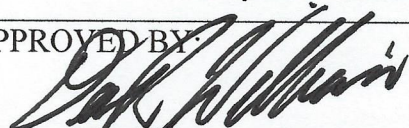


**STATE OF ALASKA
DEPARTMENT OF CORRECTIONS**



POLICIES & PROCEDURES

SECTION: Health And Rehabilitation Services		PAGE: Page 1 of 5
CHAPTER: 807	NUMBER: 807.22	P&P TYPE: Public
TITLE: Due Process Hearings For Prisoners Adjudicated Guilty But Mentally Ill		
APPROVED BY:  Dean R. Williams, Commissioner		DATE: 05/24/18
ATTACHMENTS / FORMS: (A.) GBMI Status Hearing Notice.		AUTHORITY / REFERENCES: 22 AAC 05.155 AS 33.30.011 AS 12.47.030 AS 33.30.021 AS 12.47.050 AS 44.28.030 AS 33.05.010 AS 47.30.700 AS 33.16.180

POLICY:

- I. It is the policy of the Department of Corrections (DOC) to have in place procedures to screen for the involuntary treatment of prisoners adjudicated to be guilty but mentally ill under AS 12.47.030.
- II. It is the policy of the Department to have in place hearing procedures to determine the eligibility for furlough or parole for prisoners adjudicated to be guilty but mentally ill under AS 12.47.050.

APPLICATION:

This policy and procedure will apply to all Department employees and prisoners who are adjudicated to be guilty but mentally ill (GBMI) under Alaska Statute.

DEFINITIONS:

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

Dangerous:

A determination involving both the magnitude of the risk that the prisoner will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct. A finding that the prisoner is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

Guilty But Mentally Ill (GBMI):

A prisoner is adjudicated guilty but mentally ill if, under AS 12.47.030, the court has found the defendant engaged in the criminal conduct and the defendant lacked, as a result of a mental disease or defect, the substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.

Mental Disease or Defect:

A disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or

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ability to cope with the ordinary demands of life, including intellectual and developmental disabilities that result in significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life.

Mental Health Review Committee (MHRC):

A panel appointed by the Deputy Director of the Division of Health and Rehabilitation Services to conduct a hearing to review a prisoner’s need for ongoing mental health treatment because the prisoner suffers from a mental disease or defect that makes him or her dangerous to the public.

Staff Advisor:

A member of the institutional staff independent of the prisoner’s treatment team who is assigned by the Chief Mental Health Officer or designee to assist the prisoner at the hearing and throughout the process.

PROCEDURES:

I. The Mental Health Review Committee (MHRC):

- A. The DOC Commissioner or designee shall appoint a MHRC which shall consist of a licensed psychiatrist, the Chief Mental Health Officer or designee, and a mental health clinician.
- B. The Chief Mental Health Officer or designee shall serve as the chairperson of the MHRC.
- C. None of the members of the committee may be currently participating in the prisoner’s treatment but none are disqualified from sitting on the MHRC if they have treated or diagnosed the prisoner in the past.

II. MHRC Hearing Procedures:

A MHRC hearing shall be held no later than 180 days before a prisoner who is GBMI is eligible for consideration for discretionary parole or furlough release or is scheduled for release on mandatory parole. The Alaska Board of Parole and the Chief Classification Officer shall be consulted to determine when the hearing shall occur:

- A. The prisoner shall be provided written notice of the hearing at least 30 days in advance using the *GBMI Status Hearing Notice* (Attachment A). A copy of the hearing notice shall be filed in the prisoner’s institutional file and health care record.
- B. The hearing may be continued for good cause shown. In the event that the hearing is continued, all parties shall be notified in writing.
- C. A staff advisor shall be appointed by the facility Superintendent or designee. The staff advisor shall facilitate the understanding and participation in the hearing by the prisoner and shall inform the prisoner that he or she has the right to have legal counsel present to represent them at the hearing. If the prisoner retains legal counsel, the staff advisor shall no longer provide assistance with the process.

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- D. The prisoner shall be provided the opportunity to be present at the hearing unless his or her attendance poses a substantial risk of serious physical or emotional harm to the prisoner or poses a threat to the safety of others. The facts supporting this determination shall be documented in the health care record and a summary provided to the prisoner's staff advisor or legal counsel.
- E. The prisoner's staff advisor or legal counsel shall be allowed to appear at the hearing on the prisoner's behalf whether or not the prisoner is present.
- F. At the hearing, mental health staff shall present evidence for purposes of determining if continued treatment is required because the prisoner suffers from a mental disease or defect that makes him or her dangerous to the public.
- G. The prisoner and / or staff advisor or legal counsel may present relevant evidence, including statements, testimony of witnesses, and written documents and may question witnesses who testify at the hearing.
- H. The prisoner may request witness testimony by providing a list of witnesses and their contact information on the *GBMI Status Hearing Notice* (Attachment A) no later than 10 days prior to the date of the hearing. In addition:
 - 1. All witnesses are subject to approval by the Chief Mental Health Officer and shall be relevant to the prisoner's need for treatment and danger to the public as a result of a mental disease or defect.
 - 2. Any witness attending the hearing in person is subject to security approval by the facility Superintendent.
 - 3. Telephonic or written statements from witnesses may be permitted at the hearing at the discretion of the Chief Mental Health Officer.
- I. The hearing shall be audio and / or video recorded. The Chief Mental Health Officer shall develop a protocol to ensure the safe storage of the recording for the duration of the prisoner's sentence.
- J. All documents presented by the prisoner and / or legal counsel shall be filed in the prisoner's health care record.

III. MHRC Hearing Considerations:

The MHRC shall consider the following factors when determining the prisoner's ongoing need for mental health treatment:

- A. The prisoner's current diagnosis;
- B. The prisoner's mental health treatment and history;
- C. The prisoner's disciplinary history in custody;

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- D. The circumstances of the prisoner's crime from any pertinent source to include but not limited to presentence report, criminal charging documents, and criminal judgment; and
- E. Any other relevant information to determine whether the prisoner requires treatment for a mental disease or defect that makes the prisoner dangerous to the public peace or safety.

IV. MHRC Recommendations And Decisions:

- A. A written recommendation shall be prepared by the MHRC chairperson and provided to the DOC Deputy Commissioner within 15 working days of the hearing. The written recommendation of the committee shall be signed by all members of the committee and shall contain a summary of the hearing, the evidence presented at the hearing, the findings of the committee, and the final recommendation of the committee. The MHRC's recommendation shall be filed in the prisoner's health care record.
- B. Based on the recommendation of the MHRC, the DOC Deputy Commissioner shall issue a written decision within 45 days of the hearing which includes findings of fact and the conclusion as to whether the prisoner is eligible for furlough or parole. A copy of the decision shall be provided to the prisoner, staff advisor or counsel, the Alaska Board of Parole and Chief Classification Officer. A copy of the Deputy Commissioner's decision shall be filed in the prisoner's health care record and institutional file.

V. MHRC Decision Appeals:

- A. The prisoner may submit a written appeal of the DOC Deputy Commissioner's decision to the DOC Commissioner within 15 working days of receipt of the decision. The staff advisor or legal counsel may provide guidance to the prisoner in writing the appeal.
- B. The Commissioner shall issue a written decision regarding the appeal within 15 working days of receipt of the appeal. This decision shall be the final agency decision regarding the prisoner's parole and/or furlough eligibility. A copy of the decision shall be provided to the prisoner, staff advisor or counsel, the Alaska Board of Parole and Chief Classification Officer. The decision shall state that it is the final agency decision and that the prisoner has 30 days to submit an appeal to the superior court. A copy of the Commissioner's decision shall be filed in the prisoner's health care record and institutional file.
- C. Once the DOC Deputy Commissioner (or DOC Commissioner in the case of an appeal) has issued the decision, the prisoner may request future reviews upon a change in the prisoner's treatment status. At the time of the request, the MHRC shall review the prisoner's case to determine if there have been sufficient changes in the prisoner's treatment status to warrant another MHRC hearing. Reviews based on changes in treatment status shall occur no more than annually.

VI. Pre-Release Status Review:

- A. Forty-five days prior to the expiration of the sentence of a GBMI prisoner, the MHRC shall determine whether the prisoner is still receiving treatment for a mental disease or defect that causes the defendant to be dangerous to the public peace or safety.

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- B. Where there is good cause to believe the prisoner is suffering from a mental disease or defect that causes him or her to be dangerous to the public peace or safety, the Chief Mental Health Officer shall make a recommendation to the Commissioner for involuntary civil commitment of the prisoner upon release.
- C. No less than 30 days prior to the expiration of the sentence of a GBMI prisoner, the Commissioner or designee shall file a petition for involuntary commitment under AS 47.30.700.

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