

CORRECTIONS CODE OF 1953 (EXCERPT)

Act 232 of 1953

CHAPTER IIIA

791.251 Hearings division; creation; appointment and duties of hearing administrator; duties of hearings division; supervision and qualifications of hearing officer.

Sec. 51. (1) There is created within the department a hearings division. The division is under the direction and supervision of the hearings administrator who is appointed by the director of the department.

(2) Except as otherwise provided in this section, the hearings division is responsible for each prisoner hearing the department conducts that may result in the loss by a prisoner of a right, including but not limited to any 1 or more of the following matters:

(a) An infraction of a prison rule that may result in punitive segregation, loss of disciplinary credits, or the loss of good time.

(b) A security classification that may result in the placement of a prisoner in administrative segregation.

(c) A special designation that permanently excludes, by department policy or rule, a person under the jurisdiction of the department from community placement.

(d) Visitor restrictions.

(e) High or very high assaultive risk classifications.

(3) Except as otherwise provided in this section, the hearings division is responsible for each prisoner hearing that may result in the accumulation of disciplinary time.

(4) The hearings division is not responsible for a prisoner hearing that is conducted for prisoners transferred under section 11a to an institution of another state pursuant to the interstate corrections compact.

(5) The hearings division is not responsible for a prisoner hearing that is conducted as a result of a minor misconduct charge that would not cause a loss of good time or disciplinary credits, or result in placement in punitive segregation.

(6) Each hearings officer of the department is under the direction and supervision of the hearings division. Each hearings officer hired by the department after October 1, 1979, shall be an attorney.

History: Add. 1979, Act 140, Imd. Eff. Nov. 7, 1979;—Am. 1983, Act 155, Eff. Oct. 1, 1983;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 204, Imd. Eff. June 30, 1998;—Am. 1998, Act 269, Imd. Eff. July 17, 1998.

Popular name: Department of Corrections Act

791.252 Procedures applicable to prisoner hearing.

Sec. 52. The following procedures shall apply to each prisoner hearing conducted pursuant to section 51(2):

(a) The parties shall be given an opportunity for an evidentiary hearing without undue delay.

(b) The parties shall be given reasonable notice of the hearing.

(c) If a party fails to appear at a hearing after proper service of notice, the hearings officer, if an adjournment is not granted, may proceed with the hearing and make a decision in the absence of the party.

(d) Each party shall be given an opportunity to present evidence and oral and written arguments on issues of fact.

(e) A prisoner may not cross-examine a witness, but may submit rebuttal evidence. A prisoner may also submit written questions to the hearings officer to be asked of a witness or witnesses. The hearings officer may present these questions to and receive answers from the witness or witnesses. The questions presented and the evidence received in response to these questions shall become a part of the record. A hearings officer may refuse to present the prisoner's questions to the witness or witnesses. If the hearings officer does not present the questions to the witness or witnesses, the reason for the decision not to present the questions shall be entered into the record.

(f) The hearings officer may administer an oath or affirmation to a witness in a matter before the officer, certify to official acts, and take depositions.

(g) The hearings officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The reason for the exclusion of the evidence shall be entered into the record. An objection to an offer of evidence may be made and shall be noted in the record. The hearings officer, for the purpose of expediting a hearing and if the interest of the parties are not substantially prejudiced by the action, may provide for the submission of all or part of the evidence in written form.

(h) Evidence, including records and documents in possession of the department of which the hearings officer wishes to avail himself or herself, shall be offered and made a part of the record. A hearings officer

may deny access to the evidence to a party if the hearings officer determines that access may be dangerous to a witness or disruptive of normal prison operations. The reason for the denial shall be entered into the record.

(i) The hearings conducted under this chapter shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearings officer, the department shall determine the matter as a part of the record of the hearing, and the determination shall be subject to judicial review at the conclusion of the hearing. If a hearings officer is disqualified or it is impracticable for the hearings officer to continue the hearing, another hearings officer may be assigned to continue the hearing unless it is shown that substantial prejudice to a party will result from the continuation.

(j) Except as otherwise authorized by subdivision (e), a hearings officer, after the notice of the hearing is given, shall not communicate, directly or indirectly, in connection with an issue of fact, with a person or party, except on notice and opportunity for all parties to participate. A hearings officer may communicate with other members of the department and may have the aid and advice of department employees other than employees which have been or are engaged in investigating or prosecuting functions in connection with the hearing or a factually related matter which may be the subject of a hearing.

(k) A final decision or order of a hearings officer in a hearing shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact, and shall state any sanction to be imposed against a prisoner as a direct result of a hearing conducted under this chapter. The final decision shall be made on the basis of a preponderance of the evidence presented. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by a party to the proceeding and as supported by and pursuant to competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to the prisoner. The final disposition shall be posted for the information of the reporting officer.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980.

Popular name: Department of Corrections Act

791.253 Official record of hearing; preparation; contents; exclusion of certain evidence.

Sec. 53. (1) The department shall prepare an official record of a hearing which shall include:

- (a) Questions and offers of proof, objections, and rulings on the objections.
- (b) Matters officially noticed, except a matter so obvious that a record would not serve a useful purpose.
- (c) A decision or order by the hearings officer.

(2) The official record shall not include evidence, access to which a hearings officer has determined would be disruptive of normal prison operations. However, on an appeal from a final decision made to a court of this state, that evidence shall be included in the official record.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980.

Popular name: Department of Corrections Act

791.254 Rehearing; order; request; conduct; evidence; amending or vacating decision or order; rules.

Sec. 54. (1) The department shall provide for a rehearing of a matter that was subject to a hearing, pursuant to this section. A rehearing may be ordered by the hearings administrator after a review of the record of the hearing. A rehearing may be held upon the request of a party or upon the department's own motion.

(2) A rehearing shall be ordered if any of the following occurs:

- (a) The record of testimony made at the hearing is inadequate for purposes of judicial review.
- (b) The hearing was not conducted pursuant to applicable statutes or policies and rules of the department and the departure from the statute, rule, or policy resulted in material prejudice to either party.
- (c) The prisoner's due process rights were violated.
- (d) The decision of the hearings officer is not supported by competent, material, and substantial evidence on the record as a whole.
- (e) It is determined, based on fact, that the hearings officer conducting the hearing was personally biased in favor of 1 of the parties.

(3) A request for a rehearing shall be filed within 30 days after the final decision or order is issued after the initial hearing. A rehearing shall be conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for department reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

(4) Pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, the department shall promulgate the rules

necessary to implement this chapter.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980;—Am. 1983, Act 155, Eff. Oct. 1, 1983.

Popular name: Department of Corrections Act

791.255 Motion or application for rehearing; exhaustion of administrative remedies; application for direct review in circuit court; transmitting copy of record to court; proof of procedural irregularity; scope of review; action by court.

Sec. 55. (1) A prisoner aggrieved by a final decision or order of a hearings officer shall file a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.

(2) Within 60 days after the date of delivery or mailing of notice of the decision on the motion or application for the rehearing, if the motion or application is denied or within 60 days after the decision of the department or hearing officer on the rehearing, a prisoner aggrieved by a final decision or order may file an application for direct review in the circuit court in the county where the petitioner resides or in the circuit court for Ingham county.

(3) Within 60 days after the application is filed and the department is served, the department shall transmit to the court a certified copy of the entire record of the proceedings. In the case of alleged irregularity in procedure which is not shown on the record, proof may be submitted to the court.

(4) The review shall be confined to the record and any supplemental proofs submitted pursuant to subsection (3). The scope of review shall be limited to whether the department's action is authorized by law or rule and whether the decision or order is supported by competent, material and substantial evidence on the whole record.

(5) The court may affirm, reverse or modify the decision or order or remand the case for further proceedings.

History: Add. 1979, Act 140, Eff. Feb. 1, 1980;—Am. 1983, Act 155, Eff. Oct. 1, 1983.

Popular name: Department of Corrections Act

791.256 Prisoners confined in another state; right to hearings.

Sec. 56. (1) A prisoner sentenced under the laws of this state who is imprisoned in another state pursuant to the interstate corrections compact is entitled to hearings pursuant to subsection (6) of article IV of the interstate corrections compact.

(2) A prisoner is not entitled to a hearing prior to his or her transfer to an institution of another state pursuant to the interstate corrections compact.

(3) This section shall not impair or abrogate the rights of crime victims, including but not limited to those rights provided under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

History: Add. 1994, Act 93, Imd. Eff. Apr. 13, 1994;—Am. 1998, Act 204, Imd. Eff. June 30, 1998.

Popular name: Department of Corrections Act