Legislation referred to:  
**Prisons Act 1981** ss 36, 69, 70-74, 74A, 75 and 76  
**Prisons Regulations 1982** rr 26, 66-73

1. **Laying of Charges**
   
a) Prisons Regulation 67(1)(a) requires that prison charges should be dealt with expeditiously. There may be cases where a prisoner needs to be separated from other prisoners pending an investigation, enquiry or disciplinary action. It is essential that this separation under s 36 of the **Prisons Act 1981** is justified and subject to regular review.

b) When an officer believes a prisoner has committed an act of misconduct or committed a prison offence, a written report is to be made by the officer before he/she ceases duty for consideration by the superintendent.

c) If the officer is of the opinion that it is in the interests of good order, good government or security of the prison, a prisoner may be temporarily confined until the matter is reported to the superintendent. The temporary confinement may include:
   
i. confinement to the prisoner's own cell  
ii. confinement in another cell or unit  
iii. confinement to an exercise yard.

d) The superintendent may:
   
i. refer the report to a prosecuting officer to proceed with a formal charge or consider an alternative course of action/enquiry.  
ii. consider the placement of the prisoner pending the disciplinary hearing. Continued confinement must be justified by the threat that the prisoner poses to the good order, government or security of the prison and the necessity for such action over alternative prisoner management strategies.

e) If an order is given to maintain separate confinement under s 36(3), the placement shall be reviewed by the superintendent on a daily basis. The management and routine of the prisoner shall not be less than those of a prisoner subject to placement under s 43 of the **Prisons Act 1981**. (Refer to Operational Instruction 1 for the regime).

f) If separate confinement under s 36 exceeds 72 hours, the superintendent shall inform the relevant Director in writing of:  
i. the reason(s) for the separate confinement for a period of 72 hours
ii. whether continued separation is necessary. If it is considered necessary, an order under s 43 must be obtained, except where the relevant Director agrees to an extension of the confinement under s 36(3) for a further period of up to 72 hours.

2. Prosecution of Charges

A prosecuting officer shall:

a) consider whether there is sufficient evidence to support a charge

b) in the case of a charge under s 69(h) of the Prisons Act 1981 (preferring a false or frivolous complaint against an officer), ensure that there is clear evidence as found by an independent investigation by a person not directly involved with the incident that gave rise to the charge that the prisoner knowingly made a false allegation

c) provide the prisoner with a copy of the formal charge and a written explanation of the disciplinary process that includes the options available to the prisoner as well as the right of the prisoner to call witnesses

d) advise the prisoner when a hearing time is set

e) at any hearing before the superintendent or Visiting Justice, ensure that a written note is made of any request for an adjournment (by either the prosecuting officer or prisoner) and if it is granted, the reason for the adjournment

f) in any case where an order of restitution for damage is made by a Visiting Justice, prosecuting officers are responsible to ensure that the amount debited against the prisoner is for the actual cost of restitution and not an amount based on a quote. If the actual cost is not known at the time of the hearing, the Visiting Justice should be asked to consider ordering restitution for the amount of the quote or any lesser figure that represents the final actual cost. If the final actual cost is higher than the quote, then the prison is to bear the extra cost

g) In any circumstances where a prisoner is suspected of having committed a criminal offence, a prison charge under the Prisons Act based on the same set of facts shall not be proceeded with until it is established that criminal charges will not be laid by the police. Where a criminal charge is laid by the police and the prisoner is dealt with by a court, any prison charge based on the same set of facts shall not proceed.

3. Hearing of Charges

Where the charge against a prisoner is to proceed to a hearing, the superintendent shall set an early time and date for the hearing provided that the hearing shall be not be within a 24-hour period, unless the prisoner so agrees. Prisoners due for release shall be treated under s 32 of the Prisons Act 1981.

Any request by a prisoner to defer the hearing of a prison charge must be made in writing and decisions relating to the request also recorded in writing in line with Appendix 1. Where the charge is referred to a visiting justice, the prison is to advise the visiting justice who will then set a hearing date. The charge shall not be heard within a 24-hour period unless the prisoner so agrees.