURSEMENT**

1. Prisoner's Name (last, first, M.I.)	2. D.O.B 	3. Institution	4. Date
5. List and Describe Items to be Given			
6. Property to be Given to			
7. Prisoner's Signature		8. Authorizing Officer's Signature	
9. Recipient's Signature		10. Releasing Officer's Signature	
11. Special Remarks by Officer Disbursement			

## **ATTACHMENT A**

### **LIST OF APPROVED PRISONER PROPERTY**

Prisoners will have 90 days from the date of this policy to make arrangements for the disposal of items not authorized by this policy. Unauthorized personal property found after this period will be considered contraband and disposed of in accordance with established procedures.

Description and list of authorized personal property allowed for purchase and possession of prisoners. Refer to Personal Property Inventory form for authorized items for prisons and jails.

Athletic supporter – commissary item.

Battery charger – commissary only.

Battery, dry cell – issue or commissary.

Belt – single-layer cloth only, military type, blue or olive drab.

Belt buckle – military type with sliding clasp.

Bible/Koran – may be hard cover and acceptance into the facility may be authorized by the Superintendent.

Blankets – issue only, comforter or bed spread not authorized.

Book, address – commissary item.

Books – hard cover books are not authorized for purchase, nor may they be left by relatives or friends. Superintendents may authorize hard cover books from library sources. Religious books and publications, legal, and approved educational books may have hard covers.

Board games – issue or commissary item.

Bras – commissary item.

Calculator – commissary only.

Cards – issue or commissary item.

Cassette tapes – commercially recorded only.

Clock – commissary only.

Compact disks or players

Colored pencil set – commissary item.

Cigars, pipes and chewing tobacco – not authorized.

Cup/mug/tumbler – not to exceed 12 oz.

Curling iron – commissary item.

Dictionary, pocket – commissary item.

Form 20-811.05 Attachment A.

Earrings – female only, small post type, no gemstones.

Envelopes – commissary item.

Fan – commissary item.

Gloves – issue item only.

Gloves, athletic – commissary item.

Gym shorts – standard, cut off are not authorized.

Hair dryer – commissary item.

Handkerchief – white only.

Hair curlers, foam only 20/set – commissary item.

Hat/cap – 1 dark blue/black watch cap and 1 baseball type, green in color.

Headphones – commissary item.

Hosiery – women only, commissary.

Hygiene items – only those listed for purchase through the commissary.

Jacket – 1 light windbreaker, 1 heavy winter (green only, no logos).

Medical items – those authorized by Department Medical staff.

Musical instruments – prison superintendents may authorize them through an approved standard operating policy.

Necklace – only if a religious medal is worn with it, no gemstones.

Neckties – not authorized for possession, 1 may be retained in property box and may be given to transporting officer if prisoner is appearing before a jury.

Paper – commissary item.

Pajamas or night-shirt – green only.

Pen, felt tip – commissary item.

Pencil, wooden lead – commissary item.

Photo album, no metal – commissary item.

Pillow – issue only.

Plants – superintendent may approve, prisons only.

Postage stamps or postage-paid envelopes – commissary item.

Plastic hair bags – commissary item.



Radio – AM/FM/cassette, no mike or remote speakers, no recording capability, max size 12” X 18” X 12”. Walkman type, radio only, for jails.

Razor, electric – commissary item.

Reading lamp – commissary item.

Robe – green only.

Ring – wedding band, no gemstones.

Rug – 2’ X 4’, must meet fire code.

Sewing kit – commissary item.

Sheets – issue only.

Shoes – low cuts, boots are not authorized, specialized footwear will be issued, high heels not authorized.

Shifts – short/long sleeve button front or pull over, no logos. When counting the authorized quantity personal clothing and issue clothing will be counted together. Colors similar to that of the correctional officer uniform are not authorized.

Shower thongs/slippers – standard.

Sketch pad, 9” X 12” – commissary item.

Slips – commissary.

Socks – standard.

Stationery paper/tablet – commissary item.

Suspenders – not authorized.

Suits – not authorized for possession, may be stored in property for wear to court.

Sweat bands, head/wrist – no logos.

Sweat suits – no logos.

Television – to 13”, no remote or VCR.

Thermal underwear – standard.

Trousers/pants – no khaki or gray.

Typewriter – standard, no memory, etc.

Undershirts or t-shirts – white only, no logo.

Undershorts – briefs or boxer.


Underwear/Panties.

VCR – not authorized.

Washcloth – issue only.

Watch - \$100.00 or less in value.

Weight belt – issue item.

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b> 814.02	<b>Page 1 of 4</b>
		<b>Effective:</b> 10/23/05	<b>Reviewed:</b>
		<b>Distribution:</b> Public	<b>Due for Rev:</b> 10/07
	<b>Chapter:</b> Library Services		
	<b>Subject:</b> Law Library		

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 Administrative Code

22 AAC 05.540

Standards for Adult Correctional Institutions, 3rd Edition 1990

3-4256, 3-4264

Standards for Adult Local Detention Facilities, 3rd Edition 1991

3-ALDF-3D-18, 3E-03

Standards for Adult Community Residential Services, 4<sup>th</sup> Edition, August 2000

6A-02

III. Purpose

To establish uniform procedures within the Department for provision of institutional law libraries.

IV. Application

All staff and prisoners.

V. Policy

- A. Each institution shall have a law library that includes, at a minimum, up-to-date constitutional, statutory, and case law materials, applicable court rules, practice treatises.
- B. Each institution shall provide each prisoner with timely access to the law library, library assistance, and supplies for preparing legal pleadings.

VI. Procedures

A. Law Librarian

1. The Superintendent shall provide an experienced or trained law librarian or assistant law librarian to help prisoners using the library. The law librarian may be a prisoner. The librarian must:
  - a. Know the resources available in the central and institutional law library databases;
  - b. Be able to perform basic legal research;
  - c. Understand the basic differences between the state and federal judicial systems; and
  - d. Be able to locate and reference the Court Rules of Procedure.
2. The Superintendent shall establish procedures for the selection and training of prisoners as law librarians or assistants.

3. The Superintendent shall provide an experienced or trained replacement within a reasonable period of time when the position becomes vacant.

**B. Library Access**

1. The Superintendent shall give a prisoner access to the law library within one working day of the prisoner's request, absent unusual circumstances.
2. Time limitations on the on the law library terminals shall be established and specified by the Superintendent.
3. Intentional physical abuse or attempts to compromise the security or integrity of the law library equipment shall result in an individualized determination restricting the prisoner's access to the law library and its equipment.

**C. Library Collection**

Each institutional law library must contain at least one computer terminal that provides access to legal materials in a digital format.

**D. Assistance**

1. A prisoner may receive assistance from another prisoner within the same facility only to use the law library, conduct legal research, or prepare legal pleadings. A prisoner has no right to assistance from a specific prisoner.
2. A prisoner must secure the Superintendent or designee's approval before receiving assistance from any person other than the law librarian. The Superintendent may withhold approval only for legitimate reasons that relate to the security or orderly administration of the institution.
3. A prisoner who assists another prisoner may not charge, demand or receive payment of any kind for services rendered.
4. A prisoner may not possess another prisoner's legal materials outside the law library.
5. The Superintendent may limit or deny assistance to or from a prisoner in segregation or maximum custody housing for security reasons, except for services provided by the law librarian.

**E. Supplies**

**1. Typewriter/Paper**

Superintendents shall provide at least one properly functioning typewriter for every 100 prisoners based on the maximum capacities of each institution. Prisoners shall be provided access to 1) typing paper and 2) carbon paper or photocopies (at the discretion of the Superintendent) as necessary for legal filings. These shall be provided to indigent prisoners at no charge.

**2. Limiting Access to Typewriter**

If a Superintendent decides to limit a prisoner's access to a typewriter through an individualized determination because of a safety or security risk, the Superintendent shall give the prisoner a pen with black ink or pencil and paper to prepare legal pleadings or correspondence.

**F. Segregation, Maximum Custody, and Restricted Access Prisoners**

1. Prisoners in administrative segregation or classified maximum custody must be provided the same access to the law library materials as the general population unless the Superintendent makes an individualized determination that the prisoner's use of the law library materials presents a substantial threat to the security or order of the facility.
-

2. If the prisoner has an individualized law library restriction and is not entitled to physical access to the law library, the prisoner may be provided copies of as many as 10 cases in his or her cell at one time.
3. The prisoner may have the assistance of the law librarian in locating, researching, and obtaining legal materials. Staff shall arrange for secure visits between the prisoner and the librarian.

**G. Requests for Legal Material**

A prisoner may request and obtain legal materials when the prisoner is not entitled to physical access to the law library. "Legal materials" include research materials that attorneys commonly rely on to prepare legal pleadings, documents, and briefs. In order to obtain legal material from the institutional law library, prisoners and staff must follow the steps below.

**1. Request Form**

A prisoner must fill out form 814.02A, Law Library Request Form, and give the form to the Facility Standards Officer through the law librarian. The Facility Standards Officer, or other authorized staff member, shall review the request for completion or determine whether the requested material is unavailable at the institution and then either approve or deny the prisoner request.

**2. Time**

The Facility Standards Officer or designee and the law librarian shall decide if the requested material should be provided on an expedited basis (within two working days), prioritized (within five working days), or provided within a routine time period (10 working days).

- a. The Facility Standards Officer shall expedite a prisoner's request if the prisoner has to file a reply memorandum under state or federal rules, or the court imposes a filing deadline of less than five days.
- b. The prisoner must show evidence of an actual court deadline for expedited and priority requests.

**3. Prisoner Access**

The law librarian shall give the prisoner access to the material as soon as the library receives it. The librarian also must log, catalogue, and file the material in the institution's law library file for future reference. Such research material will be copied onto goldenrod-colored paper and becomes the property of the institution, not a particular prisoner.

**4. Printing and Photocopying**

- a. Printing of legal materials directly by prisoners is prohibited. Apart from printing for prisoners without access to the law library, digital printouts of legal cases and materials shall be considered a request for personal materials and approved at the discretion of the Superintendent as specified in Policy and Procedure #808.12.
  - b. Prisoners wanting printed legal cases and materials shall submit both Law Library Request Form 814.02A and Personal Materials Copies Request Form 808.12B for each request.
  - c. Copies of legal pleadings shall be requested as specified in Policy and Procedure #808.12.
-

5. Prohibited Requests


The Department will not honor requests for:

- a. An entire issue of a law review (prisoners may request particular law review articles);
- b. Copies of more than 10 cases at one time; after the first 10 are delivered and returned, a prisoner may request up to 10 additional cases.

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; the Division Director must approve any deviation from the contents of this document in writing.

10-23-05  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Marc S. Antrim, Commissioner  
Department of Corrections

Applicable forms:  
814.02A

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## Law Library Request Form

Institution Log # \_\_\_\_\_ Central Library Log # \_\_\_\_\_

Requested by (prisoner): \_\_\_\_\_

Date cases were requested: \_\_\_\_\_ Institution: \_\_\_\_\_

Purpose of Cases: \_\_\_\_\_

---

**Check one**

\_\_\_\_ Expedite (2 working days)

\_\_\_\_ Priority (5 working days)

\_\_\_\_ Routine (10 working days)

**Compliance Supervisor/Librarian**

Authorized by: \_\_\_\_\_

Authorized by: \_\_\_\_\_

Authorized by: \_\_\_\_\_

**Note:** If "Priority" or "Expedite" is checked, the prisoner may be required to produce evidence of involvement in ongoing civil or criminal litigation with actual deadlines to meet. If there is no deadline, then "Routine" is to be checked.

Determination made that cases are not in institution's law library: \_\_\_\_\_

Signature

---

**Request for copy of the following legal cases or materials:**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_

**Person filling request:** \_\_\_\_\_ **Date Sent to Institution:** \_\_\_\_\_

Date cases were received by the institution: \_\_\_\_\_

Note which cases were not received and why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# **ALASKA PRISONERS' RIGHTS GUIDE**

## **October 2010 Addendum**


**ACLU of Alaska  
P.O. Box 201844  
Anchorage, AK 99520  
907-646-8612**



## **Guide Addendum: Miscellaneous Forms and Protocols of the Alaska Department of Corrections**

This is a brief list of some publications of the Alaska Department of Corrections relevant to prisoners. The documents with letters following the document identification number (e.g., DOC 807.14d) are forms for use by prisoners and others. The other documents are statements from the Alaska Department of Corrections about the department's policies and procedures.

1. DOC 760.01 [Classification Appeal; Policy and Procedures](#)
2. DOC 760.01a [Classification Appeal; Appeal of Classification Form](#)
3. DOC 807.14 [Health Care Services; Health Examinations Procedures](#)
4. DOC 807.14d [Health Care Services; Health Examinations; Physical Examination Form](#)
5. DOC 808.01 [Prisoners Rights; Legal Rights of Prisoners; Policy and Procedures](#)
6. DOC 808.02 [Prisoners Rights; Prisoner Media Contact](#)
7. DOC 808.02a [Prisoners Rights; Release and Permission for Media Contact Form](#)
8. DOC 808.03 [Prisoners Rights; Prisoners Grievances; Policy and Procedure](#)
9. DOC 808.03a [Prisoners Rights; Prisoners Grievance Screening Form](#)
10. DOC 808.03b [Prisoners Rights; Resolved Filed Grievance Form](#)
11. DOC 808.03c [Prisoners Rights; Prisoners Grievance Form](#)
12. DOC 808.03d [Prisoners Rights; Prisoners Grievance Appeal Statement](#)
13. DOC 808.11 [Prisoners Rights; Communication between Prisoners and Staff](#)
14. DOC 808.11a [Prisoners Rights; Request for Interview Form](#)
15. DOC 810.01 [Communication, Mail, and Visiting; Prisoner Access to Telephone](#)
16. DOC 810.03 [Communication, Mail, and Visiting; Prisoner Mail, Publications, and Packages](#)
17. DOC 811.05 [Reception and Orientation; Prisoner Property; Policy and Procedures](#)
18. DOC 811.05a [Reception and Orientation; Declaration of Valuable Property Form](#)
19. DOC 811.05b [Reception and Orientation; Release of Liability Form](#)
20. DOC 811.05c [Reception and Orientation; Report of Lost or Damaged Property Form](#)
21. DOC 811.05d [Reception and Orientation; Personal Property Inventory Form - Jail](#)
22. DOC 811.05e [Reception and Orientation; Personal Property Inventory Form - Prison](#)
23. DOC 811.05f [Reception and Orientation; Property Inventory Transfer Form](#)
24. DOC 811.05g [Reception and Orientation; Personal Property Disbursement](#)
25. DOC 811.05[A] [Attachment A – List of Approved Prisoner Property](#)
26. DOC 814.02 [Library Services; Law Library Policy and Procedures](#)
27. DOC 814.02a [Library Services; Law Library Request Form](#)

	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b> 760.01	<b>Page 1 of 5</b>	
			<b>Effective:</b> 08/24/07	<b>Reviewed:</b>	
			<b>Distribution:</b> Public	<b>Due for Rev:</b>	08/09
	<b>Chapter:</b> Classification				
	<b>Subject:</b> Appeal Procedures				

I. Authority

In accordance with 22 ACC 05.155, the Department of Corrections shall develop and adopt policies and procedures that are consistent with laws for the guidance, government and administration of correctional facilities, programs and field services.

II. References

Alaska Statutes

AS 33.30.011

Alaska Administrative Code

22 AAC 05.260

Standards for Adult Correctional Institutions 4<sup>th</sup> edition 2003

No pertinent standards apply

Standards for Adult Local Detention Facilities 3<sup>rd</sup> edition 1991

3-ALDF-4B-02

III. Purpose

To establish policy and procedure to ensure that prisoners receive the appropriate information regarding the process by which classification actions may be appealed.

IV. Application

To all employees.

V. Definitions

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

A. Appeal

A process by which a prisoner may have a classification action reviewed at an administrative level higher than that at which the original action was taken and by someone not previously involved in the decision under appeal.

B. Classification

A process that systematically subdivides a prisoner population into groups based on security and custody matrix scoring, and individual prisoner programs needs.

C. Hearing Officer/Classification Committee

An individual or group of individuals tasked to review and assess a prisoner's security, custody, and program needs and make a classification recommendation as regards the prisoner.

D. 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 "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.

VI. Policy

It is the policy of the Department that a prisoner may appeal any action resulting from a classification hearing, except initial un-sentenced prisoner staff classification and sentenced prisoner designation, to the next level of administrative review, upon proper submission of an Appeal of Classification Action (form 760.01A) within established time and procedural parameters.

VII. ProceduresA. Notice of Procedural Opportunity to Appeal

1. Un-sentenced prisoners shall receive a copy of the "Classification Form for Un-sentenced Prisoners," (form 705.01A) following the prisoner classification review as set out in 735.03. "Classification Form for Un-sentenced Prisoners" shall include a description of the classification appeal process.
2. The copy of the "Initial Classification Form for Sentenced Prisoners" (form 735.03A) or the Classification Review Form for Sentenced Prisoners (form 745.01A) that the prisoner receives following the classification action (as set out in 735.03 "Initial Classification") shall include a description of the classification appeal process.
3. The Classification Form will inform the prisoner that:
  - a. For an un-sentenced prisoner:
    - (1) The initial un-sentenced prisoner classification is without administrative appeal;
    - (2) Subsequent classification committee action may be appealed to the Director of Institutions;
  - b. For a sentenced prisoner:
    - (1) Sentenced prisoner designation is without administrative appeal;
    - (2) Hearing Officer/Classification committee action not referred to nor modified by the Superintendent may be appealed only to the Superintendent, and no higher;
    - (3) Hearing Officer/Classification committee action referred to or modified by the Superintendent, except for transfer, may be appealed to the Director of Institutions;
    - (4) Hearing Officer/Classification committee action regarding transfer may be appealed directly to the Deputy Commissioner for Operations;
  - c. Forms to facilitate an appeal will be provided by institutional staff upon request by a prisoner;
  - d. An appeal must be routed through the institutional staff member designated for the purpose of receiving and forwarding classification appeals; and
  - e. Any classification action may be commenced pending an appeal, except a transfer to an out-of-state facility.

B. Appeal of Hearing Officer/Classification Committee Decision

1. A Classification action which does not require review by the Superintendent may be appealed only to the Superintendent unless the
-

Superintendent has exercised discretionary authority to modify the classification action, in which case the decision may be appealed to the Director of Institutions per 2. below or to the Deputy Commissioner for Operations per 3. below;

2. Except as provided in 3. below, a classification action by a Superintendent may be appealed only to the Director of Institutions, except for a denial of or removal from a furlough, which may be appealed to the Deputy Commissioner for Operations if the Director of Institutions denies the appeal;
3. Notwithstanding 2. above, the result of a classification hearing, the purpose of which was the consideration of a transfer of a prisoner, may be appealed only to the Deputy Commissioner for Operations;
4. The "Appeal of Classification Action" (form 760.01A) must be submitted within five working days after the prisoner receives notice of the decision or, in the case of transfer, within five working days after the prisoner arrives at the transfer destination, whichever occurs first. If a valid reason for delay is stated by the prisoner, and verified by the institutional staff member designated to receive classification appeals at the holding institution, the five working day time limit for filing may be extended for an additional reasonable time period. However, an extension of time to file an appeal is an exception and must be accompanied by justification sufficient to support the exception to the prescribed time parameters;
5. Except as provided in 6. below for out-of-state and contract facility placement prisoners, an appeal must be filed on the "Appeal of Classification Action" (form 760.01A) and must be submitted through the institutional staff member designated by the Superintendent for the purpose of receiving, reviewing, and forwarding classification appeals, as follows:
  - a. The designated staff member receiving the appeal shall review the appeal for form and content appropriateness;
  - b. The staff member shall prepare a cover memorandum, addressed to the appropriate official, summarizing the process to date; and
  - c. Shall prepare the packet of supporting documentation to accompany the appeal, to include:
    - (1) The classification form(s) upon which the appeal is based;
    - (2) A completed "Appeal of Classification Action," (form 760.01A);

Note: A separate "Appeal of Classification Action" must be prepared for each level of appeal; i.e., the appeal statement/form prepared for the Director of Institutions containing his or her response will be appropriate for appeal of that decision to the Deputy Commissioner for Operations. However, the lower-level appeal response must accompany an appeal to the next higher level.
    - (3) The tape recording of the classification hearing; and
    - (4) The cover memorandum of explanation certifying that the appeal has been routed through institutional staff;

6. A prisoner in out-of-state placement or in-state contract facility placement who is appealing a classification decision made in accordance with 750.03, "Classification Review Team," and/or 750.04, "Return of Prisoners From Out-Of-State Placement," may appeal the decision in writing directly to the Deputy Commissioner for Operations within 10 working days after receiving written notice of the decision;
7. For purposes of appeal, a prisoner must have access to the tape recording of a related disciplinary hearing or the classification hearing being appealed, except that any portion of the tape which contains the testimony of an informant must be summarized in as much detail as possible while not placing the informant in danger, and the summary made available to the prisoner. The tape remains the property of the Department. A tape containing informant testimony may be transcribed in summary, and the summary transcript made available to the prisoner in lieu of the actual recording; and
8. With the exception of a transfer to an institution outside of Alaska, a classification action may be commenced pending an appeal.

C. Appeal Procedures

1. Once an appeal has been filed and received, a response must be made, as follows:
    - a. Appeal to Superintendent – response within five working days;
    - b. Appeal to Director of Institutions – response within 15 working days; and
    - c. Appeal to Deputy Commissioner for Operations – response within 15 working days;
  2. The appropriate official may grant the appeal, grant the appeal and modify the classification decision, deny the appeal, or refer the matter back to the committee/hearing officer for re-hearing;
  3. The official responding to the appeal shall enter his or her decision on the "Appeal of Classification Action" or, in the case of out-of-state or contract facility placed prisoner appeals per B.6. above, prepare a letter of response on official letterhead, and sign the response in the appropriate space;
  4. The appropriate official's failure to respond within the time limits set out in 1. above must be considered a denial of the appeal. However, a late response to an appeal is valid;
  5. The prisoner must be informed of the official's decision by receipt of the appeal response within the time frames set out in 1. above. A copy of the response should be sent to the Superintendent, the prisoner's case record, and the prisoner's case manager/institutional probation officer at the holding facility; and, in the case of a transfer appeal, Central Classification should receive a copy of the response as well.
  6. Prisoners who appeal an out-of-state placement shall be notified in a written decision that the decision is the last level of appeal and that they have thirty days to submit an appeal to the Superior Court.
-

D. Harmless Error

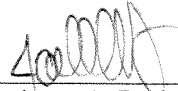
Failure of a staff member to follow the procedures set out in this Chapter does not invalidate a decision absent a showing of prejudice by the prisoner.

VIII. 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 within 14 days. All local policies and procedures must conform to the contents of this document and any deviation from the contents of this document must be approved in writing by the Commissioner or designee.

8/10/07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

Forms Applicable to this Policy.

760.01A – Appeal of Classification Action and Instructions

## APPEAL OF CLASSIFICATION ACTION

Institution: \_\_\_\_\_ Date: \_\_\_\_\_

Prisoner's Name: \_\_\_\_\_  
*Last First Middle Initial*

Action Being Appealed:

<input type="checkbox"/>	Initial Classification	Received by: _____
<input type="checkbox"/>	Classification Review	Date: _____ Time: _____ AM/PM
<input type="checkbox"/>	Other: _____	

(Enter what is being appealed, if different from initial or review classification.)

The institutional probation officer or the Shift Supervisor may be contacted for explanation of how to complete this form and/or the appeal procedures in accordance with 760.01, Appeal Procedures. The appeal must be submitted through the institutional staff member designated to receive classification appeals, who is:

APPEAL STATEMENT:\_\_\_\_\_  
Prisoner's Signature Date

(Use back of this sheet, if more space is needed.)

DECISION ON APPEAL:\_\_\_\_\_  
Signature of Official Making Decision\_\_\_\_\_  
Title of Official Date

## APPEAL OF CLASSIFICATION ACTION INSTRUCTIONS

22 AAC 05.260 APPEALS PROCEDURES. (a) A classification action by a committee which does not require a review by the Superintendent may only be appealed to the Superintendent.

(b) Except as provided in (c) of this Section and Sections .251(f) and .226(e) of this Chapter, a classification action by a Superintendent may only be appealed to the Regional Director, except in the case of a denial of a furlough, which may be appealed to the Deputy Commissioner for Operations if the Regional Director denies the appeal.

(c) Notwithstanding (b) of this Section, a classification action resulting in a prisoner being transferred may only be appealed to the Deputy Commissioner for Operations. The appeal must be made within five working days after the prisoner receives notice of the decision or after the transfer, whichever occurs first.

(d) Except as provided in (c) of this Section and Sections .251(f) and .256(e) of this Chapter, all appeals must be submitted by a prisoner within five working days of receiving notice of the decision. Where a valid reason for delay is stated by a prisoner, this time limit may be extended. With the exception of a transfer to an institution outside Alaska, any classification action may be commenced pending an appeal.

(e) Once an appeal has been filed and received, a response will be made as follows:

- (1) Appeal to the Superintendent – response within five working days;
- (2) Appeal to the Regional Director – response within 15 working days;
- (3) Appeal to the Deputy Commissioner for Operations – response within 15 working days.

(f) Failure to respond within the time limits set out in (3) of this Section is considered a denial of the appeal; however, a late response granting an appeal is valid. Failure of a staff member to follow the regulations set out in this Chapter does not invalidate a decision, absent a showing of prejudice by the prisoner.

(g) For purposes of appeal, a prisoner may have access to the tape recording of any disciplinary or classification hearing, except that portion of any tape which contains the testimony of any informant, in which case the informants' testimony must be summarized in as much detail as possible, so as not to place the informant in danger, and given to the prisoner.



## Policy

The Department shall complete health care screening for all prisoners and Title 47 detainees within 24 hours of admission to assess their physical health, promote physical well being, and prevent the spread of disease. Prisoners shall receive periodic physical examinations during their incarceration at the times set forth in this policy.

Health care staff shall encourage continuity of health care between facilities by preparing for the transfer and by reviewing a prisoner's health care needs when receiving the prisoner from another institution.

## Procedures

### A. General

1. Intake Evaluation. Before booking, health care or security staff shall visually inspect each prisoner to assess apparent immediate need for health care and identify serious health problems.
2. Health Screening. Health care staff shall do a structured evaluation of a prisoner's health and mental status within 24 hours of the prisoner's admission to a correctional institution.
3. Health Appraisal. Health care staff shall offer a health appraisal of a prisoner within 14 days of the prisoner's initial admission to a correctional institution.

### B. Arrival at the Institution

1. Intake Evaluation. Health care staff (or security staff if health care staff are not on duty or are unavailable due to a medical emergency) shall visually inspect each prisoner during the reception process before the Department accepts the prisoner for booking. Staff shall complete the pre-remand section of the Intake Screening form on Form 807.14(A) for criminal holds or on Form 807.14(B) for Title 47's.
  - a. If the prisoner is unconscious or in need of immediate medical attention, staff shall direct the remanding officer to an outside medical provider, such as an emergency room physician, for assessment. 22 AAC 05.005(a).
    - (1) Conditions that require immediate medical attention include potentially life-threatening, serious, or communicable health conditions.
    - (2) The Department is not responsible for providing medical care or arranging transports prior to booking a prisoner or prior to accepting a Title 47 hold.
    - (3) Security staff may renew the admitting process after a responsible medical authority has assessed the prisoner. (Intake Screening Form section B.) Health care staff must be promptly notified when the remand returns to the facility.
  - b. Staff shall inspect the prisoner for obvious injuries or illnesses and inquire about any medical problems or recent use of medication. As soon as practical, staff shall medically attend to a prisoner who appears to be ill, injured, or incapacitated by alcohol, narcotics, or similar agents, but not in immediate need of medical attention. 22 AAC 05.005(b).
2. If a healthcare screening is not done right away, then staff shall fill out the Post-Remand Screening section of Form 807.14(A) or 807.14(B), as appropriate.

## C. Admission

Health care staff shall perform a health screening for each new prisoner if staff are available at the time of remand and if the prisoner is cooperative. In any event, health care staff shall screen the prisoner within 24 hours of initial admission. This may be conducted by use of telenursing per the Inmate Health Telenursing protocol if no medical staff is on site during the first 24 hours of the prisoner's admission or if the prisoner is in need of medical care before medical staff comes on duty.

### 1. Health Screening.

- a. The health screening must include a mental health status screening, to be performed by health care staff who are trained to identify mental illness or the need for immediate mental health care.
- b. The health screening must also include a physical assessment, documented by completing form 807.14(A) or 807.14(B).
- c. The Institutional Health Care Officer shall periodically monitor health care screenings for the purpose of ensuring quality assurance.
- d. Abnormal health care screenings must be referred to the IHCO.
- e. New prisoners shall be kept in admissions housing, where feasible, pending examination by health care personnel. The Department shall assign the prisoner to appropriate housing after staff complete the examination.

### 2. Remand Medications see Policy 807.05.

3. Health Care Referral. Health care staff shall refer a prisoner who is in need of medical care or continuing medications after remand, to the IHCO or the on-call practitioner. If the institution cannot provide the necessary health care, then a referral must be made to a provider outside the institution. See Policy #807.02, Access to Health Care Services. Staff shall promptly refer prisoners who are a suicide risk or who show signs of mental illness, to a clinical psychologist, psychiatrist, or a qualified mental health professional acting under the supervision of a clinical psychologist or psychiatrist. The clinical psychologist or psychiatrist shall review the mental health professional's diagnosis and treatment either on-site or telephonically within 72 hours of the diagnosis, excluding weekends and holidays.

## D. Health Appraisal

Health care staff shall offer to perform a health appraisal for each prisoner within 14 days of the initial incarceration unless the prisoner has received a health appraisal within the previous 90 days and health care personnel at the receiving facility do not recommend or require a new appraisal. 22 AAC 05.120(b).

### 1. The exam must include:

- a. a review of the earlier received screening;
- b. laboratory tests including TB screening, Form 807.14 F, and any other tests that are clinically indicated;
- c. HIV test if requested by the prisoner;
- d. all items on the Physical Examination/Health History form except those items that are declined by the prisoner.
- e. for female prisoners:
  - (1) a history of menstrual cycle, problem with menses, pregnancies, etc.;

- (2) birth control history, including current method, if any;
    - (3) pelvic examination, unless declined;
    - (4) breast examination (visual and manual), unless declined; and
    - (5) pregnancy test, as indicated;
  - f. for male prisoners over 40, a rectal digital examination, unless declined;
  - g. initiation of therapy when appropriate; and
  - h. development and implementation of a treatment plan, as appropriate. The treatment plan is to include recommendations concerning housing, job assignments, and program participation, as needed.
2. Staff shall record the exam results on the Physical Examination/Health History form (807.14D).
- E. Prior to the transfer of a prisoner, on-duty health care staff shall:
1. complete the Medical Summary for Prisoner Transfer Form 807.14E;
  2. put the prisoner's medical record and all prescription medication into a marked envelope to give to the transporting officer; and
  3. notify the receiving facility's medical staff of any necessary medical concern that is urgent or unusually complicated.
- F. Health Care Evaluation upon Transfer Arrival
1. Health care or health-trained staff shall review the Medical Summary for Prisoner Transfer Form. This form includes information about the prisoner's medical, dental or mental health conditions currently being evaluated or treated, the prisoner's current medications, including the name, dosage, and method of distribution, and any allergies. Staff shall document that the review occurred in the appropriate section of the Prisoner Transfer Form.
  2. Health care or health-trained staff shall evaluate all prisoners upon arrival, utilizing form 807.14(E). If medical staff are not on duty at the time of the arrival, and if the prisoner appears to be in need of medical attention, then the health-trained staff shall contact the telenurse.
  3. If an arriving prisoner uses prescribed medications and is not authorized to participate in a self-medication program or self-medication is not utilized at the incoming facility, and if medical staff will not be on duty at the next medication time, then security staff shall notify the telenurse, who shall contact the on-call health practitioner for direction.
- G. Periodic Examinations
- The Department shall ensure that each prisoner has the following periodic examinations throughout his or her incarceration:
1. Prisoners assigned to work in the food service section of the institution must be given a health appraisal before beginning work and annually thereafter to ensure they are free from communicable diseases. See also policy #805.02, Food Service Safety and Sanitation.
  2. Female prisoners must be offered a routine pelvic (PAP) and breast examination periodically according to community standards.

Health Examinations	Page 4 of 5	Policy # 807.14
	Chapter: Health Care Services	

3. Prisoners over 50 years of age must be offered a health appraisal annually. Younger prisoners must be offered a health appraisal every two years.
4. Prisoners who are not physically mature (e.g., 12 to 19 years old) must be offered an annual physical examination. Staff shall document the prisoner's growth and development.
5. Prisoners in sentenced facilities must be offered an examined within one year of release.

H. Segregation for Medical Reasons

The Institutional Health Care Officer, with the approval of the Superintendent, shall resolve all prisoners' needs for special housing for medical treatment.

1. Refusal to Cooperate. The Department may place a prisoner in administrative segregation for medical reasons if the prisoner refuses to cooperate during the health screening or health appraisal. This includes refusal of TB screening. The prisoner must remain in segregation until the examination is complete.
2. Communicable Disease.
  - a. The Institutional Health Care Officer shall recommend segregation for the prisoner if the health appraisal reveals a communicable disease that requires segregation to protect the staff and prisoners. 22 AAC 05.485. See also policy #807.02, Access to Health Care Services.
  - b. The Institutional Health Care Officer shall notify the Superintendent or designee, in writing, when health care staff clear the prisoner to return to the general prisoner population.
3. Confidentiality. Staff may not post the reason for the prisoner's segregation in public view, whether segregated for medical or other administrative reasons. If a prisoner is suspected of having TB, a sign must be posted on the door saying "Respiratory Isolation; masks must be worn."

1-12-01  
Date

William A Worrall MD  
William Worrall MD  
Department of Corrections

January 18, 2001  
Date

Margaret M. Pugh  
Margaret M. Pugh, Commissioner  
Department of Corrections

Authority:

Cleary Final Order, 3AN-81-5274 CIV, Sept. 1990  
22 AAC 05.005  
22 AAC 05.120

Health Examinations	Page 5 of 5	Policy # 807.14
	Chapter: Health Care Services	

22 AAC 05.485

Forms Applicable:

- 807.14 A, Remand Screening
- 807.14 B, Title 47 Remand Screening
- 807.14 D, Physical Examination
- 807.14 E, Medical Summary for Prisoner Transport
- 807.14 F, TB Screening Form

## Health History

Prisoner Name \_\_\_\_\_

OB# \_\_\_\_\_

HAVE YOU EVER		YES	NO	DO YOU?		YES	NO	
Lived with anyone who had TB				Wear glasses or contact lenses				
Coughed up blood				Have vision in both eyes				
Bled excessively after injury				Wear a brace or back support				
Attempted Suicide				Wear dentures or other prosthetic				
HAVE YOU EVER HAD OR HAVE YOU NOW?	YES	NO	DON'T KNOW	HAVE YOU EVER HAD OR HAVE YOU NOW?	YES	NO	DON'T KNOW	
Asthma				Night Sweats				
Tuberculosis				Tumors, cysts or growths				
Cancer or Tumor				Cramps in your legs				
Diabetes				Rupture or hernia				
Emphysema				Recent gain or loss of weight				
Ear, nose or throat trouble				Frequent indigestion				
Hearing loss				Stomach trouble or ulcer				
Chronic or frequent colds				Hepatitis or jaundice				
Hay fever				Gall bladder trouble				
Severe tooth or gum trouble				Hemorrhoids or rectal trouble				
Shortness of breath				Head injuries				
High blood pressure				Epilepsy or seizures				
Pain or pressure in heart				Frequent or severe headaches				
Pounding heart				Loss of memory or amnesia				
Arthritis or bursitis				Periods of unconsciousness				
Fractures (broken bones)				Paralysis, numbness, weakness				
Bone, joint, or other deformity				Dizziness, fainting spells				
Painful or trick shoulder				Nervous problem of any type				
Foot trouble				Alcoholism				
Recurrent back trouble				Syphilis, gonorrhea				
Swollen or painful joints				Drug allergies				
Kidney trouble				Lumps, pain, discharge on breast				
Frequent or painful urination				Change in menstrual pattern				
Blood in urine				Pregnancy/abortion/miscarriage				
Recurrent infections				Treated for female disorder				
Rheumatic fever				Thyroid trouble				
YOUR PRESENT DOCTOR'S NAME (address, phone)				Have you ever been a patient or received treatment in a hospital? (surgery/injuries); state where, when, why & address				
Have you ever been treated for a mental condition (If yes, state reason and give details)				Have you ever taken narcotics? (If yes, state what kind, when you last took it, and if you are in a treatment program)				
Do you have any current health problems?				Have you ever been incarcerated in this jail before? (If so, when?)				
How would you describe your health?								
						YES	NO	DON'T KNOW
Do you use or have you used IV drugs?								
Have you even had an operation/surgery?								
Are you heterosexual, bisexual, or gay?								
Have you ever had sex with an IV drug user?								



**STATE OF ALASKA**

**DEPARTMENT OF CORRECTIONS**

Prisoner's Name: \_\_\_\_\_

OB#: \_\_\_\_\_

Blood Pressure:		Pulse Rate:	Pulse Rhythm:	Respir. Rate:	Respir. Rhythm:
Height:		Weight:	Temp.:	Visual Activity:	Ocular Tension:
General Appearance:		<input type="checkbox"/> Healthy <input type="checkbox"/> Unhealthy			
PARTS OF THE BODY			OBSERVATION		
1)	Head, face, scalp				
2)	Skin	(a) lesions, ulcers, jaundice (b) lacerations, tracks			
3)	Eyes	(a) pupils (b) conjunctive, sclera			
4)	Ears	(a) pinnae, canals, drums (b) gross hearing			
5)	Nose				
6)	Mouth	(a) teeth/dentures (b) throat			
7)	Neck	(a) lymph nodes (b) masses (c) thyroid			
8)	Chest Wall				
9)	Breasts				
10)	Lungs				
11)	Heart	(a) rate (b) murmurs			
12)	Abdomen (appearance)				
13)	Liver	(a) size (cm) (b) tenderness (c) edge			
14)	Spleen				
15)	Groin	(a) nodes (b) lesions (c) hernias			
16)	Back	(a) pain (b) range of motion			
17)	Extremities	(a) clubbing (b) tracks			
18)	Flanks				
19)	Joints	(a) deformity (b) range of motion			
20)	Neurological	(a) reflexes (b) gross touch (c) gait (d) oriented (e) speech			
21)	Rectal/Prostate				
22)	MALES: penis, scrotum, testes				
23)	FEMALES:	(a) vulva, vagina (b) cervix (c) uterus, adnexa			
Laboratory Results		PPD or time		U.A.	

## Physical Examination (Continued)

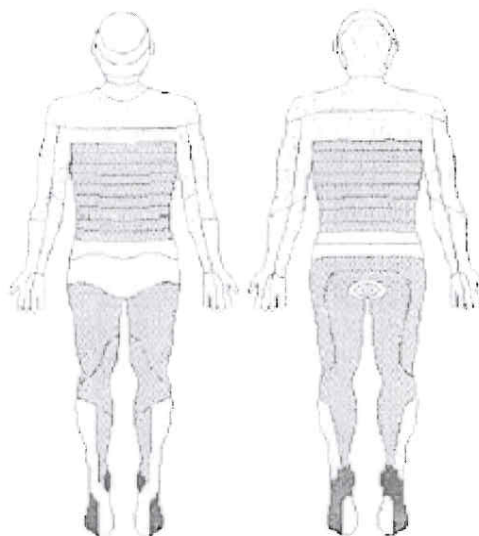
Prisoner's Name \_\_\_\_\_

OB# \_\_\_\_\_


## Injuries and Identification Marks on Admission

Mark with a numbered arrow location of the following:

1. Bruise
2. Cut
3. Swelling
4. Sore
5. Amputation
6. Bandage
7. Cast
8. Scar
9. Tattoo
10. Birthmark
11. Sensory Change (describe)

\_\_\_\_\_  
Signature of Examiner\_\_\_\_\_  
Date



	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b>	808.01	<b>Page 1 of 3</b>	
			<b>Effective:</b>	6/26/07	<b>Reviewed:</b>	
			<b>Distribution:</b>	Pubic	<b>Due for Rev:</b>	6/09
	<b>Chapter:</b>	Prisoner Rights				
	<b>Subject:</b>	Legal Rights of Prisoners				

I. Authority

In accordance with AS 44.28.030, AS 33.30.021 and 22AAC 05.155, the Department of Corrections will establish and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the Department.

II. Reference

Alaska Statutes

12.25.150, 33.30.011, 33.30.031, 33.30.221, 44.28.030

Alaska Administrative Code

22AAC 05.545

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

3ALDF 3D-18, 3E-01, 3E-02, 3E-03, 5D-06

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003

4-4268, 4274, 4275, 4276

III. Purpose

To establish procedures enabling prisoner contact and communication with their attorney, the courts, and access to legal materials.

IV. Applications

All employees and prisoners

V. Definitions

Working Day

Monday through Friday except for legal holidays

VI. Policy

The Department will ensure that prisoners have access to privacy and a telephone to communicate with their attorney or legal representatives. Prisoners also must have access to the court for transmitting correspondence and documents. Department staff may not penalize prisoners for seeking judicial relief.

VII. Procedures

A. Visitation by Attorneys and Legal Representatives. (See also policy #810.02, Visitation.) Attorneys and legal representatives may visit a prisoner at the institution between 8 AM and 10 PM daily or at any time during the initial 24 hours of a client's incarceration except at meal times or while the institution conducts a population count. 22 AAC 05.545(a)

1. An attorney entitled to practice law in Alaska has the right to visit the prisoner immediately after arrest if the prisoner, a relative, or a friend so requests. A.S. 12.25.150(b); 22 AAC 05.545(b)

2. Attorneys and legal representatives must show proper identification and sign the Professional Visitor's Log when they arrive at the correctional facility. See policy #810.02, Visitation 22 AAC 05.545.

3. Each institution shall provide private and secure attorney-client interview space with adequate seating and a writing table or desk.

a. The institution shall ensure that the attorney or attorney's representative can speak privately with the prisoner and exchange or review legal documents without interference from correctional staff, except for a search for contraband.

- b. The institution may not monitor conversations between an attorney or attorney's representative and a prisoner except upon Court order.
    4. An attorney's representative has the same right to access prisoners as the attorney unless the Superintendent has reason to believe that the representative threatens the security of the institution. The Superintendent may require the attorney to specify in writing the identity of the representative and the prisoner to be interviewed. 22 AAC 05.545
    5. The institution shall make every effort to ensure that an attorney or attorney's representative is able to see his or her client within a reasonable time after a request.
  - B. Telephone Calls after Arrest. See also policy #810.01 Prisoner Access to Telephone. Immediately after arrest, a prisoner has the right to telephone or otherwise communicate with an attorney and any relative or friend. A.S. 12.25.150(b)
    1. An officer shall pat-search each prisoner for weapons before allowing the prisoner to use the telephone. The pat-search is limited to external probing of body and clothing for possible signs of weapons. The officer may not remove a prisoner's clothing or search their pockets without probable cause. *Gray v. State*, 798 P.2d 346 (Alaska App. 1990)  
Note: This limited search only applies to a prisoner who has not been booked and admitted into the facility.
    2. The prisoner must call collect or otherwise pay for all long distance telephone calls.
    3. The shift supervisor shall allow combative and incapacitated prisoners to use the telephone only when they are under control.
  - C. Access to Law Library and Material. The Department shall ensure that each prisoner, including a prisoner in either punitive or administrative segregation, is provided regular access to a facility law library and legal materials. Absent unusual circumstances, the Department shall provide a prisoner access to the law library within one *working day* of the prisoner's request. See policy #814.02 Law Library.
  - D. Legal Correspondence. The Department may not restrict or censor a prisoner's legal correspondence; all legal mail to or from a prisoner is privileged mail. See policy #810.03 Prisoner Mail. Prisoners (except *indigents*) shall pay all postage costs.
    1. The Department may open and search legal correspondence for contraband only in the presence of the prisoner.
    2. Each institution shall provide first class postage for *indigent* prisoners to mail legal correspondence to any court or attorney. See policy #810.03 Prisoner Mail, for postage limits.
  - E. Legal Faxes may be sent to the prisoner by an attorney.
    1. These messages may be delivered with the next scheduled mail call or may be delivered directly to the prisoner as determined by local standard operating procedures. In any case the fax shall be delivered to the prisoner by the next working day after it is received.
    2. The delivery of a legal fax may be expedited with the approval of a CO III or higher authority.
    3. Legal Faxes are limited to two pages including the cover page. Legal faxes in excess of two pages shall be forwarded to the facility standards officer who will return the fax to the sender by
-



- mail with an explanation for its non-delivery. The prisoner shall be notified verbally or in writing within 24 hrs of non-delivery.
4. The subject matter of a legal fax is limited to legal matters. Suspected abuse shall be reported to the Superintendent. When abuse is substantiated, the privilege may be suspended or revoked by the Superintendent.
  5. Prisoner requests to fax material to an attorney or other party shall be denied.
- F. Prisoners shall have access to notary public services.

VIII. Implementation


This policy and procedure is effective 14 days following 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 Director of Institutions.

6-26-07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>		<b>Index #:</b>	808.02	<b>Page 1 of 3</b>	
			<b>Effective:</b>	10/10/07	<b>Reviewed:</b>	
			<b>Distribution:</b>	Public	<b>Due for Rev:</b>	10/09
	<b>Chapter:</b>	Prisoner Rights				
	<b>Subject:</b>	Prisoner/Media Contact				

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

44.28.030

Alaska Administrative Code

22 AAC 05.525

Standards for Adult Correctional Institutions; 4th Edition 2003

4-4019, 4021, 4279, 4429

Standards for Adult Local Detention Facilities; 3<sup>rd</sup> Edition 1991

3-ALDF-1A-19, 3E-07

III. Purpose

To establish procedures for media contact with prisoners.

IV. Application

To all employees and prisoners.

V. Definition

As used in this document, the following definition shall apply:

A. Media

Any agency or agent that gathers and reports news for a general circulation newspaper, news magazine, internet news service, national or international news service, or radio or television news program for stations holding a Federal Communications Commission License.

VI. Policy

- A. With approval of the Director of Institutions, media representatives may visit institutions to conduct interviews or prepare reports on programs and activities. The Superintendent has a responsibility to protect the privacy and other rights of employees and prisoners.
- B. Media representatives will be afforded the same opportunities to tour an institution or to visit prisoners as is afforded other persons in accordance with Policy 105.03, Tours and Events within Institutions; and Policy 810.02, Visiting.
- C. Prisoners will be afforded reasonable opportunities to contact or correspond with media representatives. Absent treatment plans to the contrary, disabled prisoners shall not be discriminated against in the provision of media access.

VII. Procedures

- A. Representatives of the news media shall be permitted access to facilities and allowed to interview prisoners in accordance with established procedures. The news media have no greater right to institutional access than other private citizens.

B. Institutional Visits

Institutional visits by news media representatives for the purpose of interviewing prisoners must be approved in advance by the Director of Institutions who will in turn

inform both the Deputy Commissioner for Operations and the Special Assistant for Communications. Media visits will be coordinated through the host Superintendent. All media inquiries received at the institution regarding prisoners must be referred to the Superintendent. The Superintendent shall provide for:

1. Media access to specified areas;
2. Employee and prisoner rights to privacy;
3. Factual representations made about the institution, staff, and prisoners;
4. Media awareness of facility rules regarding custody and security; and
5. Victim notification as provided under 1000.01, Procedures 9. a and b.

The Superintendent may suspend or cancel media visits for administrative or security reasons.

**C. Interviews with Prisoners**

If the identity of a prisoner to be interviewed might be disclosed, or might be evident from the published version of an interview, the Superintendent or designee must secure the written consent of the prisoner before the interview. Personal interviews with prisoners must be conducted within the following guidelines:

1. News media or other visitors to an institution may not possess or use cameras, tape recorders, or other sound or visual recorders while in the institution without the prior approval of the Superintendent;
2. Interviews are normally conducted during business hours, Monday through Friday, 8:00 a.m. to 4:30 p.m.;
3. The location for an authorized interview will be selected by the Superintendent;
4. News media representatives shall not be permitted an interview off institutional grounds, except upon direct authorization through the Superintendent by the Commissioner or designee;
5. Disabled prisoners shall not be discriminated in the provision of access to the media however, the Superintendent, in consultation with the health care staff, may limit media access to a prisoner if the prisoner's medical or mental health treatment plan makes visitation inappropriate;
6. Prisoner contact with the news media is voluntary. The prisoner has a right not to be interviewed, photographed, or recorded by the news media. The prisoner shall sign a Release and Permission for News Media Contact (Form 808.02) prior to being interviewed or photographed; and
7. All interviews must be "one-on-one." A press conference with more than one prisoner is not permitted unless specifically authorized by the Commissioner.

**D. Prisoner Information Provided to the Media**

1. Upon request by media representatives for prisoner information, a booking officer or higher authority shall provide factual information as set out below:
    - a) Name
    - b) Age
    - c) Race
    - d) Place of incarceration and previous movements via transfer
    - e) Charges and bail information; and
    - f) Conviction and sentencing date.
-

2. A Department photograph (mugshot) of a convicted prisoner shall be released to the media by the Superintendent upon request. A Department photograph (mugshot) of a pretrial prisoner may be released by the Superintendent to the media when a public safety concern justifies such a release. Reasons would include an escape, the posting of "wanted" information or an attempt to elicit information from the public in regards to an ongoing law enforcement investigation. If additional information is sought, the media inquiry will be referred through the Superintendent to the Commissioner's designee for public affairs..

VIII. Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each Manager shall incorporate the directions outlined in this document into local policy and procedure. All local policies and procedures must conform to these directions; any deviation must be approved in writing by the Division Director

9/26/07

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

Release and Permission for News Media Contact

I, \_\_\_\_\_, a prisoner in \_\_\_\_\_ ,  
herby grant \_\_\_\_\_ permission to (initial item(s))

\_\_\_\_\_ Interview

\_\_\_\_\_ Photograph

\_\_\_\_\_ Electronically Record

with regard to the following subject matter: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I grant this permission freely and voluntarily. I understand that I have the right to decline being interviewed, recorded, or photographed. Further, I fully understand that anything I say during the interview is subject to being printed or broadcast in the news media and may be used against me in court, at a future time. Finally, I reserve the right to end the interview at any time.

\_\_\_\_\_  
Signature of Prisoner

\_\_\_\_\_  
Date


\_\_\_\_\_  
Time

\_\_\_\_\_  
Signature of Witness  
(*Superintendent or Designee*)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

This contact was initiated by: \_\_\_\_\_  
Name of Interviewer News Media Represented

	<b>State of Alaska</b> <b>Department of Corrections</b> <b>Policies and Procedures</b>	<b>Index #:</b> 808.03	<b>Page</b> 1 of 12
		<b>Effective:</b> 10/13/06	<b>Reviewed:</b>
		<b>Distribution:</b> Public	<b>Due for Rev:</b> 10/08
	<b>Chapter:</b> Prisoner Rights		
	<b>Subject:</b> Prisoner Grievances		

#### 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 Administrative Codes

Standards for Adult Correctional Institutions, 1990

Standards for Adult Local Detention Facilities, 1991

#### III. Purpose

This policy establishes an internal prisoner grievance and appeal system that promotes proper and effective communication between staff and prisoners in efforts to resolve issues at the lowest possible level.

#### IV. Application

All staff and prisoner population.

#### V. Definitions

##### A. Emergency Grievance

Emergency grievances involve issues that threaten life or the security of the facility, or may cause harm to any individual.

##### B. Excessive Grievances

Excessive grievances are the filings of more than five grievances in a week and/or 20 in 180 consecutive days.

##### C. Facility Manager

The Facility Manager is the Superintendent or Warden of the institution.

##### D. Frivolous Grievance

A frivolous grievance addresses information or circumstances that are trivial, lacking in seriousness, irresponsible, self-indulgent, or that have already been addressed.

##### E. Grievance Abuse

Grievance abuse is the repeated abuse of the grievance process through:

1. The filing of frivolous and/or excessive grievances;
2. The appeal of a grievance settled in the prisoner's favor;
3. The filing of grievances concerning issues not grievable; or
4. The filing of emergency grievances that are not emergencies.

##### F. Health Care

Health care includes the fields of medical, dental, psychiatric, and mental health.

##### G. Institutional Health Care Officer

The Institutional Health Care Officer is the chief departmental health care officer in a correctional facility.



H. Medical Advisory Committee

The Medical Advisory Committee shall include, but is not limited to, the Medical Director, the Clinical Director, and the Health Practitioner with the Psychiatrist, Quality Assurance Nurse, and Contract Dentist as ad hoc members.

I. Retaliation

Retaliatory action could include any form of discipline, placement in administrative segregation, transfer, other adverse classification action, or harassment that is imposed upon a prisoner for the prisoner's filing or pursuit of a grievance. It does not include transfers that are in the best interest of the institution or the Department.

J. Request for Interview Form

The Request for Interview Form (Form 808.11A) is the Department form used to attempt to informally resolve a grievance or to appeal a screened grievance.

K. Screened Grievance

A screened grievance is a grievance that is rejected or returned for correction due to content or completion deficiencies.

L. Standard Grievance

A standard grievance is a formal attempt to resolve a general issue regarding the Department's alleged violation of regulations, statutes, or policy. Separate procedures apply to the processing of emergency and health care grievances and grievances against staff.

M. Working Days

Unless otherwise stated, all processing timelines describe working days. A working day is a 24-hour period of which no portion includes a Saturday, Sunday, or holiday.

1. Computation of a working day as prescribed or allowed in this policy begins with the day after the act or event beginning the computation unless it is a Saturday, Sunday, or holiday.
2. The last day of the time period is to be included unless it is a Saturday, Sunday, or holiday.
3. In institutions where a working day includes weekends and holidays, the facility SOPs and prisoner handbook will specify this exception.

VI. Policy

A. Grievance and Appeal System

The Standards Administrator and the Director of Institutions shall develop, implement, and monitor the Department's prisoner grievance system that promotes dispute resolution through effective and timely communication. The Facility Manager at each institution shall monitor the grievance process.

B. Standard Grievance Procedures

All prisoners, staff, and reviewing authorities shall follow the procedures in this policy when filing and responding to a grievance unless otherwise specified under special grievances outlined below. Special procedures apply to:

1. Emergency grievances;
  2. Health care grievances; and
  3. Grievances against staff.
-

C. Grievance Appeal Procedures

1. The Department shall establish uniform procedures for processing prisoner grievance appeals.
2. The Department may deny any prisoner's appeal that does not follow these appeal procedures.

D. Communication Continuum

The prisoner grievance and appeal system promotes open communication between prisoners and staff to resolve disputes and issues. The Department encourages informal face-to-face communication as the first step towards resolution. The prisoner is required to then seek written informal resolution through the Request for Interview Form (Form 808.11A) or another appropriate Department form before filing a formal grievance.

E. Scope of a Grievance

1. What can be grieved
  - a. A prisoner may grieve any alleged action violating the Department's regulations, statutes, policies, or procedures stated in the prisoner handbook that does not already have a separate appeal process.
  - b. A prisoner may only file a grievance in his or her own behalf if directly affected by or a party to the alleged action being grieved.
  - c. A prisoner may file a health care grievance regarding treatment that pertains to the provision or denial of essential health care services. This includes applications of policy stated in the Prisoner Health Plan (807.02 Attachment A).
2. What cannot be grieved
  - a. Classification decisions addressing security or custody levels, facility placement, work and program eligibility and assignments, or furlough.
  - b. Disciplinary decisions.
  - c. Medical charge disputes (see Policy 807.07).
  - d. Administrative transfers.
  - e. Any other administrative procedure which has its own appeal process.
  - f. Alaska Parole Board procedures or decisions.
  - g. Court procedures or decisions.
  - h. Claims on a continuing issue the prisoner is actively litigating in the courts.
  - i. Decisions on whether or not an emergency grievance is an emergency.
  - j. Unrelated issues that should be submitted in separate grievances.

F. Grievance System Abuse

1. A prisoner may be found to abuse the grievance system who:
  - a. Files more than five grievances in a week;
  - b. Files more than 20 grievances in any 180 consecutive days; and/or
  - c. Demonstrates a pattern of abuse of the system by filing frivolous or repetitious grievances, or by filing false statements.
2. A prisoner found to abuse the grievance system may be subjected to both a restriction on filing grievances and/or disciplinary action.
3. The Facility Manager shall determine abuse of the grievance system.

G. Prisoner Responsibilities

1. A prisoner is expected to participate in good faith in the grievance process.
-

2. A prisoner who has difficulties understanding or following the procedures in this policy must request assistance.

#### H. Staff Responsibilities

1. The Facility Manager shall assign an appropriate staff member as the Facility Standards Officer. In matters pertaining to the grievance process, the Facility Standards Officer answers directly to the Facility Manager.
2. The Facility Manager shall make locked boxes available near each of the institutional housing units.
3. The Facility Manager shall ensure that staff inform and instruct prisoners, all new commitments, and transfers about the grievance process through the prisoner handbook and prisoner orientation.
4. The Facility Manager shall inform all prisoners through the prisoner handbook and/or prisoner orientation of the institution's policy on providing them copies of completed Request for Interview Forms (Form 808.11A).
5. Staff will make this policy accessible in the institutional law library.
6. Staff will explain the grievance procedure to the prisoner, through an interpreter, if necessary, and provide assistance for special needs prisoners.
7. Department staff will respond to appropriate verbal and written attempts to informally and formally resolve grievances in a professional and timely manner.
8. Staff may not take retaliatory action against any prisoner for the filing or pursuit of a grievance. Claims about retaliation will be reviewed and processed as grievances alleging staff misconduct.

### VII. Procedures

#### A. Standard Grievances

##### 1. Prisoner Responsibilities

###### a. Filing Time Frames

- (1) A prisoner must try to informally resolve an issue as soon as possible after the action or incident.
- (2) Within 30 calendar days from the date the incident occurred or from when the prisoner has knowledge of the incident, a prisoner must file a grievance (Form 808.03C).

###### b. Informal Resolution

- (1) A prisoner must try to resolve an issue informally before filing a formal grievance.
- (2) The prisoner should first attempt to speak directly with the staff member aware of or directly involved with the incident.
- (3) If verbal communication attempts fail to resolve the problem informally, the prisoner must complete a Request for Interview Form (Form 808.11A) to address the issue and place it in the appropriate locked box.
- (4) If the response on the Request for Interview Form does not resolve the issue, the prisoner may then choose to submit a formal grievance.

###### c. Formal Grievance Packet Completion (Level 1)

- (1) A prisoner must fully complete page one of the Prisoner Grievance Form (Form 808.03C).
  - (2) The prisoner may attach up to two additional pages of narrative.
-

- (3) If the facility provides the inmate with a copy of the response to the Request for Interview Form (Form 808.11A), the form showing attempts to resolve the issue informally must be attached to the grievance.
  - (4) If the facility does not provide the inmate with a copy of the response to the Request for Interview Form (Form 808.11A), the prisoner must write on the grievance form with whom and when he or she tried to initially resolve the issue informally, and state the results of that communication.
  - (5) The prisoner must place the grievance packet in the appropriate locked box.
- d. Withdrawn Grievances
- (1) A prisoner can request in writing to withdraw a grievance at any time in the grievance process.
  - (2) If an issue is easily resolved through the Facility Standards Officer prior to a grievance investigation and decision, the Resolved Filed Grievance Form (Form 808.03B) must be filled out completely and properly signed by the prisoner and the Facility Standards Officer.
  - (3) If the prisoner is released from custody, within five working days of release the prisoner must notify the Facility Standards Officer in writing and leave a contact address if he or she wants the grievance process to continue. Otherwise, the Facility Standards Officer will close the grievance unless the Facility Manager chooses to continue processing the grievance.
- e. Screened Grievances
- (1) If a prisoner can correct the deficiency that caused a grievance to be screened, the prisoner shall be permitted to resubmit the grievance. The grievance shall be considered timely if resubmitted within two working days of receipt of the screening form.
  - (2) If the prisoner believes that a grievance screening decision is incorrect, the prisoner may appeal the Screened Grievance. The prisoner must state in writing on the Request for Interview Form (Form 808.11A) why the screening is incorrect and attach it to the grievance and the screening form, and return it to the Facility Standards Officer within two working days after receiving the screening decision.
- f. Grievance Appeal (Level 2)
- (1) A prisoner may appeal a Facility Manager's/Director's grievance decision.
  - (2) Within two working days after receiving the Facility Manager's/Director's decision, the prisoner must complete and file a Prisoner Grievance Appeal Statement (Form 808.03D) with the Facility Standards Officer.
  - (3) This statement must only address the subject and relief sought in the initial grievance. No additional information may be submitted.
  - (4) The prisoner must place the completed Prisoner Grievance Appeal Statement Form in the appropriate locked box.
- g. Standards Administrator Review (Level 3)
- A prisoner who believes a grievance was not handled consistent with policy may seek review by the Standards Administrator after the Director renders a decision.
- (1) Within 20 working days after receiving the Director's decision, the prisoner must request a review by writing a letter not to exceed two pages and send it in a sealed envelope directly to the Standards Administrator.
-

- (2) The review by the Standards Administrator serves as the final administrative action of the Department on the grievance.

2. Staff Responsibilities

- a. The Facility Standards Officer shall make sure that an adequate supply of grievance forms and Request for Interview Forms are available.
- b. Within one working day of a request, staff shall provide the forms necessary for filing a grievance.
- c. Initial Grievance Processing (Level 1)

Each working day, the Facility Standards Officer or staff designated by the Facility Manager will:

- (1) Check the locked boxes;
- (2) Forward Request for Interview Forms appealing screened grievances through the Facility Standards Officer to the Facility Manager; and
- (3) Record the grievance packet and its subject matter in the grievance log and/or the grievance database.

d. Initial Grievance Review

- (1) The grievance process begins when the Facility Standards Officer receives, records, and files the formal grievance.
- (2) The Facility Standards Officer shall promptly review all grievances to see if they should be screened, easily resolved, or processed further.

(3) Screened Grievances

The Facility Standards Officer must complete the Grievance Screening Form (Form 808.03A) and provide copies of the form and the grievance to the prisoner with instructions for proper completion. Grievances will be screened if:

- (a) The action or decision being grieved is not a grievable issue as specified in VI.E. above;
  - (b) The grievance is not within the institution's or Department's jurisdiction;
  - (c) The issue grieved was not first addressed informally;
  - (d) The issue was already grieved by the prisoner or by another prisoner and resolved;
  - (e) The grievance is submitted on behalf of another prisoner who is able to file his or her own grievance;
  - (f) The form is not filled out completely;
  - (g) The grievance is not filed within 30 calendar days of the action or incident;
  - (h) The grievance is grieving an action not yet taken;
  - (i) The grievance contains inappropriate use of obscene or profane words;
  - (j) The grievance is factually incredible or clearly devoid of merit;
  - (k) The specific relief sought is unclear;
  - (l) The grievance raises unrelated issues that should be presented in separate grievances;
  - (m) The grievance is against the Facility Manager, but is not for action taken directly by the Facility Manager.
-

- (n) The grievance is on an issue the prisoner is currently litigating in the court system.
  - (4) Easily Resolved Grievances  
If the grievance is easily resolved, the Resolved Filed Grievance Form (Form 808.03B) must be filled out completely and properly signed by the prisoner and the Facility Standards Officer.
  - (5) Grievance Assignment and Transfers
    - (a) Grievances that are not screened or easily resolved are either sent to the Facility Standards Officer of the facility where the incident occurred or assigned to an impartial investigator.
    - (b) If the Department transfers a prisoner while it is processing the prisoner's grievance, the Facility Standards Officer shall continue the grievance process in coordination with the Facility Standards Officer of the receiving institution unless the prisoner's transfer resolves the issue.
  - e. Screened Grievance Appeals
    - (1) The Facility Standards Officer shall record the appeal and forward it to the Facility Manager. If the screened grievance concerns an action taken by the Facility Manager, it will be forwarded to the Director of Institutions.
    - (2) The Facility Manager/Director has 10 working days after receipt of the appeal to complete the review and issue a written decision through the Facility Standards Officer to the prisoner.
    - (3) If the prisoner does not receive a response within the 10 working days, the appeal is considered denied. However, a late response granting an appeal is valid. The screened grievance appeal review is the final administrative action by the Department on the grievance.
  - f. Grievance Investigation
    - (1) If the grievance is not screened, easily resolved, or withdrawn after its initial filing, the Facility Standards Officer must either investigate or assign another staff member to investigate the grievance.
    - (2) The Facility Standards Officer shall assign an objective staff member that is not involved in the subject of the grievance to investigate the grievance and issue a recommendation.
    - (3) The investigator will interview the appropriate staff and/or prisoner(s) in order to fully and equitably examine the issue.
    - (4) Within 10 working days after receiving the assignment, the investigator shall forward a clear and concise written statement of findings and recommendations (Form 808.03C, Part Two) to the Facility Manager through the Facility Standards Officer.
  - g. Formal Grievance Decision
    - (1) Within five working days after receiving the investigator's findings, the Facility Manager/Director will issue a determination. The decision must include a copy of the investigator's findings and recommendations, include sufficient findings and conclusions to provide for further review, and note any corrective action.
    - (2) The Facility Manager/Director shall, through the Facility Standards Officer, give the prisoner the written response (Form 808.03C).
-

h. Record Keeping

- (1) The Facility Standards Officer shall promptly log the completed grievance and make and distribute copies of the grievance.
- (2) The Facility Standards Officer or designee shall have the prisoner sign the completed grievance and/or document its delivery to the prisoner.
- (3) The Facility Standards Officer shall place the completed original grievance in the prisoner's institutional or medical file, as appropriate.

i. Grievance Appeal (Level 2)

- (1) If the appeal results from the decision of the Facility Manager, the Facility Standards Officer shall record and immediately send an appeal packet consisting of the appeal form and a copy of the grievance to the Director.
- (2) If the appeal results from the decision of the Director, the Facility Standards Officer shall record and immediately send the appeal packet to the Standard's Administrator as a Level 3 review.
- (3) The Director shall respond to the prisoner in writing through the Facility Standards Officer within 15 working days after receiving the appeal. The original must be sent to the Facility Standards Officer with a copy to the prisoner. The Director shall either affirm or reverse the Facility Manager's decision, note any corrective action, and set out findings and conclusions sufficient to permit further review. If the prisoner does not receive a response within 15 working days, the appeal is considered denied. However, a late response granting the appeal is valid.

j. Standards Administrator Review (Level 3)

The Standards Administrator shall respond in writing directly to the prisoner within 20 working days. This decision is the final administrative action by the Department on the grievance.

B. Health Care Grievances

1. Prisoner Responsibilities

Prisoners shall follow the standard procedures in VII.A.1.a.-e. and VII.A.2.a.-e. above when filing grievances regarding health care.

2. Staff Responsibilities

- a. The Facility Standards Officer, in consultation with health care staff that is not involved in the subject of the grievance, shall promptly decide if the grievance should be screened or could be easily resolved.
  - b. If the grievance cannot be screened or easily resolved, the Facility Standards Officer shall assign and forward the grievance to the Institutional Health Care Officer through the facility manager for investigation and response.
    - (1) Within 15 working days after receiving the grievance, the Institutional Health Care Officer shall investigate the grievance, compile copies of all relevant medical records, and issue a written decision containing a clear and concise statement of findings (on Form 808.03C) to the Facility Manager through the Facility Standards Officer.
    - (2) The Facility Manager shall promptly review and route the grievance to the Facility Standards Officer.
    - (3) The Facility Standards Officer shall promptly log the decision, make and distribute copies of the grievance, and place the original grievance in the prisoner's medical file.
-

- c. If the grievance is against the Institutional Health Care Officer, the Facility Standards Officer shall ask the Anchorage Central Office Health Care Administrator to assign an impartial investigator.
  - 3. Health Care Grievance Appeals
    - a. Prisoner Responsibilities
      - (1) If a prisoner is not satisfied with the response to the grievance, the prisoner may file an appeal.
      - (2) Within two working days after receiving the decision, the prisoner must complete the Prisoner Grievance Appeal Statement (Form 808.03D) and place it in the appropriate locked box.
    - b. Staff Responsibilities
      - (1) The Facility Standards Officer shall record and forward the grievance appeal and the copies of grievance and relevant medical records to the Medical Advisory Committee.
      - (2) The Health Care Administrator shall promptly assign an impartial investigator.
      - (3) Within 10 working days of receipt of the grievance, the assigned investigator shall investigate the matter and provide the Medical Advisory Committee with a written statement of findings and recommendations.
      - (4) Within 5 working days of receipt of the investigator's statement of findings and recommendations, the Medical Advisory Committee shall review the documentation and issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
      - (5) The decision will be sent to the prisoner through the Facility Standards Officer who will promptly log the grievance decision.
      - (6) The Medical Advisory Committee shall send copies of all appeal decisions to the Standards Administrator.
      - (7) If the appeal involves a health care decision made by the Medical Director, within 10 working days of receipt of the investigator's statement of findings and recommendations, the Medical Advisory Committee shall review the investigator's written recommendations and issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
      - (8) The decision of the Medical Advisory Committee is the final administrative action on the grievance by the Department.
  - C. Grievances Against Staff
    - 1. Allegations of Staff Misconduct
      - a. Prisoner Responsibilities
        - (1) If a prisoner files a grievance alleging staff misconduct, the prisoner does not need to try to resolve the grievance informally with the staff member who is the subject of the grievance.
        - (2) If a prisoner alleges retaliation resulting from filing or pursuing a grievance, the prisoner shall address the grievance as an allegation of staff misconduct.
        - (3) A prisoner must complete and submit a formal grievance packet as stated in VII.A.1.c above.
        - (4) A prisoner may appeal the decision of the Facility Manager/Director according to VII.A.1.e-f above.
-



b. Staff Responsibilities

- (1) If a grievance alleges staff violations of the ethical code or standards of conduct as defined by Policy 202.01, the Facility Standards Officer shall record and forward the grievance directly to the Facility Manager.
- (2) After receiving the grievance, the Facility Manager shall either:
  - (a) Within 15 working days investigate the grievance and provide a written decision to the prisoner through the Facility Standards Officer; or
  - (b) Promptly return the grievance to the Facility Standards Officer for informal resolution or assignment to an investigator according to VII.A.2.f-g above.

2. Grievances Against the Facility Manager

a. Prisoner Responsibilities

- (1) Before a prisoner files a grievance against action taken directly by the Facility Manager, the prisoner must first try to resolve the issue informally with the Facility Manager according to VII.A.1.a-b above.
- (2) The prisoner must complete and submit a formal grievance packet according to VII.A.1.c above to the Director of Institutions through the Facility Standards Officer.
- (3) The prisoner may appeal the decision of the Director to the Standards Administrator according to VII.A.1.g above. This review will be the final administrative action on the grievance by the Department.

b. Staff Responsibilities

- (1) If the grievance is filed against the Facility Manager, the Facility Standards Officer shall forward it to the Director of Institutions for investigation or assignment to an impartial investigator.
- (2) If the investigation is assigned, within 10 working days after receiving the assignment, the investigator shall forward a clear and concise written statement of findings and recommendations (Form 808.03C, Part Two) to the Director of Institutions.
- (3) Within five working days after receiving the investigator's findings, the Director will issue a written decision containing findings of fact and conclusions as to the merits of the grievance.
- (4) The decision will be sent to the prisoner through the Facility Standards Officer who will promptly log the grievance decision.
- (5) If the prisoner appeals the Director's decision, within 20 working days after receiving the appeal, the Standards Administrator will issue a determination in writing directly to the prisoner.
- (6) The review by the Standards Administrator is the final administrative action within the Department on the grievance.

D. Emergency Grievances

1. Prisoner Responsibilities

- a. A prisoner may file an emergency grievance by notifying the Facility Standards Officer, the Facility Manager, or the Facility Manager's designee (e.g., Shift Supervisor during nights, weekends and holidays) verbally or through completion of a written grievance according to the procedures set out in this policy.
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<b>Subject:</b>	Prisoner Grievances	<b>Index #:</b>	808.03	<b>Page:</b> 11 of 12
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- b. The prisoner does not need to seek to informally resolve an emergency grievance.
- c. The prisoner cannot appeal the Department's determination as to whether the issue grieved is an emergency.

## 2. Staff Responsibilities

- a. If a prisoner files an emergency grievance, staff shall immediately notify the Facility Manager.
- b. The Facility Manager shall consult with the Institutional Health Care Officer, if necessary, and promptly determine whether the issue grieved is an emergency.
- c. If the Facility Manager is unavailable, the Facility Manager's designee through immediate consultation with the Facility Manager (and Institutional Health Care Officer, if necessary) shall determine whether the issue grieved is an emergency.
- d. If the grievance is found to be an emergency, the Facility Standards Officer, Facility Manager, the Facility Manager's designee, or the Institutional Health Care Officer shall investigate and resolve the emergency grievance the same day or before the end of the shift.
- e. The Facility Manager, the Facility Manager's designee, or the Institutional Health Care Officer shall send a written decision to the prisoner through the Facility Standards Officer as soon as practicable. The Facility Standards Officer will log and document the grievance in accordance with the procedures set out in this policy.
- f. If the grievance is not found to be an emergency, the Facility Manager or designee will inform the Facility Standards Officer in writing of the decision. The Facility Standards Officer will process the grievance according to VII.A.-C. above.
- g. The prisoner who provides false information regarding the emergency grievance may be disciplined pursuant to 22 AAC 05.400.

## E. Grievance System Abuse

### 1. Prisoner Responsibilities

- a. A prisoner who receives a written caution regarding abuse of the prisoner grievance system is expected to correct the action(s) that resulted in the warning.
- b. The prisoner cannot appeal the initial grievance system abuse restriction.
- c. The prisoner can appeal the consecutive extensions of a restriction to the Director of Institutions according to VII.A.1.f.
- d. The prisoner can file one non-emergency grievance per week during the restriction. This limit may only be exceeded if other grievances filed during the week are emergency grievances.
- e. The prisoner who continues to abuse the grievance system and/or provide false statements may be subjected to both continued restrictions on filing grievances and/or disciplinary action pursuant to 22 AAC 05.400.

### 2. Staff Responsibilities

- a. If a prisoner demonstrates a pattern of abusing the prisoner grievance system, the Facility Manager shall send a written caution to the prisoner stating:
  - (1) The specific reasons for the caution, and
  - (2) The continued pattern may result in restricted use of the grievance system.

- b. If a prisoner continues a pattern of grievance abuse, the Facility Manager may issue a written restriction limiting the use of the grievance system that:
  - (1) Specifies the reason(s) for the restriction,
  - (2) Specifies the length of the restriction, which shall not exceed 90 calendar days,
  - (3) Limits the filing of grievances to one per week, and
  - (4) Is not subject to appeal.
- c. If the grievance system abuse continues, the Facility Manager may continue to extend restrictions not to exceed 90 calendar days by issuing additional written determination(s).
- d. If the prisoner appeals the restriction extension, within 15 working days after receiving the appeal, the Director shall respond in writing to the prisoner through the Facility Standards Officer in accordance with the procedures set out in this policy. This decision is the final administrative action within the Department on the grievance.

**F. Records and Accountability**

- 1. The Facility Standards Officer shall keep records of all individual prisoner grievances and any relevant documents at the institution for at least three years after the final resolution of each grievance.
- 2. The Facility Standards Officer shall maintain and keep a permanent grievance log (see Policy 1208.11).
- 3. The Standards Administrator shall periodically audit grievance records to ensure that all grievances are properly logged and handled in accordance with this policy.
- 4. The Standards Administrator shall report annually to the Commissioner about the disposition and the handling of grievances by the Department during the reporting period.

**VIII. Implementation**

This policy and procedure is effective 14 days following 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. The Division Director must approve in writing any deviation from the contents of this document.

September 29, 2006

Date



Marc Antrim, Commissioner  
Department of Corrections

Forms Applicable:

808.03A  
808.03B  
808.03C  
808.03D

## GRIEVANCE SCREENING FORM

To: Prisoner's Name:  
 Offender Number:  
 DIO Grievance #:  
 FSO Grievance #:  
 Institution:

Your grievance is being returned to you for one or more reasons below:	
a.	The action or decision being grieved is not a grievable issue as specified in section VI.E. of DOC Policy #808.03.
b.	The grievance is not within the institution's or the Department's jurisdiction.
c.	The issued grievance was not first addressed informally.
d.	This issue was already grieved by the prisoner or by another prisoner and resolved.
e.	The grievance was submitted on behalf of another prisoner who is able to file his or her own grievance.
f.	The grievance form is not filled out completely.
g.	The grievance was not filed within 30 days of the action or incident.
h.	The grievance is grieving on action not yet taken.
i.	The grievance contains inappropriate use of obscene or profane words.
j.	The grievance is factually incredible or clearly devoid of merit.
k.	The specific relief sought is unclear.
l.	The grievance raises unrelated issues that should be presented in separate grievances.
m.	The grievance is against the Facility Manager, but is not for action taken directly by the Facility Manager.
n.	The grievance is on an issue the prisoner is currently litigating in the court system.
o.	The above noted reason (s) for screening your grievance is not self-explanatory. The following written explanation is provided to clarify the above noted screening decision. <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div>

You have two options in response to a screened grievance. (See Policy 808.03.)

1. You can correct the deficiency that caused a grievance to be screened and resubmit the grievance within two working days of receipt of the screening form; or
2. You may appeal the Screened Grievance if you believe the screening decision is incorrect. You must state in writing on the Request for Interview Form (Form 808.11A) why the screening is incorrect, attach it to the grievance and the screening form, and return it to the Facility Standards Officer within two working days after receiving the screening decision.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Facility Standards Officer

Distribution: Original to Prisoner Case File  
 Facility Standards Officer  
 Prisoner

**RESOLVED FILED GRIEVANCE FORM**

I, \_\_\_\_\_, a prisoner at \_\_\_\_\_,  
agree to voluntarily withdraw my grievance log number \_\_\_\_\_  
based upon the following reason(s) (see checked line applicable below):

- \_\_\_\_\_ 1. The grievance issue I raised in this logged formal grievance has been resolved since the grievance was filed.
- \_\_\_\_\_ 2. The appropriate Department staff has been contacted and the necessary action needed to resolve and rectify this matter to my satisfaction is being taken.
- \_\_\_\_\_ 3. I have thought about this matter and I determined that this is not the appropriate process to address my concern or the issue.

4. Other:

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I take this action freely. I am not under any form of duress or coercion, nor has there been any expressed or implied threats of retaliation if I do not seek this withdrawal. Also, I am fully aware of the fact that I have the option to re-file this grievance within 30 days from the date on this withdrawal form.

\_\_\_\_\_  
Prisoner's Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Facility Standards Officer's Signature

\_\_\_\_\_  
Date Signed

Distribution:      Original to Prisoner's Case File  
                         Facility Standards Officer  
                         Prisoner

## DEPARTMENT OF CORRECTIONS

## PART ONE

Page 1 of 2

## PRISONER GRIEVANCE

## PART TWO

PRISONER NAME	Offender #	FSO LOG #	DIO LOG #

## INVESTIGATOR'S FINDINGS AND RECOMMENDATIONS:

INVESTIGATION: I met with grievant on \_\_\_\_\_ at \_\_\_\_\_ hours.

INVESTIGATOR'S

SIGNATURE:

DATE:

## FACILITY MANAGER'S FINDINGS AND DETERMINATION:

FACILITY MANAGER'S

SIGNATURE:

DATE:

## PRISONER'S RESPONSE:

☐ I AM SATISFIED WITH THIS RESPONSE.☐ I AM NOT SATISFIED WITH THIS RESPONSE,☐ BUT **DO NOT** WISH TO APPEAL.☐ AND **DO INTEND** TO APPEAL TO THE Director of Institutions OR the Medical Advisory Committee.I UNDERSTAND THAT MY COMPLETED STATEMENT OF APPEAL FORM MUST BE SUBMITTED TO THE Facility Standards Officer **WITHIN TWO WORKING DAYS OF THIS DATE.**

PRISONER'S SIGNATURE:

DATE:

FORM DELIVERED TO PRISONER  
BY OFFICER \_\_\_\_\_

(PRINT NAME/SIGNATURE)

(DATE/TIME)

Page 2 of 2

Distribution: Original to Prisoner's Case/Medical File  
Facility Standards Officer  
Prisoner


## DEPARTMENT OF CORRECTIONS

PRINT NAME	INSTITUTION/MODULE	OFFENDER NUMBER	FSO LOG NUMBER	DIO LOG NUMBER

I acknowledge receipt of this grievance appeal statement and have logged it with the appropriate initially filed grievance.	
DATE FILED IN STANDARDS' OFFICE:	FACILITY STANDARDS OFFICER'S SIGNATURE:

Distribution: Original to Prisoner Case File  
Facility Standards Officer  
Prisoner



	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	808.11	<b>Page 1 of 2</b>	
		<b>Effective:</b>	4/13/08	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	4/10
	<b>Chapter:</b>	Prisoners' Rights			
	<b>Subject:</b>	Communication Between Prisoners and Staff			

I. Authority

In accordance with 22AAC 05.155, the Department of Corrections shall develop and adopt policies and procedures that are consistent with laws for the guidance, government and administration of correctional facilities, programs and field services.

II. References

Alaska Statutes

33.30.011, 44.28.030

Alaska Administrative Code

22AAC 05.155

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003  
4-4016

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

No Relevant Code

III. Purpose

To establish a standard procedure for verbal and written communication between prisoners and staff.

IV. Application

To all Department employees

V. Definition

None

VI. Policy

It is the Department's policy to promote and facilitate open channels of communication between employees and prisoners. Effective verbal and written communication promotes more efficient operations.

VII. Procedures

A. Each Superintendent shall establish SOPs which facilitate communication between employees and prisoners by:

1. Reinforcing the benefits of appropriate interactions and communications;
2. Insuring that Request for Interview forms (808.11) are readily available, and that they are responded to in a timely manner by the staff member responsible for the activity or program addressed.
  - a. If the addressee is not the most appropriate person to respond, the employee will forward the request to the most appropriate person for response, and so note on the form;
  - b. Written communications directed to a staff member may be sealed by the prisoner for privacy. This form of communication is not considered prisoner mail and is not subject to confidential requirements of policy 810.03, Prisoner Mail, Publications and Packages;
  - c. Locked boxes shall be provided for the deposit of all written prisoner communication;
  - d. Communications deposited in the boxes will be picked up and distributed by a person designated by the Superintendent; any Request for Interview form containing profanity, vulgarity, or statements that are intended to be insulting and/or degrading will be returned to the prisoner without action;

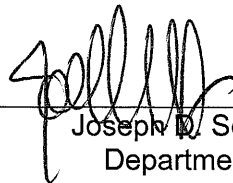
- e. The staff reply to a request for interview may be delivered verbally or in writing. When the reply is delivered verbally it shall be noted on the Request for Interview prior to filing;
- f. Except as noted below, a completed Request for Interview will be filed in the prisoner's permanent record. Routine requests such as haircuts, cleaning supplies, etc., need not be filed.
- 3. Distributing or posting up-to-date written descriptions of programs, procedures, meetings and other pertinent information for prisoners.
- 4. Ensuring that those prisoners who require assistance in understanding written or verbal communication due to a reading or language difficulty are provided appropriate assistance.
- 5. Whenever possible, program/treatment staff offices shall be located in close proximity to the prisoner population.

**VIII. Implementation**

This policy and procedure is effective 14 days following 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.

3/31/08

Date



Joseph R. Schmidt, Commissioner  
Department of Corrections

**Authority:**

AS 44.28.030

AS 33.30.021

22 AAC 05.155

**Forms Applicable to this Policy:**

808.11 Request for Interview

## STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

## Request for Interview


Name:		Institution:		Date:	
OTIS#		Mod/Quad:			
To: _____ Request: _____         					
			Prisoner Signature:		

Action Taken: _____	
Employee Signature: _____	Date: _____

Final Action Taken: _____	
Employee Signature: _____	Date: _____

Instructions: Request must be specific and state the action being requested (i.e., interview, hearing, etc.)  
Requests are to be responded to within a reasonable time of receipt.

Distribution: Original to Case Record  
*Department of Corrections, Form 808.11A*  
*Rev. 04/08*

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	810.01	<b>Page 1 of 4</b>	
		<b>Effective:</b>	7/16/07	<b>Reviewed:</b>	7/07
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	7/09
	<b>Chapter:</b>	Communication, Mail, and Visiting			
	<b>Subject:</b>	Prisoner Access to Telephone			

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 12.25.150, AS 33.30.011, AS 33.30.021, AS 44.28.030

Administrative Code

22AAC 05.015, 22AAC 05.530, 22AAC 05.400

Standards for Adult Correctional Institutions; 4th Edition 2003

4-, 4429, 4271, 4272, 4472, 4497, 4497-1

Standards for Adult Local Detention Facilities; 3<sup>rd</sup> Edition 1991

3ALDF 3D-21, 3D-21-1, 3D-22, 3D-23, 3E-02, 5D-09

III. Purpose

To establish uniform procedures within the Department for prisoner access to telephones.

IV. Application

All staff and prisoners.

V. Definitions

None

VI. Policy

- A. Prisoners shall have reasonable access to a telephone. The Department may limit, monitor, or record prisoners' telephone calls to preserve security and order in the institution and to protect the public. Accommodations shall be made to ensure access to telephone communication by disabled prisoners.
- B. The Commissioner may ban prisoner use of certain types of telephone calls or telephone features that threaten facility security, the safety of a person, or the protection of the public, such as conference calls or call-forwarding, so long as reasonable telephone access is maintained. If a particular type of telephone call or telephone feature is banned, such a prohibition should not be construed to prohibit use of that type of call or feature at any Court or agency hearing in which a prisoner participates as a party or witness when the use of that type of call or feature is authorized by the judge.

VII. Procedures

A. Access and Use of Telephone

1. Access and Limiting Access

Prisoners in open population and administrative segregation shall have reasonable telephone access as determined by the Superintendent. Accommodations shall be made to ensure disabled prisoners have access to telephone communications. Upon request, Telecommunication Device for The Deaf (TTD) or similar equipment shall be made available to prisoners with hearing/speech disabilities. An open population or

administrative segregation prisoner's telephone access may be limited or suspended by:

- a. A disciplinary tribunal as punishment for a disciplinary infraction;
- b. The Superintendent, based upon an individualized determination that reasonable grounds exist to believe that the prisoner's telephone use threatens facility security, the safety of a person, the protection of the public, or otherwise constitutes telephone abuse;
- c. A Court order or condition of probation/parole restricting contact with an individual or class of individuals;
- d. Prisoners whose telephone access has been limited or suspended must still be allowed telephone calls to an attorney, the Courts for scheduled hearings, and the Ombudsman's Office; and
- e. A prisoner whose telephone privileges are limited or suspended in connection with placement in administrative segregation or disciplinary action may challenge those restrictions only in the administrative segregation or disciplinary appeal process, as applicable. A prisoner whose telephone privileges are limited or suspended based upon an individualized determination may challenge the restrictions only by filing a grievance pursuant to policy 808.03 Prisoner Grievances.

## 2. Prohibited Phone Calls

- a. Except as specifically authorized by the Superintendent (e.g., telephonic Court or administrative agency hearings where the judge or hearing officer authorizes the inmate to participate telephonically from prison), prisoners are prohibited from making phone calls that use, directly or indirectly, the following features:
  - (1) Three-way calls (telephone calls where there are initially two parties to the call and then third or subsequent parties are added by means of a conference or similar feature);
  - (2) Call-forwarding, whether permanent or temporary;
  - (3) Collect long-distance calls made through an operator rather than through the automated phone system in place;
  - (4) Calls to toll-free numbers, except as authorized by the Superintendent;
  - (5) Calls to 900 or similar numbers for which special, additional charges apply;
  - (6) Calls using calling cards or Personal Identification Numbers (PINs) not issued directly by the facility;
  - (7) Calls billed to credit cards or third parties.

## 3. Administrative Segregation

Prisoners in administrative segregation must request to use the telephone in accordance with institutional Standard Operating Procedures.

## 4. Punitive Segregation

Prisoners in punitive segregation are limited to telephone calls to attorneys, the Courts for scheduled hearings, and the Ombudsman's Office. The Superintendent may approve other calls for compelling reasons. Prisoners in punitive segregation must request to use the telephone in accordance with institutional Standard Operating Procedures.

## 5. Prisoner-to-Prisoner Calls

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Prisoner-to-prisoner telephone calls are prohibited. The Superintendent may authorize calls between family members at his or her discretion.

6. Long Distance Calls

The Department is not required to pay for long-distance telephone calls. Prisoners must call all long distance numbers collect unless otherwise authorized by the Superintendent.

7. Coinless Pay Phones

The Department may install coinless pay phones with caller identification for all local and long distance calls.

B. Telephone Calls to Legal Representatives

The Department shall ensure that telephone calls to attorneys can be made during normal office hours. The Department may not restrict the number of attorneys a prisoner may call. The Department shall implement a system by which attorneys may leave messages for prisoners via facsimile. These messages shall be posted in an area accessible to all prisoners or delivered to the appropriate prisoner within 24 hours of receipt, except on weekends and holidays. These messages are not confidential. Except as authorized by the Superintendent; facsimile messages are limited to two pages.

C. Telephone Calls after Arrest

Immediately after arrest, a prisoner has the right to telephone or otherwise communicate with an attorney and any relative or friend.

1. The prisoner must call collect or otherwise pay for all long distance telephone calls.
2. The shift supervisor shall allow combative and incapacitated prisoners to use the telephone only when their conduct does not threaten themselves, others, or the safety and security of the institution.

D. Monitoring and Recording of Calls

1. Except as noted below, all calls may be monitored and recorded at any time.
  2. Calls between a prisoner and an attorney, or the Office of the Ombudsman, may not be monitored or recorded, except when authorized by court order. Calls to other designated privileged organizations may not be monitored and recorded, except when authorized by the Commissioner. The Commissioner shall designate organizations which are privileged for purposes of monitoring and recording of calls. Each Superintendent will ensure that the prisoner handbook lists procedures for calling attorneys, the Ombudsman or other designated privileged organizations to avoid recording or monitoring. Designated organizations are listed below:
    - a. Alaska Human Rights Commission
    - b. Alaska legislators
    - c. Any Court in the United States
    - d. Attorney General of Alaska
    - e. Chairman, Alaska Board of Parole
    - f. Commissioner, Department of Corrections
    - g. Division of Occupational Licensing
    - h. Department of Corrections Grievance and Facility Standards Administrator
    - i. Governor of Alaska
    - j. Members of the U. S. Congress for Alaska
-

- k. Physician of record for the prisoner
  - l. State of Alaska Americans with Disabilities Act Coordinator (Division of Rehabilitation, Department of Labor)
  - m. The prisoner's foreign consulate
  - n. The Office of Victim's Rights (when the prisoner also qualifies as a "victim" under Alaska Statute.)
  - o. Any organization, such as the American Civil Liberties Union, National Prison Law Project, or Alaska Legal Services Corporation, that assists persons in the exercise of their legal rights.
3. Notice that all calls may be monitored and recorded must be posted near each prisoner telephone.


#### VIII. 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.

7/2/07  
Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	810.03	<b>Page 1 of 8</b>	
		<b>Effective:</b>	7/16/07	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	7/09
	<b>Chapter:</b>	Communication, Mail & Visiting			
	<b>Subject:</b>	Prisoner Mail, Publications, and Packages			

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

22 AAC 05.400

22 AAC 05.510

22 AAC 05.520

Standards for Adult Correctional Institutions, 4th Edition 2003

4-4487, 4-4488, 4-4489, 4-4490, 4-4491, 4-4492, 4-4493, 4-4494, 4-4495, 4-4496

Standards for Adult Local Detention Facilities, 3<sup>rd</sup> Edition 1991

3-ALDF-5D-02, 5D-03, 5D-04, 5D-05, 5D-06, 5D-07, 5D-08

III. Purpose

To establish uniform procedures within the Department for prisoner mail, publications, and packages.

IV. Application

All staff and prisoner population.

V. Definitions

none

VI. Policy

- A. Prisoners may correspond with anyone except those persons and business limited by this policy.
- B. Each institution shall make an effort to ensure conscientious handling of prisoner's mail to prevent theft, tampering, delay, or other interference. The Department is not liable for mail, which the U.S. Postal Service or any other officially recognized mail or package courier system mishandles or losses.
- C. Prisoners may receive publications and packages except as limited in this policy.

VII. Procedures

- A. Superintendent's Duties
  1. Standard Operating Procedures (SOP)  
Each Superintendent shall develop SOP to carry out this policy. The Superintendent shall review the procedures annually and update them when necessary. The SOP must cover:
    - a. Prisoner's receipt of mail;
    - b. Accepting, handling, and distributing packages in an institution (including procedures for general mail in section D.2., and procedures for processing package contents in section I of this policy);
    - c. Removing cashier's checks and money orders from incoming mail in accordance with policy 302.12; and
    - d. Forwarding prisoner mail (including instructions in section G of this policy).
  2. Staff



The Superintendent or designee shall assign staff to review prisoner's mail and carry out the procedures in this policy.

B. General

1. The Department divides mail into three categories:
    - a. This category is defined as incoming and outgoing correspondence with the persons or organizations listed below as privileged, if the individuals are acting in their official capacities and the mail is properly marked "privileged":
      - (1) Alaska Human Rights Commission;
      - (2) Alaska legislators;
      - (3) Any attorney licensed to practice in the United States;
      - (4) Any court in the United States;
      - (5) Attorney General of Alaska;
      - (6) Chairman, Alaska Board of Parole;
      - (7) Commissioner, Department of Corrections;
      - (8) Division of Occupational Licensing;
      - (9) Department of Corrections Grievance and Standards Administrator;
      - (10) Governor of Alaska;
      - (11) Members of the U.S. Congress for Alaska;
      - (12) Ombudsman for the State of Alaska;
      - (13) Physician of record for the prisoner;
      - (14) State of Alaska Americans with Disabilities Act Coordinator (Division of Rehabilitation, Department of Labor; and
      - (15) Any organization, such as the American Civil Liberties Union, National Prison Law Project, or Alaska Legal Services Corporation, that assists persons in the exercise of their legal rights.
    - b. Prisoner-to-Prisoner Mail  
Prisoner-to-prisoner includes all mail between prisoners.
    - c. General Mail  
General mail includes all mail other than privileged or prisoner-to-prisoner mail.
  2. A prisoner may send or receive any amount of first, second, or third class mail, except that limitations may be placed on the mail to conduct or operate a business. Prisoners do not need the Superintendent's approval to receive or send mail to a particular individual.
  3. Informational fourth class mail, such as mail from a public agency, and subscription fourth class mail shall be delivered to prisoners, but fourth class mail sent by private entities for the purpose of merchandising need not be delivered to prisoners and shall instead, be discarded.
  4. Gifts  
The Superintendent may require family or friends to take the following steps before mailing a gift to a prisoner:
    - a. Verify with the Superintendent or other institution staff that the gift to be sent to a prisoner is on the approved prisoner property list; and
    - b. Notify the institution when the gift will be sent;
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- c. The Superintendent shall record this information to ensure that the prisoner receives the gift upon delivery. However the gift will not be delivered to the prisoner without being inspected beforehand by institutional staff.
  5. Staff shall distribute and deliver prisoners' incoming mail (except packages) within 24 hours from the time the institution receives it; and staff shall pick up prisoners' outgoing mail within 24 hours (excluding weekends and holidays). Staff must distribute packages to prisoners within 48 hours of receipt after examination for contraband (excluding weekends and holidays).
  6. Mail shall be delivered to prisoners in such a manner as to ensure it is received by the intended recipient only. A prisoner may never distribute mail or look through mail to find his or her mail.
  7. Prisoners may not enter into credit agreements, installment purchase arrangements, or other contracts without the approval of the Superintendent or designee. The Superintendent has the discretion to approve special transactions such as selling property, college loans, etc.
  8. Prisoners may not represent any business firms or conduct any type of business operation without the approval in accordance with policy 815.05 Prisoner Business.
  9. A prisoner must obtain the Superintendent's or designee's approval before ordering or buying any item (other than publications in section H below) from a commercial vendor or supplier for delivery to an institution.
    - a. Only the Superintendent may approve items not on the approved prisoner property list. (Attachment A to policy 811.05 Prisoner Personal Property.)
    - b. If the Superintendent has not pre-approved the item, staff shall return the unopened item to the sender, or, if opened, return the item at the prisoner's expense.
  10. A prisoner may purchase or receive electronic equipment only through the commissary.
- C. Outgoing Mail
1. Collection  
Prisoners shall have access to secured mailboxes. Staff shall collect outgoing mail at least once each day, Monday through Friday, excluding holidays.
  2. Return Address  
Prisoner must use the return address format below or staff shall return the mail to the prisoner:  
Prisoner's Name  
Name of institution (spelled out in full)  
Address of institution  
City, State, and Zip Code
  3. Postage  
Prisoners shall pay for all outgoing mail.
    - a. The Superintendent shall make postage available for prisoners to purchase.
    - b. Indigent prisoners may mail, at the Department's expense, up to five pieces of mail per week, legal or otherwise, weighing up to one pound each. The Superintendent may consider requests for heavier pieces of mail. This policy does not apply to shipping
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excess personal property. See policy 811.05 Prisoner Personal Property.

- c. Certified or registered mail shall be provided at the discretion of the Superintendent and only when necessary such as for purposes of service of the summons and complaint in a legal proceeding. The Superintendent may confer with legal council to determine if certified or registered mail is necessary.

**D. Inspection/Reading of Mail**

**1. Privileged Mail**

The Department may not restrict or censor a prisoner's legal correspondence. All legal mail to or from a prisoner is privileged mail. Prisoners (except indigent prisoners) shall pay all postage costs. If there is doubt as to whether or not mail is in fact privileged, such as mail received from an unknown organization, the mail may be opened in the presence of the prisoner and scanned to determine whether it is privileged mail.

**a. Outgoing**

Staff may not read or search outgoing privileged mail for contraband. However, staff may verify, in the prisoner's presence, that the intended recipient of the mail is the same person as the privileged addressee.

**b. Incoming Mail**

Staff shall search incoming privileged mail for contraband in the presence of the prisoner. Staff may not read this mail, unless, after opening it, staff discovers that it is not privileged.

- c. Privileged mail may be read only after consultation with the Department of Law.

**2. General Mail (excluding packages)**

Staff may scan and inspect general mail for contraband outside the prisoner's presence. Staff may read the mail for content (except as provided in b. below) if policy prohibits that type of mail. In that case:

- a. The Superintendent or designee shall give the prisoner written notice within two working days reflecting that the prisoner's mail was read and stating the specific reason(s) why the mail was read.
- b. The Superintendent or designee may delay giving the prisoner notice if he or she has reason to believe that the notice will hamper an investigation of criminal activity referred to in the communication. In that case, the Superintendent or designee may delay providing the notice until the investigation is completed, so long as an adequate record is made of the reason for delaying notice.

**3. Prisoner-to-Prisoner Mail**

- a. The Department may not restrict mail between prisoners unless an individual's safety (e.g., victim of a prisoner) or the security of the facility requires a restriction.
  - b. The Superintendent may restrict prisoner-to-prisoner mail only on a case-by-case basis. The restriction must be no broader than necessary to address the safety or security concerns.
  - c. Mail received by a prisoner from another prisoner may be read by the Department prior to delivery. In the first instance when a
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prisoner's mail to another prisoner is read, the Department shall provide to the prisoner recipient written notice stating that the prisoner's mail was read due to its status as prisoner-to-prisoner mail, and that future reading of that prisoner-to-prisoner correspondence may occur without notice. This initial written notice must be provided to the prisoner recipient within two working days, subject to any delay required by an investigation of criminal or prohibited activity.

**E. Prohibited Mail**

The Department shall prohibit any mail that:

1. Contains plans or threats of physical harm or other criminal activity;
2. Contains contraband, plans for sending contraband in to or out of the institution, or indicates other activities prohibited under 22 AAC 05.400, Prohibited Conduct For Prisoners;
3. Is written in a code that the reader cannot understand;
4. Shows frontal nudity. Frontal nudity includes either the exposed female breast(s) and/or the genitalia of either gender;
5. Solicits gifts, money, credit, or contractual purchases without the approval of the Superintendent or designee;
6. Contains information that, if communicated, would create a risk of mental or physical harm to a person;
7. Contains material that could reasonably be expected to aid an escape, or incite or encourage any form of violence;
8. Contains audio or video tapes;
9. Is in violation of a court order or probation/parole condition prohibiting contact with an individual or class of individuals; or
10. Has been banned for cause following an individualized determination by the Department, (e.g., the intended recipient is a victim who has requested no contact with the prisoner or is a minor whose guardian has requested no contact with the prisoner).

**Note:** The Department also may restrict certain publications, musical compact discs or electronic games. See section H below.

**F. Disposition of Prohibited Material**

1. **Prisoner's Case File**  
A prisoner may be subject to disciplinary proceedings for attempting to mail prohibited material. Staff shall place a reproduction of the prohibited material from outgoing mail into a prisoner's case file and give the prisoner written notice of this within two working days.
2. **Contraband**  
Staff shall dispose of contraband or return it to the sender in accordance with policy 803.08 Searches of Prisoners and Institutional Areas.
3. **Non-Delivery of Mail**  
If staff opens mail and decides that it is prohibited, staff shall give notice to the affected persons as set forth below (except as specified in sections D.3.a. and D.3.c., above). The Department may delay notice if notice interferes with an investigation of criminal activity. See section D.2.b, above.
  - a. **Incoming Mail**  
Staff shall send the prisoner and the sender (other than a publisher of printed material) written notice within two working days after receiving the prohibited mail, that states the specific



reason(s) why the mail was not delivered to the prisoner. The Superintendent or designee must sign the notice.

b. **Outgoing Mail**

Staff shall send the prisoner a written notice within two working days of receipt by the institutional mailroom, which states why the institution did not send the mail. The Superintendent or designee must sign the notice.

G. **Forwarding Mail**

The institution shall forward prisoner's mail as follows:

1. **First, Second and Third Class Mail**

The institution shall forward first, second and third class mail to prisoners housed in Alaska D.O.C. facilities, and contract facilities to include prisoners housed in contract facilities outside of Alaska. The institution shall return to sender first, second and third class mail for prisoners who have been released and federal prisoners who have been transferred to a federal facility. Third class mail not stamped "Forwarding and Return Postage Guaranteed" shall be discarded.

2. **Fourth Class Mail**

Fourth-class mail is normally considered bulk mail. The institution shall discard fourth-class mail if the person is not at the address written on the article. Informational fourth class mail, such as mail from a public agency, and subscription fourth class mail shall be delivered to prisoners, but fourth class mail sent by private entities for the purpose of merchandising need not be delivered to prisoners and may, instead, be discarded.

H. **Publications, Musical Compact Discs, and Electronic Games**

The institution may not limit or restrict a prisoner's receipt of paperback books and magazines from family and friends through the mail except as set out in 3., below. However, the Department may limit the number of books and magazines that a prisoner keeps in his or her living area for fire, safety, security, or health reasons. See policy 811.05 Prisoner Personal Property.

1. **Purchase**

Prisoners do not need advance approval to purchase or subscribe to books, magazines, or newspapers through the mail. The prisoner, prisoner's family, or friends must pay for all orders in advance.

2. **Review**

The Superintendent shall designate staff to review all incoming publications, electronic games, and musical compact discs addressed to prisoners. Superintendents may not establish an excluded list of publications. Staff must review individual publications prior to rejection. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

3. **Rejection**

Staff shall reject an electronic game, musical compact disc, or a publication, in whole or part if it:

a. Contains material that could reasonably be expected to aid in escape, incite violence, theft, or destruction of property in the facility;

b. Contains instructions or illustrations on how to construct or use weapons, ammunitions, bombs, explosives, incendiary devices, handguns, or rifles;

- c. Depicts or describes procedures for brewing alcoholic beverages or making or cultivating drugs or poisons;
- d. Contains obscene material:
  - (1) Contains words, gestures, language, books, newspapers, periodicals, or other written or pictorial materials that the average person, applying contemporary community standards, would find depicts or describes, in a patently offensive way, ultimate sexual acts, masturbation; excretory functions, lewd exhibition of the genitals, or sexual sadomasochistic activity;
  - (2) The work, taken as a whole, appeals to the prurient interest; and
  - (3) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value;
- e. Shows frontal nudity. Frontal nudity includes either the exposed female breast(s) and/or genitalia of either gender.
- f. Is written in code that the reader cannot understand;
- g. Depicts, describes, or encourages activities that could reasonably be expected to lead to the use of physical violence or group disruption; or
- h. Specifically prohibited are musical media that have an affixed parental advisory label indicating "explicit content", and electronic games rated Adults Only, Mature or otherwise labeled with descriptors indicating the inclusion of content that is unacceptable as defined above. Musical compact discs or electronic games withheld under these restrictions are to be handled under section H.4.a.-d.

Note: Prisoners are already prohibited by statute from viewing video movies rated X, R, or NC-17.

- 4. Withholding a Publication
  - a. Staff shall give the prisoner written notice within 30 days when withholding a publication from a prisoner. The notice must include:
    - (1) The reason for withholding the publication; and
    - (2) A statement that the prisoner may challenge the decision by filing a grievance within 15 days.
  - b. If the prisoner does not file a grievance, the prisoner may request, at his or her option, that the institution dispose of the publication in one of the following ways within 15 days:
    - (1) Mail the publication to a party specified by the prisoner;
    - (2) Return the publication to the publisher for a refund; or
    - (3) Discard the publication.
  - c. The prisoner must pay the postage for any publication that he or she chooses to return to the publisher or send to another party.
  - d. If the prisoner files a grievance, the facility must keep a copy of the rejected publication as evidence for two years.
- 5. All publications must be stored in the prisoner's property box.

I. Packages

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The Superintendent's Standard Operating Procedures shall include the following instructions for processing packages in the institution:

1. Delivery  
Staff shall deliver packages to prisoners within 48 hours of receipt, excluding weekends and holidays.
2. Search and Inventory  
Prior to delivery, staff shall:
  - a. Search the contents of the package for contraband (staff need not open packages in the prisoner's presence); and
  - b. Inventory the contents, other than correspondence, and give the prisoner a receipt, or place the package in the prisoner's stored personal property. See policy 811.05 Prisoner Personal Property. Staff shall process any contraband in accordance with section F., above.
3. Unacceptable Items
  - a. Staff shall return the package to the sender if the package contains unacceptable items. Staff also shall send a written explanation of why the items were rejected and the prisoner's new address (if applicable).
  - b. Staff shall send a letter to the prisoner requesting an address to forward the package if the package does not have a return address. Postal Service charges for forwarding will be billed to the prisoner. Staff shall dispose of the package if the prisoner does not respond within 30 days.
4. Forwarding  
If the institution receives a package for a prisoner who was transferred to another institution within the Department, the institution shall:
  - a. Forward the package to the new institution within three working days of receipt;
  - b. Keep a record to show where and when the institution forwarded the package.

J. Filing a Grievance


A prisoner may file a grievance regarding any action that the Department takes concerning this policy. Prisoners must follow the procedures in policy 808.03 Prisoner Grievances, except for the shortened time period for publications in section H.4.a.(2), above.

VIII. Implementation

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

7/2/07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Joseph D. Schmidt, Commissioner  
Department of Corrections

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b>	811.05	<b>Page 1 of 13</b>	
		<b>Effective:</b>	07/16/08	<b>Reviewed:</b>	
		<b>Distribution:</b>	Public	<b>Due for Rev:</b>	07/10
	<b>Chapter:</b>	Reception and Orientation			
	<b>Subject:</b>	Prisoner Personal Property			

I. Authority

In accordance with 22 AAC 05.155, the Department of Corrections will establish and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the Department.

II. References

Alaska Statutes:

18.65.340, 33.30.021, 33.30.251 .261, 44.28.030

Alaska Administrative Code:

22 AAC 05.035, 22AAC 05.125

Standards for Adult Correctional Institutions 4<sup>th</sup> Edition 2003

4- 4164, 4285, 4293, 4294

Standards for Adult Local Detention Facilities 3<sup>rd</sup> Edition 1991

3ALDF 2E-11, 4A-04

Standards for Adult Probation and Parole Field Services 3<sup>rd</sup> Edition 1998

3-3177

III. Purpose

To establish the amount and type of personal property maintained in a prisoner's possession; the volume of property institutions will maintain in secure storage; and to describe procedures for the safekeeping, storage, access to and disposal of prisoner personal property. Additionally, this Policy and Procedure is to establish procedures for Division of Probation/Parole Offices in the handling of offender property either seized by DPP personnel or abandoned by offenders.

IV. Application

To all Department employees.

V. Definitions

A. Contraband

Items not authorized for receipt, retention, or use in an institution.

B. Personal Property

A prisoner's property authorized for retention, including hobby craft items, in possession or facility storage during the period of incarceration or offender's property held by a field probation office. Personal property does not include cash or negotiable checks (P&P 302.12). Personal property also does not include food or other consumables.

C. Property Storage Container

A box, drawer, closet, locker, etc., provided by the facility for prisoner personal property storage. The container will provide at least the cubic inches available in a 10.5" x 12" x 15" box.

D. Property Transfer Box

A cardboard box with a detachable lid measuring 10.5" x 12" x 15".



E. Jail

A facility or component of a facility normally used for the holding or detention of persons facing criminal charges, pending probation or parole revocation, and persons remanded according to AS 47.30.700 (mental health) or AS 47.37.170 (intoxicated).

F. Prison

An institution or component of an institution, normally used for the confinement of sentenced felons.

G. Dual Function Institution

An institution whose functions include those associated with both a jail and a prison (i.e., AMCC, YKCC, LCCC, FCC, KCC). Those institutions which have designated living units for long-term sentenced prisoners, provided space is available, will allow these individuals to possess property prescribed for prisoner facilities (form 811.05E).

H. Standardized Personal Property List - Jail/Dual Function Institution

List of the basic items authorized for prisoner retention (barring individualized security assessment) in any jail or dual function institution which does not have designated living units for long-term sentenced prisoners.

I. Standardized Person Property List - Prisoner Facility

List of the basic items authorized for prisoner retention in every sentenced program facility. There may be exceptions in some institutions based upon a prisoner's custody level or status, housing configuration, and space requirements, for specific items such as TVs, radios, etc.

J. Working Day

8:00 a.m. through 5:00 p.m. Monday through Friday excluding any State-recognized holiday.

K. Transient Status

The status of a prisoner in transit being held temporarily at an interim institution pending actual placement at a designated facility.

L. Field Office

A business office within the Division of Probation and Parole.

M. Offender

A person subject to supervision by the Division of Probation and Parole.

VI. Policy

The provisions of this policy shall be strictly followed, including type, quantity, size, and methods of acquisition of prisoner personal property. Superintendents and Chief Probation Officers shall develop standard operating procedures (SOPs) for the access, inventory, and disbursement of prisoner/offender personal property. Superintendents shall ensure adequate space is provided for the safe and secure storage of prisoner property. Exceptions to this policy MAY ONLY be granted by the appropriate Director. Unauthorized or abandoned personal property will be disposed of in accordance with established procedures.

- A. The Department will allow reasonable types and amounts of prisoner personal property while ensuring that institutional order and security are not compromised.

- B. Each prisoner, upon admission to an institution, shall be advised in writing of the personal property items permitted or allowed for retention. Unsentenced prisoners who are housed in a prison will be authorized personal property as if they were in a jail.
- C. A receipt shall be given to each prisoner for the following:
  - 1. All personal property items authorized for retention;
  - 2. Any personal property seized as contraband or not authorized for retention;
  - 3. All personal property accepted for storage;A copy of each receipt is to be placed in the prisoner's case record.
- D. Superintendents are authorized, when space and funds are available, to make provisions for prisoner personal storage facilities in housing units such as wall lockers, drawers, foot lockers, or other suitable storage facilities approved by the State Fire Marshal's office.
- E. Prisoners will not be allowed to transfer ownership or possession of property from one prisoner to another. Property transferred in violation of this policy shall be deemed contraband and will be confiscated and disposed of in accordance with established procedures.
- F. Each facility is responsible for establishing a prisoner personal property accounting system that tracks property remanded with the prisoner, property acquisitions, disbursements, seizures and lost property claims. These records shall be maintained no less than 1 year from the prisoner's transfer or release from the facility. A copy of this record will be supplied to a requesting facility within 24 hrs, excluding weekends and holidays.

VII. Procedures

A. Property Inventory

All prisoners remanded to the custody of the Department shall be booked in accordance with policy 811.02, Booking. During the booking process, inventory of all the prisoner's clothing and property must be accomplished in the following manner:

- 1. Any property or funds taken into institutional custody will be inventoried immediately to:
  - a. accurately establish the property inventory list,
  - b. determine what items are authorized for retention by the prisoner,
  - c. determine what property is acceptable for storage, and
  - d. take necessary steps to dispose of unauthorized property.
- 2. The prisoner shall sign an itemized receipt, or a receipt must be signed by admitting staff should a prisoner be unable or unwilling to sign. The prisoner shall be provided a copy of the inventory receipt.
- 3. All jewelry in possession of the prisoner at the time of booking must be photocopied:
  - a. Jewelry not allowed to be kept in prisoner's possession must be placed in the property container, or a locked unit such as a safe, and recorded in the Safe Log according to Policy 803.11, Permanent Records Logs.
  - b. Authorized jewelry items which do not exceed the value limit of

\$100.00 include:

- 1). A wedding band that must be of plain metal or other material such as ivory, with no gemstone or imitation gemstones.
- 2). No more than two (2) religious necklaces constructed from plain metal, beads, string or braided material, with no gemstones or imitation gemstones. Necklace(s) must have apparent religious significance, such as attached crucifix, Star of David, etc. The attached emblem may not exceed two inches in length, diameter, depth, or width.
- 3). Prisoners will be allowed to possess a medicine bag (size: 2.5 inches long and 2.5 inches wide) which must be attached to a necklace constructed of the same materials as noted in 2, above. Medicine bags are subject to inspection by having the prisoner empty the contents of the bag into the open palm of his or her hand. The prisoner shall hold the bag open, which will allow staff to inspect inside with a flashlight. Refusal of a prisoner to allow staff to search the medicine bag will result in the loss of this privilege. In the absence of the prisoner, a medicine bag may be handled, in a respectful manner, by staff for storage and inspection purposes.
  - b. A Declaration of Valuable Property (811.05A) must be completed for all jewelry the prisoner has that is valued more than \$100.00.
  - c. Valuables such as rings, watches, and other jewelry will be sealed in a plastic bag or envelope, with the prisoner initialing across the sealing flap, then placed in the property container or a locked unit such as a safe. All jewelry items that have an estimated value beyond the established limit of \$100.00 must be disbursed as set forth in section N. of this policy.
4. If a prisoner is incapacitated and the property cannot be inventoried immediately (e.g., prisoner intoxication), it shall be packed, sealed, and placed in a designated secure area with documentation identifying the officer(s) who packed the property.
5. Regardless of the items authorized for retention, the officer who inventories incoming items of personal property must ensure that each item is free of contraband.
6. A prisoner will not be allowed to retain money, driver's license, credit or debit cards, social security card, other identification cards, or valuable documents. Non-cash financial instruments such as debit or credit cards must be listed on the inventory and secured in the property container or a locked unit such as a safe.
7. All medications or medical equipment/devices will be inventoried at the time of intake and the following action taken:
  - a. Medications will be delivered to medical staff who will decide whether to continue the medications;
  - b. All medications brought with the prisoner will be documented in the prisoner's medical record by medical personnel;

- c. Loose medications, not immediately needed, will be destroyed by medical staff. The destruction will be witnessed by another member of the staff and documented in the medical record; and
  - d. Medical equipment/devices not authorized by medical staff will be disposed of in the same manner as any other unauthorized property.
- 8. Food items, tobacco products, hygiene items, etc., in possession of a prisoner at the time of remand will not be authorized for retention and must be disposed of when the prisoner is not going to be promptly released.
  - 9. A numbered property container will be provided for property storage at the time of property inventory and the number(s) entered on the booking record.

**B. Storage of Prisoner Personal Property**

The intent of the Department is to provide temporary secure storage for items not authorized for personal retention. Items not authorized for personal retention must be disbursed within ninety (90) days of receipt, except for a limited amount of property that may be stored with approval of the Superintendent. Such items as personal identification may be stored for extended periods of time. Other items such as checkbooks, credit or debit cards, or other personal finance devices shall be stored for pre-sentenced prisoners. These items may be stored for a sentenced prisoner with less than 1 year to release. Finance devices not authorized for retention shall either be disbursed to friend or family or destroyed in the prisoner's presence at the discretion of the prisoner. Secure storage may not be used as a means to rotate items, such as CDs, etc. The only exception will be legal materials whose rotation must be approved by the Correctional Officer IV or higher authority. Storage procedures for each facility must comply with the following:

- 1. Firearms, ammunition, knives, explosives, combustible liquids, etc., will not be accepted and will be turned over to the remanding authority at the time of admission. Firearms and other weapons seized by field probation staff shall be stored in a secure location.
- 2. Each facility and field office shall maintain a separate room or secure area for the storage of prisoner property. The area shall have restricted access and other safeguards to ensure accountability.
- 3. Personal property that may be retained in temporary storage at a holding institution will normally be limited to the contents of one property storage container per prisoner according to C., below. However, property storage volume limits may vary from one institution to another, depending upon the institutional mission, thus permitting more than one box at some institutions.
- 4. Staff will inventory and store prisoner's personal property when a prisoner's housing status temporarily changes (e.g., segregation, hospital, program participation, or court appearances).
- 5. Law Enforcement Inspection of Property

Once the prisoner's/offender's property has been received into Departmental custody, the property is not available for inspection or

seizure by law enforcement agents without a search warrant; however, the property inventory sheet may be reviewed without a search warrant.

C. Authorized Personal Property

All prisoner personal property must be acquired through a vendor approved by the Director of Institutions. Advance approval is not required for the purchase of subscriptions to books, magazines or newspapers received by mail. Individuals who wish to mail any other gift to a prisoner must first verify that the item is authorized for retention, then obtain the Superintendent's permission to purchase the item from an approved vendor. Any gift purchased in this manner may not be removed from the vendor's premises, and must be sent by the vendor directly to the institution. Electronic equipment, including TVs, cassette players, stereos, etc., will not be accepted; however, family or relatives who wish to send funds to a prisoner for the purchase of such items must send either a certified cashier's check and/or a money order to the institution. These funds will be deposited in the prisoner's account and once posted will be available for the prisoner's use to purchase items noted on the approved commissary list. Prisoners may not be allowed to purchase personal property from mail order catalogs without the prior approval of the Superintendent. The Superintendent will have final authority to approve or disapprove hobby craft and club functions.

1. Prisoners housed in jail/prison facilities shall be authorized personal property items as outlined in forms 811.05 D and E based on security considerations, housing configurations, and program needs.
2. Personal property in possession of a prisoner is the responsibility of that prisoner and not the institution. A Prisoner Release of Liability (form 811.05B) must be completed and forwarded to the property officer, prior to disbursal to the prisoner.
3. When property is taken from a prisoner by institutional staff, other than during emergency situations, the prisoner shall receive a completed receipt for property seized within 48 hours, utilizing Property Seizure Report/Receipt (form 1208.08A).
4. During emergency situations, such as when mass shakedowns are necessary:
  - a. the property seized will be tagged, separated, and preserved; and
  - b. receipts will be given after the emergency has ceased.

D. Authorized Clothing

Prisoners are required to dress in accordance with the security standard of their assigned institution. Dress regulations will be established by Superintendents on the basis of institutional mission, program, safety, security, identification, and hygiene. The following shall be incorporated into institutional SOPs:

1. Pre-trial detainees, except those in punitive segregation or administrative segregation pending disciplinary action, are allowed to wear approved personal clothing in their living area. Institutional

SOPs shall specify allowed personal clothing.

2. Prisoner clothing:

- a. At least one full set of clean and reasonably well-fitting clothing will be supplied to each prisoner at the time of booking, or after arraignment, if the prisoner requests.
- b. Each prisoner shall be provided at least two sets of institutional clothing per week, or conduct a clothing exchange at least two times per week; however, three sets of underwear and socks shall be provided per week.
- c. Special protective clothing will be issued as applicable to work assignments and as authorized by the Superintendent.
- d. Prisoners will be responsible for all clothing issued:
  - (1) In facilities where prisoners are not provided washers and dryers, State-issued clothing will be replaced on a direct exchange basis (one clean for one soiled); and
  - (2) Procedures are to be established by Superintendents for determining responsibility for lost, destroyed, or stolen items.
- e. The cost of replacing unauthorized altered or missing pieces of State issue clothing will be at the prisoner's expense, as determined under d.(2), above.

E. Acquisition of Property

It is the responsibility of the prisoners to request permission from appropriate institutional staff when additional property is desired. If approved and acquired, the additional items will be added to the prisoner's inventory list. A prisoner may not purchase or trade property from or with another prisoner.

F. Hobby Craft Materials

Superintendents shall develop SOPs dealing with arts and crafts projects and the storage of such, if such programs are permitted. Approved hobby craft items will be used and stored in a designated use area. Hobby craft items shall be stored in such a manner that they are secure and do not present a fire, sanitation, security, or housekeeping hazard. (See Policy 815.04, Arts and Craft Programs.) Hobby craft items may only be transferred between facilities having hobby craft programs and only after specific approval by the receiving facility. Absent conditions listed in the previous sentence, the prisoner has 60 days in which to disburse the hobby craft materials after which they will be treated as abandoned property under R. of this policy.

G. Restricted Use of Property

1. Superintendent may restrict the use of certain personal and institutional property items (e.g., radios, cassette players, televisions, typewriters, and musical instruments) to certain times and locations to ensure orderly administration of the institution.

2. The number of electrical appliances and the overall use of electrical power within a prisoner's living area shall be controlled by the Superintendent for safety, security, and orderly administration of the institution.
- H. Property of Prisoners on Escape Status
- Property of any prisoner who escapes will be considered abandoned and will be disposed of in accordance with this Policy.
- I. Property of a Deceased Prisoner
1. Immediately upon the death of a prisoner, the shift supervisor shall order the prisoner's property to be inventoried and secured until investigating law enforcement personnel collect the property.
    - a. If property is removed from a facility by law enforcement personnel, a notation shall be made on the prisoner's property inventory list identifying the officer and agency taking possession of the property.
    - b. In all other cases, the property shall be held at the facility until disposed of per instructions from the Chaplain's Office at Anchorage Central Office.
  2. The Superintendent shall direct claimants to the deceased's property to the Chaplain's Office at Anchorage Central Office.
    - a. The chaplain's Office shall direct the claimant to execute an "Affidavit for Collection of Personal Property of Decedent" (Probate Form P-110) and submit it along with a notarized copy of the Death Certificate to the Chaplain's Office after the mandatory minimum of 30 days, per AS 13.16.680.
    - b. After the 30-day period expires; and upon receipt of the notarized copies of the "Affidavit for Collection of Personal of Decedent;" and the death certificate, the Chaplain shall forward a copy of these documents to both the appropriate Superintendent and the Offender Trust Account Manager with instructions to release the deceased's property and account balance. Checks shall be made payable to "the estate of" and the name of the deceased.
    - c. The original notarized documents shall be maintained in a file for that purpose in the Department Chaplain's Office in Anchorage.
    - d. If the deceased's property is released directly to the claimant, the claimant shall sign for all property received. If the deceased's property is mailed to the claimant it shall be by a shipping method requiring return receipt and a delivery signature from the recipient only. Copies of the signed inventory or proof of delivery shall be placed in the prisoner's

file. The originals shall be sent to the Department Chaplain's Office and maintained in a file there.

3. If there is no claim filed for the deceased prisoner's property within 90 days, the property shall be disposed of in accordance with N., below.

J. Repair of Personal Property

1. Required servicing and maintenance of personal items such as typewriters, televisions, radios, cassette players, watches, or musical instruments, shall be at the prisoner's expense.
2. Superintendents shall develop procedures governing the way a prisoner may have such articles repaired.

K. Replacing Lost/Damaged Personal Property

1. If a prisoner claims that property is lost or damaged:
  - a. The Superintendent shall have reports of lost/damaged property investigated, utilizing form 811.05C.
  - b. Substantiated claims in excess of \$1000 will be submitted to the Division of Risk Management for disposition, as well as written notification to the Director of Institutions as to circumstances of the claim.
2. The institution has twenty (20) working days to investigate a report of lost/damaged property. If the investigation involves another institution, the time period may be extended an additional thirty (30) days before a final resolution must be made.
3. A copy of all lost/damaged property reports must be maintained at the institution where the claim originated and/or was settled.
4. The resolution, reimbursement, or settlement of a lost/damaged property claim will be concluded by the claimant prisoner on the original Report of Lost or Damaged Property form (form 811.05C) at the time of receipt, replacement, or reimbursement.

L. Transfer of Prisoner Personal Property

1. Prisoner personal property in the prisoner's possession or held by the facility shall be transferred with the prisoner at the time of transfer, as long as it fits within one transfer box.
2. If the amount of personal property exceeds one box and if time allows, the prisoner shall be allowed to decide which items he or she wants in the transfer box.
3. Unsealed or unwrapped food items, drinks or other perishables will be not be shipped or mailed in a transfer box. Items will not be taped to the outside of the box. Sealed food items, particularly that food purchased in commissary and that is sealed in a wrapper or container, will be allowed for transfer.
4. Transfer boxes shall be clearly marked with the prisoner's name, OB#, and contain a complete inventory.
5. For prisoners transferred from a regional jail, property in excess of clothing being worn by the prisoner, wallet items including identification, and hygiene items will not be accepted.



6. Property in excess of the above:
    - a. The prisoner has ten (10) working days from his or her arrival at the designated facility to make arrangements for the shipment (at his or her expense) or pickup of all property remaining at the sending institution. The prisoner may request an extension of up to 80 days in order to make arrangements to have the property picked up at the facility or to obtain funds for mailing.
    - b. Property remaining at the facility 90 days after transfer shall be considered abandoned and will be handled according to section N. of this policy.
    - c. Exceptions to the use of property transfer boxes (regarding mailing purposes only) will be limited to those authorized items which will not fit (e.g., TV, radio, typewriter). Odd-sized boxes shall not be used as travel boxes for the actual transport.
    - d. Any property that is mailed will be sent at the least expensive rate available unless the prisoner requests and pays for higher priority service. It shall be insured and return receipt requested, unless the prisoner specifies First Class Mail. (See section M. below, regarding legal material.)
  4. Transporting or escorting officers will not accept prisoner personal property for transport in excess of one box unless authorized by the Director of Institutions. When transporting prisoners, Transportation Officers shall not accept property for prisoners not being moved.
- M. Handling of Legal Material
1. Due to the volume limitation (one box) allowed at the time of transfer, a prisoner will have to determine which legal papers are needed immediately upon arrival at his new destination. If the prisoner is not willing to decide which legal papers to take, staff will fill the transfer box as they see fit. Indigent prisoners may have one additional box of legal material shipped to them at state expense. Exceptions to this limit must be approved by the Correctional Officer IV or higher authority.
  2. The prisoner has 10 working days from his or her arrival at the designated facility to make arrangements for the shipment (at his or her expense) or pickup of legal material in excess of that described under M.1., above. The prisoner may request an extension of up to 80 days in order to make arrangements to have excess legal materials picked up at the facility or to obtain funds for mailing. Any legal material remaining at the sending facility after 90 days will be considered abandoned property and handled under section N. of this policy.
- N. Disposal of Excess, Unauthorized and/or Abandoned Personal Property
1. Property determined to be in excess, held at a correctional facility, must be mailed to friends, relatives, or other designated persons at

the prisoner's expense, or arrangements made to have said property picked up at the institution within 90 days. The Prisoner Property Disbursement, (form 811.05G) must be used for this purpose. When notification or shipment of property is attempted via U.S. Mail, return-receipt shall be used. The property officer shall maintain a record of all attempts at notification and/or shipment.

2. Offender personal property held at a Probation/Parole Field Office shall be mailed to the offender or to a third person as directed in writing by the offender. With approval of the office supervisor, property may also be picked up at the field office. Such property shall not be mailed to a correctional facility without prior approval of the property officer or higher authority at that facility. Attempted notification and/or shipment of property by U.S. Mail shall be return-receipt. The Field Office Supervisor shall ensure a record is maintained of all attempts at notification.
3. Property held at an institution or field office that has not been disbursed in accordance with 1 and 2 above will be considered abandoned.
4. Abandoned personal property shall be disposed of as follows:
  - a. Institutional program staff shall be notified when textbooks, library books, equipment, and supplies that might be of use in an institutional program are declared abandoned.
  - b. Items with re-sale value such as electronic equipment, jewelry, furniture, tools, hobby crafts, stamps, suitcases, pocketknives, etc., shall be sent to the Surplus Property Warehouse accompanied by an "Interdepartmental Property Transfer" (TAR) form. Contact shall be made to the Surplus Warehouse prior to any items being shipped. (Phone: Anchorage 1-907-279-0596; Juneau 1-907-465-2172.) The Departmental Property Officer is available at 1-907-465-3337 to answer questions and assist in completing the TAR.
  - c. Items with little or no re-sale value such as clothes, linens, towels, personal hygiene items, food, legal and/or personal papers, etc., will not be sent to the Surplus Warehouse. Clothing in a serviceable condition may be donated to a local charity. Personal and legal paperwork shall be shredded. All other items shall be thrown out. In no case is disposed personal property to come into the possession of a Department employee.
5. Firearms  
Offender firearms that come into possession of the Department which may not be returned to the offender or rightful owner, if known; and are no longer held as evidence, shall be disposed of in accordance with AS 18.65.340.

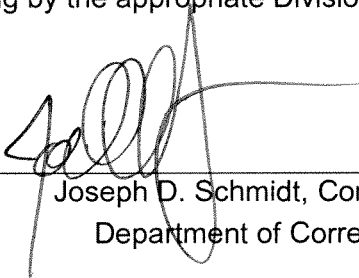
- a. The Supervising P.O. or property officer shall contact the Division of General Services' Surplus Property Warehouse Firearm Property Custodian at 1-907-561-1092 x 222 for instructions. Firearms will not be accepted by the Firearm Property Custodian without an Interdepartmental Transfer (TAR) #02-0622 form accompanied by a court order establishing the State of Alaska's right to dispose of the firearm. AS 18.65.340.
  - b. Firearms that cannot be disposed of, as in the case where a chain of evidence or other tracking paperwork does not exist, in accordance with a., above, shall be referred to the appropriate Division Director who, in consultation with the Department of Law, will issue written instructions as to the method of the firearm's destruction and related record keeping.
- O. Release. All personal property held by the institution or in personal possession of the prisoner shall be turned over to the prisoner upon release. The institution may require the prisoner to mail out property in excess of one (1) box if DOC transport is necessary to return to place of arrest.

#### VIII. Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each manager shall incorporate the contents of this document into local Standard Operating Procedures. All local Standard Operating Procedures must conform to the contents of this document and deviation from the contents of this document must be approved in writing by the appropriate Division Director.

7/2/08

Date



Joseph D. Schmidt, Commissioner  
Department of Corrections

Attachments to this policy

Attachment A List of Approved Prisoner Property

Forms Applicable to this Policy:

811.05A	Declaration of Valuable Property
811.05B	Prisoner Release of Liability
811.05C	Report of Lost or Damaged Property
811.05D	Jail & Dual Function Institutions whose primary function is Jail – Personal Property Inventory
811.05E	Prison or Dual Function Institution whose primary function is Prison – Personal Property Inventory
811.05F	Property Transfer Inventory
811.05G	Prisoner Property Disbursement

**Declaration of Valuable Property****Institution:** \_\_\_\_\_**Date:** \_\_\_\_\_**Prisoner Name:** \_\_\_\_\_**OBSCIS No.:** \_\_\_\_\_

The following property items with an estimated value of over \$100 are being temporarily held in safekeeping.

**Description of Property and Estimated Value:**Statement of Responsibility to Safeguard Property

The State of Alaska shall provide a safe area with appropriate security to protect your property.

At the time of your release or disbursal of property, it is your responsibility to check property against your receipt. If any of your property is missing, notify the releasing officer and request a Report of Lost or Damaged Property (form 811.05C). You are not required to sign the property release section of your booking sheet for items reported lost or damaged.

\_\_\_\_\_  
Prisoner's Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Staff Signature (Witness)\_\_\_\_\_  
Date

Distribution: Property File; Inmate Case Record; Inmate

Prisoner Release of Liability

Personal property retained in the possession of a prisoner is the responsibility of the individual. The Department of Corrections shall not be responsible for the repair or replacement of retained personal property lost, stolen, damaged or destroyed. Furthermore, in the absence of negligence the department shall not be liable for damage to personal property which may result from staff inspection of such property, notwithstanding any other provisions in this form. If the personal property is a computer, the prisoner agrees that the State of Alaska, Department of Corrections and State employees and contractors are not responsible for any loss or damage of the work product stored on the computer or computer disks. When a prisoner is required to relinquish control of personal property to the department, the department shall become responsible for safekeeping of the property.

**I have read this release and I agree not to hold the State of Alaska or its employees responsible for those items of personal property which I voluntarily bring into the institution for my personal use while incarcerated.**

\_\_\_\_\_  
Prisoner's initials entered by prisoner

**Description of Item(s):**

\_\_\_\_\_  
Prisoner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature (Witness)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Institution

Distribution:    Property File  
                      Inmate Case Record  
                      Inmate

Report of Lost or Damaged Property

Institution: \_\_\_\_\_

Prisoner's Name: \_\_\_\_\_ OTIS#: \_\_\_\_\_

Reported to Officer: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

ITEMS LOST OR DAMAGED: (Must include size and complete description)	Estimated Value
Total Estimated Value	\$

Property Officer's Findings. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Attachments \_\_\_\_\_

Recommend Claim Approved \_\_\_\_\_ Recommend Claim Disapproved \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Superintendent's Action:

☐ Approved ☐ Denied

Replacement Date: \_\_\_\_\_

By: \_\_\_\_\_

Reimbursement Date: \_\_\_\_\_

By: \_\_\_\_\_

I hereby acknowledge I have received the Lost or Damaged item(s) listed on this form, or replacement item(s) of like value, or reimbursement for value and have **NO FURTHER CLAIM TO THE ITEM(S) LISTED AS LOST OR DAMAGED ABOVE:**

\_\_\_\_\_  
Claimant/Prisoner's Signature\_\_\_\_\_  
Staff Signature (Witness)      Date

Distribution:

Cc:

Superintendent

Prisoner Record

Prisoner

Risk Management (for claims having a total value in excess of \$1,000)

811.05C 11/07

**Jail & Dual Function Institutions (not including designated long-term living units)\***

**PERSONAL PROPERTY INVENTORY**

**(See Policy 811.05 for details)**

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeline pencil	2		STATIONARY		
						Eye shadow	2				
						Eye wash – no Visine	1		Address book	1	
			Battery, dry cell	6		Athlete's Foot Powder	1		Books – paperback	5	
						Hair Spray – no aerosol	2		Dictionary – pocket	1	
						Hair curlers – foam set/20	1		Colored pencil set (10)	1	
Handkerchief - white	3					Hair dressing	2		Education Material	**	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – pack	1	
						Lip Balm	1		Envelopes – with clasp	10	
						Lipstick	2		File folders	10	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Magazine/newspaper	5	
Skirts/dresses	3		Calculator, pocket (non-electric)	1		Mouthwash	1		Paper - notebook	200	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Paper – tablet	2	
Shoes – shower (thongs)	1					Plastic hair Bags	2		Pen – felt tip	6	
Slips	1					Poli-Grip cream	1		Pencil – wood	12	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Personal Letters	20	
Support Athletic	1					Shampoo /Conditioner	2		Photo album – no metal	1	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Photos – looses	5	
Sweat band – wrist	2					Skin cream/oil	1		Postage Stamps	25	
Sweat suits – pants/jacket	1		Dentures	1		Soap – bar	2		Sketch Pad – 9 x 12"	1	
Gym shorts	1		Eyeglasses	**		Soap dish – plastic	1		Writing Tablet	2	
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	1		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
Thermal Underwear	1										
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
4. **The limit of the property stated above is the amount which will fit one property transfer box provided by the institution, unless approved by the superintendent.**
5. **HOBBY CRAFT** is limited to one property box for hobby craft tools – **if authorized by superintendent.**

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**



**Jail & Dual Function Institutions (not including designated long-term living units)\***

**PERSONAL PROPERTY INVENTORY**

(See Policy 811.05 for details)

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeliner pencil	2		STATIONARY		
						Eye shadow	2				
						Eye wash – no Visine	1		Address book	1	
			Battery, dry cell	6		Athlete's Foot Powder	1		Books – paperback	5	
						Hair Spray – no aerosol	2		Dictionary – pocket	1	
						Hair curlers – foam set/20	1		Colored pencil set (10)	1	
Handkerchief - white	3					Hair dressing	2		Education Material	**	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – pack	1	
						Lip Balm	1		Envelopes – with clasp	10	
						Lipstick	2		File folders	10	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Magazine/newspaper	5	
Skirts/dresses	3		Calculator, pocket (non-electric)	1		Mouthwash	1		Paper - notebook	200	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Paper – tablet	2	
Shoes – shower (thongs)	1					Plastic hair Bags	2		Pen – felt tip	6	
Slips	1					Poli-Grip cream	1		Pencil – wood	12	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Personal Letters	20	
Support Athletic	1					Shampoo /Conditioner	2		Photo album – no metal	1	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Photos – looses	5	
Sweat band – wrist	2					Skin cream/oil	1		Postage Stamps	25	
Sweat suits – pants/jacket	1		Dentures	1		Soap – bar	2		Sketch Pad – 9 x 12"	1	
Gym shorts	1		Eyeglasses	**		Soap dish – plastic	1		Writing Tablet	2	
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	1		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
Thermal Underwear	1										
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
4. **The limit of the property stated above is the amount which will fit one property transfer box provided by the institution, unless approved by the superintendent.**
5. **HOBBY CRAFT** is limited to one property box for hobby craft tools – **if authorized by superintendent.**

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**

**Prison or Dual Function Institutions (including designated living units for long-term prisoners)\***

**PERSONAL PROPERTY INVENTORY**

(See Policy 811.05 for details)

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

Inventory Reason:    ☐ Segregation    ☐ Hospital    ☐ Escape    ☐ Intake    ☐ Other: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyelinier pencil	2		STATIONARY		
Belt	2		Battery charger	1		Eye shadow	2		Address book	1	
Belt Buckle – 2" max	2		Battery, dry cell	6		Eye wash – no Visine	1		Books – paperback	10	
Handkerchief – no red /blue	2		Calculator, pocket (non-electric)	1		Athlete's Foot Powder	1		Dictionary – pocket	1	
Jacket (1 light, 1 heavy)	3		Cassette, clear plastic	20		Hair Spray – no aerosol	2		Colored pencil set (10)	1	
			Clock	2		Hair curlers – foam set/20	1		Education Material	**	
Shirts/Blouses	7		Computer	1		Hair dressing	2		Envelopes – pack	1	
Skirts/dresses	5		Computer Disks	20		Hair pick - plastic	1		Envelopes – with clasp	10	
Shoes- every day/dress/work	3		Curling Iron	1		Lipstick	2		File folders	10	
Shoes – shower (thongs)	1		Fan – 1 to 12" plastic blades	1		Magic Shave	2		Magazine/newspaper	10	
Shorts (GYM)	1		Hair Dryer	1		Mirror, plastic handle	1		Paper - notebook	200	
Socks – pair	7		Headphones - pair	1		Mouthwash	1		Paper – tablet	2	
Suit	1		Musical Instrument	**		Nail clipper – no file	1		Pen – felt tip	6	
Slips	2		Radio, 12x18" max			Plastic hair Bags	2		Pencil – wood	12	
Sweat band – head	2		headphones req. unless approved	1		Poli-Grip cream	1		Personal Letters	20	
Sweat band – wrist	2		Razor, electric	**		Remover – MAKE-UP	1		Photo album – no metal	2	
Sweat suits – shorts/pants/coat	2		Reading Lamp	1		Sanitary Napkin/Tampons-box	2		Photos – looses	25	
Thermal Underwear – top/bottom	2		Typewriter – without memory	**		Shampoo /Conditioner	2		Postage Stamps	50	
Trousers/pants – no khaki or gray	5		TV – up to 13", no remote/VCR	**		Shaving cream	1		Sketch Pad – 9 x 12"	1	
Undershirts/ T-shirts	7		MEDICAL ITEMS			Skin cream/oil	1		Writing Tablet	2	
Undershorts/panties	3		Dentures	1		Soap – bar	2				
Bras	3					Soap dish – plastic	1				
Hosiery	3					Toothbrush	2				
Nightgown	2		Eyeglasses	**							
Robe	1		Prosthetics	**		Toothbrush tube	1				
Slips	3		Other:	**		Toothpaste	2				
			HYGENE ITEMS, ETC.								
						RECREATIONAL AND ENTERTAINMENT ACCESSORIES					
			Air Freshener, solid	2		Athletic supporter	1				
			Blusher	1		Board games	1				
JEWELRY AND PERSONAL ACCESSORIES			Brush – 6" maximum length	1		Chess set	1				
Bible/Koran	1		"Care Free" activator	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
Cup/Mug – plastic 12oz.	1		"Care Free" moisturizer	1		Weight belt	1		No hobby material will be transferred between institutions. If additional space is needed, attach list to this form.		
Ear Rings (Females)	2 pr		Comb – plastic	1		Weight gloves - pair	1				
Hangers - plastic	10		Contact lens solution	2							
Religious medal/necklace	2		Contact disinfecting solution	2							
Ring, wedding – no stones	1		Contact lens daily cleaner	2							
Watch	1		Dental Floss – unwaxed	1							
			Deodorant	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.
4. The limit of the property stated above is the amount which will fit one property transfer box provided by the institution, unless approved by the superintendent.

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**\*See sections VI., G. and H.**

# PROPERTY TRANSFER INVENTORY

(See Policy 811.05 for details)

**NOTE: When transferred, only one property box will be allowed to go with the Prisoner that must include legal material as stated within Policy 811.05**

Prisoner's Name: \_\_\_\_\_ OTIS# \_\_\_\_\_ Institution: \_\_\_\_\_

ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN	ITEM	AUTH	QUAN
COTHING AND LINEN			APPLIANCES AND ACCESSORIES			Eyeliner pencil	2		STATIONARY		
						Eye shadow	2		Address book	1	
						Eye wash – no Visine	1		Books – paperback	5	
			Battery, dry cell	6		Athlete's Foot Powder	1		Dictionary – pocket	1	
			Computer	1		Hair Spray – no aerosol	2		Colored pencil set (10)	1	
			Computer disks	20		Hair curlers – foam set/20	1		Education Material	**	
Handkerchief - white	3					Hair dressing	2		Envelopes – pack	1	
Hat – watch cap or baseball	1 ea.					Hair pick - plastic	1		Envelopes – with clasp	10	
						Lip Balm	1		File folders	10	
						Lipstick	2		Magazine/newspaper	5	
Shirts/Blouses	3		Headphones - pair	1		Magic Shave	2		Paper - notebook	200	
Skirts/dresses	3					Plastic hair Bag	2		Paper – tablet	2	
Shoes- soft sole	1		Radio, AM/FM Walkman Type	1		Nail clipper – no file	1		Pen – felt tip	6	
Shoes – shower (thongs)	1					Mouthwash	1		Pencil – wood	12	
Slips	1					Poli-Grip cream	1		Personal Letters	20	
Socks – pair	3					Sanitary Napkin/Tampons-box	2		Photo album – no metal	1	
						Shampoo /Conditioner	2		Photos – looses	5	
Sweat band – head	1		MEDICAL ITEMS			Shaving cream	1		Postage Stamps	25	
Sweat band – wrist	2					Skin cream/oil	1		Sketch Pad – 9 x 12"	1	
			Dentures	**		Soap – bar	2		Writing Tablet	2	
			Eyeglasses	**		Soap dish – plastic	1				
Trousers/pants – no khaki or gray	3		Prosthetics	**		Tooth Brush	2				
Undershirts/ T-shirts white	3		Other:	**		Toothbrush tube	1				
Undershorts/panties	3					Toothpaste	2				
Bras	3										
Nightgown	2		HYGENE ITEMS, ETC.								
Robe	1					ENTERTAINMENT					
			Air Freshener, solid	1							
			Blusher	1							
			Brush – 6" maximum length	1		Board games	1				
			"Care Free" activator	1		Chess set	1				
			"Care Free" moisturizer	1		Cards (deck)	3		APPROVED HOBBY CRAFT MATERIAL		
JEWELRY AND PERSONAL ACCESSORIES			Comb – plastic	1					Not transferred to other facilities		
Cup/Mug – plastic 12oz.	1		Contact lens solution	2							
Ear Rings (Females)	2 pr		Contact disinfecting solution	2							
Religious medal/necklace	2		Contact lens daily cleaner	2							
Ring, wedding – no stones	1		Dental Floss – unwaxed	1							
			Deodorant (No aerosol)	2							
			Denture Cream	1							

1. All clothing quantities are a combination of State-issued and personal property.
2. \*\* indicates quantities as required, prescribed or permitted y medical or approved by Superintendent.
3. **Food/Drink items:** Open or perishable items will not be permitted by transferred or stored.

Officer, \_\_\_\_\_, Personally inventoried the above listen on \_\_\_\_\_; Prisoner: \_\_\_\_\_, has checked the above list of personal property and agrees that all the items listed are his.

Officer, \_\_\_\_\_, Personally received and inventoried the above listen of property and issued same to the above named prisoner on \_\_\_\_\_; Prisoner: \_\_\_\_\_ received these items on \_\_\_\_\_.

**PRISONER PROPERTY DISBURSEMENT**

1. Prisoner's Name (last, first, M.I.)	2. D.O.B 	3. Institution	4. Date
5. List and Describe Items to be Given			
6. Property to be Given to			
7. Prisoner's Signature		8. Authorizing Officer's Signature	
9. Recipient's Signature		10. Releasing Officer's Signature	
11. Special Remarks by Officer Disbursement			

## **ATTACHMENT A**

### **LIST OF APPROVED PRISONER PROPERTY**

Prisoners will have 90 days from the date of this policy to make arrangements for the disposal of items not authorized by this policy. Unauthorized personal property found after this period will be considered contraband and disposed of in accordance with established procedures.

Description and list of authorized personal property allowed for purchase and possession of prisoners. Refer to Personal Property Inventory form for authorized items for prisons and jails.

Athletic supporter – commissary item.

Battery charger – commissary only.

Battery, dry cell – issue or commissary.

Belt – single-layer cloth only, military type, blue or olive drab.

Belt buckle – military type with sliding clasp.

Bible/Koran – may be hard cover and acceptance into the facility may be authorized by the Superintendent.

Blankets – issue only, comforter or bed spread not authorized.

Book, address – commissary item.

Books – hard cover books are not authorized for purchase, nor may they be left by relatives or friends. Superintendents may authorize hard cover books from library sources. Religious books and publications, legal, and approved educational books may have hard covers.

Board games – issue or commissary item.

Bras – commissary item.

Calculator – commissary only.

Cards – issue or commissary item.

Cassette tapes – commercially recorded only.

Clock – commissary only.

Compact disks or players

Colored pencil set – commissary item.

Cigars, pipes and chewing tobacco – not authorized.

Cup/mug/tumbler – not to exceed 12 oz.

Curling iron – commissary item.

Dictionary, pocket – commissary item.

Form 20-811.05 Attachment A.

Earrings – female only, small post type, no gemstones.

Envelopes – commissary item.

Fan – commissary item.

Gloves – issue item only.

Gloves, athletic – commissary item.

Gym shorts – standard, cut off are not authorized.

Hair dryer – commissary item.

Handkerchief – white only.

Hair curlers, foam only 20/set – commissary item.

Hat/cap – 1 dark blue/black watch cap and 1 baseball type, green in color.

Headphones – commissary item.

Hosiery – women only, commissary.

Hygiene items – only those listed for purchase through the commissary.

Jacket – 1 light windbreaker, 1 heavy winter (green only, no logos).

Medical items – those authorized by Department Medical staff.

Musical instruments – prison superintendents may authorize them through an approved standard operating policy.

Necklace – only if a religious medal is worn with it, no gemstones.

Neckties – not authorized for possession, 1 may be retained in property box and may be given to transporting officer if prisoner is appearing before a jury.

Paper – commissary item.

Pajamas or night-shirt – green only.

Pen, felt tip – commissary item.

Pencil, wooden lead – commissary item.

Photo album, no metal – commissary item.

Pillow – issue only.

Plants – superintendent may approve, prisons only.

Postage stamps or postage-paid envelopes – commissary item.

Plastic hair bags – commissary item.

Radio – AM/FM/cassette, no mike or remote speakers, no recording capability, max size 12” X 18” X 12”. Walkman type, radio only, for jails.

Razor, electric – commissary item.

Reading lamp – commissary item.

Robe – green only.

Ring – wedding band, no gemstones.

Rug – 2’ X 4’, must meet fire code.

Sewing kit – commissary item.

Sheets – issue only.

Shoes – low cuts, boots are not authorized, specialized footwear will be issued, high heels not authorized.

Shifts – short/long sleeve button front or pull over, no logos. When counting the authorized quantity personal clothing and issue clothing will be counted together. Colors similar to that of the correctional officer uniform are not authorized.

Shower thongs/slippers – standard.

Sketch pad, 9” X 12” – commissary item.

Slips – commissary.

Socks – standard.

Stationery paper/tablet – commissary item.

Suspenders – not authorized.

Suits – not authorized for possession, may be stored in property for wear to court.

Sweat bands, head/wrist – no logos.

Sweat suits – no logos.

Television – to 13”, no remote or VCR.

Thermal underwear – standard.

Trousers/pants – no khaki or gray.

Typewriter – standard, no memory, etc.

Undershirts or t-shirts – white only, no logo.

Undershorts – briefs or boxer.

Underwear/Panties.


VCR – not authorized.

Washcloth – issue only.

Watch - \$100.00 or less in value.

Weight belt – issue item.



	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b> 814.02	<b>Page 1 of 4</b>
		<b>Effective:</b> 10/23/05	<b>Reviewed:</b>
		<b>Distribution:</b> Public	<b>Due for Rev:</b> 10/07
	<b>Chapter:</b> Library Services		
	<b>Subject:</b> Law Library		

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 Administrative Code

22 AAC 05.540

Standards for Adult Correctional Institutions, 3rd Edition 1990

3-4256, 3-4264

Standards for Adult Local Detention Facilities, 3rd Edition 1991

3-ALDF-3D-18, 3E-03

Standards for Adult Community Residential Services, 4<sup>th</sup> Edition, August 2000

6A-02

III. Purpose

To establish uniform procedures within the Department for provision of institutional law libraries.

IV. Application

All staff and prisoners.

V. Policy

- A. Each institution shall have a law library that includes, at a minimum, up-to-date constitutional, statutory, and case law materials, applicable court rules, practice treatises.
- B. Each institution shall provide each prisoner with timely access to the law library, library assistance, and supplies for preparing legal pleadings.

VI. Procedures

A. Law Librarian

1. The Superintendent shall provide an experienced or trained law librarian or assistant law librarian to help prisoners using the library. The law librarian may be a prisoner. The librarian must:
    - a. Know the resources available in the central and institutional law library databases;
    - b. Be able to perform basic legal research;
    - c. Understand the basic differences between the state and federal judicial systems; and
    - d. Be able to locate and reference the Court Rules of Procedure.
  2. The Superintendent shall establish procedures for the selection and training of prisoners as law librarians or assistants.
-

3. The Superintendent shall provide an experienced or trained replacement within a reasonable period of time when the position becomes vacant.

**B. Library Access**

1. The Superintendent shall give a prisoner access to the law library within one working day of the prisoner's request, absent unusual circumstances.
2. Time limitations on the on the law library terminals shall be established and specified by the Superintendent.
3. Intentional physical abuse or attempts to compromise the security or integrity of the law library equipment shall result in an individualized determination restricting the prisoner's access to the law library and its equipment.

**C. Library Collection**

Each institutional law library must contain at least one computer terminal that provides access to legal materials in a digital format.

**D. Assistance**

1. A prisoner may receive assistance from another prisoner within the same facility only to use the law library, conduct legal research, or prepare legal pleadings. A prisoner has no right to assistance from a specific prisoner.
2. A prisoner must secure the Superintendent or designee's approval before receiving assistance from any person other than the law librarian. The Superintendent may withhold approval only for legitimate reasons that relate to the security or orderly administration of the institution.
3. A prisoner who assists another prisoner may not charge, demand or receive payment of any kind for services rendered.
4. A prisoner may not possess another prisoner's legal materials outside the law library.
5. The Superintendent may limit or deny assistance to or from a prisoner in segregation or maximum custody housing for security reasons, except for services provided by the law librarian.

**E. Supplies**

**1. Typewriter/Paper**

Superintendents shall provide at least one properly functioning typewriter for every 100 prisoners based on the maximum capacities of each institution. Prisoners shall be provided access to 1) typing paper and 2) carbon paper or photocopies (at the discretion of the Superintendent) as necessary for legal filings. These shall be provided to indigent prisoners at no charge.

**2. Limiting Access to Typewriter**

If a Superintendent decides to limit a prisoner's access to a typewriter through an individualized determination because of a safety or security risk, the Superintendent shall give the prisoner a pen with black ink or pencil and paper to prepare legal pleadings or correspondence.

**F. Segregation, Maximum Custody, and Restricted Access Prisoners**

1. Prisoners in administrative segregation or classified maximum custody must be provided the same access to the law library materials as the general population unless the Superintendent makes an individualized determination that the prisoner's use of the law library materials presents a substantial threat to the security or order of the facility.
-

2. If the prisoner has an individualized law library restriction and is not entitled to physical access to the law library, the prisoner may be provided copies of as many as 10 cases in his or her cell at one time.
3. The prisoner may have the assistance of the law librarian in locating, researching, and obtaining legal materials. Staff shall arrange for secure visits between the prisoner and the librarian.

**G. Requests for Legal Material**

A prisoner may request and obtain legal materials when the prisoner is not entitled to physical access to the law library. "Legal materials" include research materials that attorneys commonly rely on to prepare legal pleadings, documents, and briefs. In order to obtain legal material from the institutional law library, prisoners and staff must follow the steps below.

**1. Request Form**

A prisoner must fill out form 814.02A, Law Library Request Form, and give the form to the Facility Standards Officer through the law librarian. The Facility Standards Officer, or other authorized staff member, shall review the request for completion or determine whether the requested material is unavailable at the institution and then either approve or deny the prisoner request.

**2. Time**

The Facility Standards Officer or designee and the law librarian shall decide if the requested material should be provided on an expedited basis (within two working days), prioritized (within five working days), or provided within a routine time period (10 working days).

- a. The Facility Standards Officer shall expedite a prisoner's request if the prisoner has to file a reply memorandum under state or federal rules, or the court imposes a filing deadline of less than five days.
- b. The prisoner must show evidence of an actual court deadline for expedited and priority requests.

**3. Prisoner Access**

The law librarian shall give the prisoner access to the material as soon as the library receives it. The librarian also must log, catalogue, and file the material in the institution's law library file for future reference. Such research material will be copied onto goldenrod-colored paper and becomes the property of the institution, not a particular prisoner.

**4. Printing and Photocopying**

- a. Printing of legal materials directly by prisoners is prohibited. Apart from printing for prisoners without access to the law library, digital printouts of legal cases and materials shall be considered a request for personal materials and approved at the discretion of the Superintendent as specified in Policy and Procedure #808.12.
  - b. Prisoners wanting printed legal cases and materials shall submit both Law Library Request Form 814.02A and Personal Materials Copies Request Form 808.12B for each request.
  - c. Copies of legal pleadings shall be requested as specified in Policy and Procedure #808.12.
-

5. Prohibited Requests


The Department will not honor requests for:

- a. An entire issue of a law review (prisoners may request particular law review articles);
- b. Copies of more than 10 cases at one time; after the first 10 are delivered and returned, a prisoner may request up to 10 additional cases.

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; the Division Director must approve any deviation from the contents of this document in writing.

10-23-05  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Marc S. Antrim, Commissioner  
Department of Corrections

Applicable forms:  
814.02A

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## Law Library Request Form

Institution Log # \_\_\_\_\_ Central Library Log # \_\_\_\_\_

Requested by (prisoner): \_\_\_\_\_

Date cases were requested: \_\_\_\_\_ Institution: \_\_\_\_\_

Purpose of Cases: \_\_\_\_\_

---

**Check one**

\_\_\_\_ Expedite (2 working days)

\_\_\_\_ Priority (5 working days)

\_\_\_\_ Routine (10 working days)

**Compliance Supervisor/Librarian**

Authorized by: \_\_\_\_\_

Authorized by: \_\_\_\_\_

Authorized by: \_\_\_\_\_

**Note:** If "Priority" or "Expedite" is checked, the prisoner may be required to produce evidence of involvement in ongoing civil or criminal litigation with actual deadlines to meet. If there is no deadline, then "Routine" is to be checked.

Determination made that cases are not in institution's law library: \_\_\_\_\_

Signature

---

**Request for copy of the following legal cases or materials:**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

10. \_\_\_\_\_

**Person filling request:** \_\_\_\_\_ **Date Sent to Institution:** \_\_\_\_\_

Date cases were received by the institution: \_\_\_\_\_

Note which cases were not received and why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_