

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 904.00: COUNTY CORRECTIONAL FACILITIES -- ENFORCEMENT PROCEDURES

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904.01: Notice of Non-compliance

- (1) If, in the opinion of the Commissioner, any county correctional facility does not comply with 103 CMR 900.00 through 979.00, the Commissioner shall give notice in writing of the alleged non-compliance to the Sheriff.
- (2) The notice of non-compliance shall be delivered by mailing, postage prepaid, to the Sheriff.
- (3) The notice of non-compliance shall specify the section, or sections, of 103 CMR 900.00 through 979.00 with which the county correctional facility has allegedly failed to comply.

904.02: Response to Notice of Non-compliance

Within 60 days of receipt of the notice of non-compliance, the Sheriff/facility administrator shall file with the Commissioner, a response admitting or denying each allegation of non-compliance contained therein. For each allegation of non-compliance denied, the response shall set forth an explanation of how the county correctional facility in question meets the relevant requirements of 103 CMR 900.00 through 979.00. For each allegation of non-compliance admitted, the response shall set forth a plan to remedy such non-compliance within a reasonable time.

904.03: Request for Hearing

- (1) The Sheriff/facility administrator served with a notice of non-compliance in accordance with 103 CMR 904.01 shall have a right to a hearing before the Commissioner or his designee regarding the contents of such notice. The request for a hearing shall be filed within 30 days after receipt of the notice of non-compliance, and may be included in the response to such notice required by 103 CMR 904.02.
- (2) The Commissioner may schedule a hearing regarding a notice of non-compliance at which time the Sheriff/facility administrator may present evidence regarding the contents of the notice of non-compliance. The Commissioner may include a notice of scheduling of a hearing in the notice of non-compliance, and shall serve a notice of such hearing to the Sheriff either within ten working days of service of the notice of non-compliance, or within ten working days following receipt of the response required by 103 CMR 904.02.
- (3) The hearing shall be scheduled on a date not more than 30 days following a request thereof or notice thereof in accordance with 103 CMR 904.01 and 904.02.
- (4) Hearings may be continued by stipulation or for good cause, in the Commissioner's discretion.

904.04: Compliance Hearing - Order of Proceedings

- (1) The compliance hearing shall be conducted by a hearing officer designated by the Commissioner. The hearing officer shall govern all aspects of the hearing.
- (2) The Sheriff/facility administrator shall first make a presentation regarding each item contained in the notice of non-compliance that is the predicate for the hearing. Such presentation shall include, but shall not be limited to, evidence of:
 - (a) compliance with 103 CMR 900.00 through 979.00;
 - (b) circumstances giving rise to any instance of non-compliance with 103 CMR 900.00 through 979.00;
 - (c) explanation of any failure or inability to comply with 103 CMR 900.00 through 979.00; and,
 - (d) explanation of plans to remedy any instances of non-compliance.
- (3) The Commissioner may designate a Department of Correction employee, someone other than the hearing officer to make a presentation regarding each item contained in the notice of non-compliance that is the predicate for the hearing. Said employee may present any evidence relevant to the contents of the notice of non-compliance and response thereto, including but not necessarily limited to, evidence of:
 - (a) compliance with 103 CMR 900.00 through 979.00;
 - (b) circumstances giving rise to any instance of non-compliance with 103 CMR 900.00 through 979.00;
 - (c) explanation of any failure or inability to comply with 103 CMR 900.00 through 979.00;
 - (d) commentary upon and explanation of any plans to remedy any instances of non-compliance; and,
 - (e) recommended disposition.
- (4) The hearing officer may thereafter, in his/her discretion, hear testimony or take other relevant evidence from any person; provided, that such person has filed a notice of intervention at or prior to the hearing, in which is set forth identification of the proposed intervener, a statement of the issues on which he/she wishes to be heard, and a summary of the evidence to be presented on each issue. Where necessary the hearing officer may continue the hearing to a subsequent date to permit reception of third party evidence.

904.05: Compliance Hearing - Evidence

- (1) The hearing officer shall not be bound by the rules of evidence observed by courts. The hearing officer may admit and give probative effect only to evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
- (2) The hearing officer may take administrative notice of matters which could be judicially noticed by courts, and of technical or general facts within the specialized knowledge of the Department of Correction.

904.06: Compliance Hearing - Conduct

All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. The hearing officer may take whatever appropriate actions are necessary to conduct a hearing where such standards are not observed by any person.

904.07: Compliance Hearing - Transcript and Record

Testimony offered at a compliance hearing shall be transcribed by tape recorder or stenographer. The record shall consist of the transcript, notice of non-compliance, response, stipulations, exhibits in evidence, and any other docketed documents.

904.08: Compliance Hearing - Oral Argument, Brief, Proposed Findings of Fact

- (1) The hearing officer may in his discretion allow a reasonable time to the parties for oral argument.

904.08: continued

(2) Briefs or proposed findings of fact may be filed by parties or by an interested person before or during the course of a hearing, or within such time thereafter as the hearing officer may designate.

904.09: Compliance Hearing - Finding and Report

Following the close of the compliance hearing, the hearing officer shall within 30 days issue a finding and report in writing, which shall determine, as to each instance of alleged non-compliance in controversy:

(1) whether the county correctional facility is in compliance with 103 CMR 900.00 through 979.00;

(2) if non-compliance is found, whether the plan of remedy, if any, offered by the Sheriff/facility administrator is adequate to secure compliance within a reasonable time;

(3) what other steps, if any, need to be taken to secure compliance; and,

(4) what period of time shall reasonably be allowed for remedying any instance of non-compliance.

The finding and report of the hearing officer shall contain all findings of fact and conclusions of law necessary to support its determinations and shall, upon completion, be delivered to the Commissioner.

904.10: Compliance Order

(1) The Commissioner shall make the final decision in any compliance proceeding.

(2) In cases where a compliance hearing has not been held, the Commissioner may, after review of the notice of non-compliance, the response thereto, and all other relevant materials, issue a written compliance order. The compliance order shall contain determinations of:

(a) instances of non-compliance;

(b) what steps need to be taken to secure compliance; and,

(c) what period of time shall be allowed for remedying all instances of non-compliance.

The compliance order shall also contain all findings of fact and conclusions of law necessary to support its determinations. A copy of the compliance order shall be served upon the Sheriff/facility administrator, and if applicable, each other party to the proceedings and/or each attorney of record for a party.

(3) In cases where a compliance hearing has been held, the Commissioner shall, after review of the finding and report of the hearing officer and all other relevant materials, issue a written compliance order. The compliance order shall contain determinations of:

(a) instances of non-compliance;

(b) what steps need to be taken to secure compliance; and,

(c) what period of time shall be allowed for remedying all instances of non-compliance.

The compliance order shall also contain all findings of fact and conclusions of law necessary to support its determinations. A copy of the compliance order shall be served upon the Sheriff/facility administrator, and if applicable each other party to the proceedings and/or each attorney of record for a party.

904.11: Request for Extension of Time

The Sheriff/facility administrator of a county correctional facility which is the subject of a compliance order may apply in writing to the Commissioner for an extension of the time specified in the compliance order for remedying all instances of non-compliance, provided, that the application for extension is filed prior to the expiration of the time period specified in the compliance order or any previous extension thereof. The Commissioner may in his discretion grant such extensions of time for good cause shown.

904.12: Judicial Enforcement

If the time for remedying all instances of non-compliance specified in a compliance order, including all proper extensions thereof, has expired, and if in the opinion of the Commissioner the facility has not been brought into compliance with 103 CMR 900.00 through 979.00, the Commissioner may, with the approval of the Attorney General, petition the Superior Court in equity in the county in which such facility is located for an order to close the facility or for other appropriate relief. If the Commissioner does decide to petition the Court, following the approval of the Attorney General, he/she shall notify the Sheriff/facility administrator five days prior to said petitioning.

REGULATORY AUTHORITY

103 CMR 904.00: M.G.L. c. 12, § 3; c. 124, § (1), (c), (d) and (q); c. 127, §§ 1A and 1B.