



## Breaches of discipline

**This fact sheet sets out the laws and processes that must be followed when a prisoner is breached.**

Certain behaviour in prison can result in breach proceedings. A few examples are:

- Not following a lawful direction of a corrective services officer
- Giving a positive test sample / failing to provide without a reasonable excuse
- Possessing or taking medication without approval

### **Major or Minor Breach?**

An officer can decide to start proceedings for either a major or minor breach. When deciding whether to issue a major or minor breach, they should consider whether the breach was serious, the circumstances and the prisoner's previous behaviour.

### **Criminal offence or Breach?**

If a matter could be dealt with as either a breach of a criminal offence, the officer must decide within 24 hours whether it should be referred to the police. If the matter is referred to the police, a prisoner must be told within 48 hours. The police will then decide whether to prosecute the matter as an offence and notify the prison of their decision. A prisoner cannot be breached and charged for the same matter.

A positive drug test should be dealt with as a breach only and should not be referred to the police unless there is other alleged criminal conduct.

### **When must a decision be made?**

An officer who alleges that a prisoner has committed a minor breach of discipline must decide the breach within 24 hours of becoming aware of the matter.

An officer who alleges that a prisoner has committed a major breach of discipline must decide the breach within 14 days of becoming aware of the matter.

If the matter was referred to the police and they decide not to prosecute, the prison can start major breach of discipline proceedings within 14 days of being advised that the police are not prosecuting.



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## Breach hearing

If a decision is made to start breach proceedings, a breach hearing must be held. The prisoner must be given a breach form that describes the events that led to the alleged breach and must be given time to read and understand the documents.

During the breach hearing the officer must give the prisoner a reasonable opportunity to make submissions including by:

- Attending the hearing; **AND**
- Questioning any witness called by the officer; **AND**
- Calling a person within the prison to give evidence in the prisoner's defence unless the officer considers the evidence may be given in another form

A breach hearing is not the same as going to court. The hearing officer is not bound by the rules of evidence and no legal representation is permitted. However, a prisoner may be helped by someone in prison if they are disadvantaged by language barriers or impaired mental capacity.

At the end of the hearing, the officer must decide whether the prisoner is guilty or not guilty. A decision on a minor breach is to be made on the balance of probabilities, but an officer deciding a major breach must be convinced beyond reasonable doubt.

The prisoner must be told of the decision *immediately* after it is made. They must also be told of their right to review the decision.

## Review Hearing

A prisoner who wants a review of a breach decision must ask for it *immediately* after they are told of the decision. The review must be held by a more senior officer than the officer who made the original decision.

The process is very similar to the original hearing. The review officer will re-hear the breach and must consider the original evidence and any other evidence they allow. The prisoner must be present and permitted to make submissions in their own defence and in mitigation of punishment.

The review officer may confirm, change or set aside the decision. They can declare a previous major breach to be a minor breach. They must immediately tell the prisoner of their decision.



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## Punishment

All breaches of discipline are recorded on a prisoner's file and may be taken into account when correctional authorities are considering matters such as security classifications and prison placement. For example, if a prisoner provides a positive urine sample, they may be transferred from residential to secure accommodation. Transfers should not be automatic and prisoners can stay in residential if a breach is of a minor nature. Breaches can also be taken into account by the parole board when deciding whether or not to grant release on parole.

There are three further possible punishments for a breach of discipline:

- Reprimand without further punishment; **OR**
- Loss of privileges for up to 7 days (major) or 24 hours (minor) **OR**
- Separate confinement in the detention unit for up to 7 days (major) or 24 hours (breach)

For a minor breach of discipline, separate confinement can only be ordered where the prisoner has committed many minor breaches and was warned on the last occasion that the next breach could result in separate confinement.

## Records

Each prison must keep a register of the details of all decisions to issue a breach of discipline, all reviews and any warnings about whether the next breach could result in being separately confined. All major breach hearings must be videotaped. Video tapes of breach hearings can be accessed through Right to Information.

## Complaints

If a prisoner is dissatisfied with breach proceedings following an internal review, they can make a complaint to the Ombudsman requesting an independent investigation. It is also possible to write to the General Manager asking that the deciding officer provide a statement of reasons for their decision to issue a breach of discipline. Any complaint to the Ombudsman or General Manager should explain if any legal procedures were not followed during the breach process.

A request for a statement of reasons must be made within 28 days from the date of the decision.