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State of Indiana Indiana Department of Correction	Effective Date	Page 1 of	Number
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POLICY AND ADMINISTRATIVE PROCEDURES
Manual of Policies and Procedures

Title
OFFENDER GRIEVANCE PROCESS

Legal References (includes but is not limited to)	Related Policies/Procedures (includes but is not limited to)	Other References (includes but is not limited to)
IC 11-11-1-1 *et.seq.*	00-01-102 01-04-101 02-01-101 02-03-102 02-04-101 03-02-104	ACA: CO: 2-CO-3C-01 ACI: 4-4284 JTS: 1E-02, 3D-09, 5B-02-1, 5H-04

I. PURPOSE:

The purpose of this policy and its administrative procedures is to provide an administrative process that offenders committed to the Department of Correction may use to resolve concerns and complaints relating to their conditions of confinement.

II. POLICY STATEMENT:

The Department shall develop an Offender Grievance Process that allows offenders to raise issues regarding the conditions of their confinement within the Department. It is the intent of the Department that staff be responsive to the concerns of the offenders and that offender complaints and concerns be resolved as soon as possible. Preferably offender complaints will be resolved informally and it will not be necessary to initiate a grievance.

The intent of the Offender Grievance Process is to provide a mechanism for every offender to express complaints and topics of concern, for the efficient and fair resolution of legitimate offender concerns, and for facility and Department management to be better informed and better able to carry out the Department's mission and goals. The Offender Grievance Process is not intended to interfere with or supplant existing channels of communication and the resolution of offender problems or concerns informally, without extra paperwork. It is anticipated that offender complaints will be resolved informally by staff attempting to meet and discuss the complaints prior to the offender filing a formal written grievance.

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All offenders shall be made aware of the Offender Grievance Process during orientation to the Department and the facilities. The Department shall ensure that a copy of this policy and its administrative procedures is placed in various locations, including the Law Library, for ready access by the offenders.
The Department shall ensure that this administrative process provides:

A. A fair and prompt decision and action in response to an individual offender's complaints;

B. An available channel for hearing and resolving concerns of offenders;

C. A management tool for administrators to keep informed of developing trends and specific problems so that they may be addressed in a timely manner;

D. A means to lessen conflict between offenders and staff and offenders and other offenders; and

E. Administrative remedies to complaints in order to prevent litigation.

Staff shall take no reprisal for an offender exercising in good faith the right to use the grievance process. However, offenders who have been found abusing the grievance process may be restricted as to the number of grievances that they may have in the process at any one time.

III. DEFINITIONS:

For the purpose of these administrative procedures, the following definitions are presented:

A. ABUSE: The use of the Offender Grievance Process in a manner other than in good faith, such as the filing of frivolous, repetitive or retaliatory grievances.

B. APPEAL: A request for review of a facility-level response to a grievance by the Department Offender Grievance Manager.

C. DEPARTMENT: The Indiana Department of Correction.

D. DEPARTMENT OFFENDER GRIEVANCE MANAGER: The staff person in the Department's Central Office designated by the Commissioner as being responsible for receiving and ensuring that appeals

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are investigated and a response is returned to the offender and for the oversight of the Offender Grievance Process.

E. EMERGENCY GRIEVANCE: A grievance filed by an offender based upon a situation or condition which presents a substantial, imminent risk to the life or safety of the offender.

F. EXECUTIVE ASSISTANT: The staff person at a facility who is designated by and reports directly to the Facility Head to oversee the operation of the Offender Grievance Process at the facility, including receiving, reviewing, logging, assigning a case number and ensuring an investigation is conducted and a proper response and resolution is made to each grievance. The Facility Head or Executive Assistant may designate another staff member to work with the Executive Assistant and may define the specific duties of that staff member.

G. FRIVOLOUS OR MULTIPLE GRIEVANCES: Repetitive grievances addressing the same issue where sufficient time for a response has not elapsed or where a response has been provided, unless there are continuing grievous violations of the same type or any remedy granted on a prior grievance has not been provided within a reasonable period of time; or grievances in which the allegations or the remedy sought lack any basis in fact.

H. GRIEVANCE: A written complaint or concern submitted on State Form 45471 in compliance with this administrative procedure and accepted and logged by the Executive Assistant. Until the Executive Assistant accepts and logs the document, it is a form and not a grievance.

I. INFORMAL RESOLUTION: A resolution to an offender complaint or concern reached by the complaining offender and staff without the submission of a grievance.

J. MAINLINE: The formal movement of offenders at mealtime, including the time when an offender is in line waiting for a meal in the Food Services area.

K. OFFENDER GRIEVANCE SYSTEM: The computer application officially called the Offender Grievance Review and Evaluation System, or OGRE, employed by the Department to assist in the management of the Offender Grievance Process.

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L. REMEDY: Any action taken in response to a complaint or concern, or to a grievance, raised or submitted by an offender.

M. REPRISAL: Any act or threat of action against anyone for the good faith use of or participation in the Offender Grievance Process.

N. WORKING DAY: Monday through Friday, excluding any holidays recognized and observed by the State of Indiana.

IV. PRINCIPLES OF THE OFFENDER GRIEVANCE PROCESS:

The following principles provide a conceptual framework within which facilities shall provide and operate an effective grievance process:

A. Emphasis shall be placed on the resolution of problems at the earliest possible opportunity and in as informal a manner as possible;

B. Each grievance shall be answered in writing at each level of decision and review, including the reason(s) for the decision;

C. Specific time limits are set at each level of review to ensure that grievances are submitted and responded to expeditiously;

D. Good faith participation shall not result in reprisal by staff or offenders;

E. Every offender will have equal access, regardless of classification, disciplinary or other administrative or legislative decision to which the offender may be subject;

F. The grievance process is applicable to a broad range of issues and concerns;

G. The grievance process contains an appeal system which allows an offender to request review by higher authority if not satisfied with a response received at a lower level;

H. Each new offender and staff member shall be given an introduction to the facility grievance procedure and copies shall be posted or made available to both offenders and staff; and,

I. Remedies available through the grievance process may include the removal of an objectionable condition or a change in departmental policy or procedure or facility procedures.

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V. USE OF THE OFFENDER GRIEVANCE PROCESS:

The Department recognizes only one grievance process. Although an offender may use one or more other methods to resolve problems, the grievance process described in these administrate procedures is the only administrative remedy officially recognized by the Department for grievable issues. The complete Offender Grievance Process consists of three steps: (1) an informal attempt to solve a problem or address a concern, which can be followed by (2) submission of a written form setting out the problem or concern and other information, and the response to that submission, which can be followed by (3) a written appeal of the response to a higher authority and the response to that appeal. The Department does not require an offender who is satisfied with the result at any step to proceed further with the process.

A. Offenders may initiate the grievance process when an incident or issue affects them personally and impacts the conditions of their confinement. Examples of issues about which an offender may initiate the grievance process include, but are not limited to:

1. The substance and requirements of policies, procedures and rules of the Department or facility (including, but not limited to, correspondence, staff treatment, medical or mental health, some visitation, and food service);

2. The way that staff members are interpreting and applying the policies, procedures, or rules of the Department or of the facility.

3. Actions of individual staff, contractors or volunteers;

4. Acts of reprisal for the good-faith use of, or participation in, the Offender Grievance Process; and,

5. Any other concerns relating to conditions of care or supervision within the Department or its contractors, except as noted in these administrative procedures.

B. Some issues cannot be resolved by the Department or the facilities and the offender will need to proceed through other channels in order to attempt to address these issues. Other issues are, by their nature, not of a type that can properly be addressed through the Offender Grievance Process. Some of these types of issues are, but are not limited to:

1. Federal, state and local law;

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2. Court actions and decisions, including pre-sentence investigation reports, pending charges, and jail time credit;

3. Indiana Parole Board or Indiana Clemency Commission actions or decisions;

4. Parole agent recommendations to the Indiana Parole Board;

5. Classification actions or decisions, which include loss of a job, change in security level, facility transfers, and bed moves (a separate classification appeals process is in place for this purpose);

6. Disciplinary actions or decisions (a separate disciplinary appeal process is in place for this purpose);

7. Contents of grievance or appeal responses from the Executive Assistant or the Department Offender Grievance Manager;

8. Complaints on behalf of other offenders;

9. The denial of a sex offender's visits with minors based upon the results of the Department's case review;

10. Any matter over which the Department has no control, such as the actions of persons outside the Department who are not operating under contract with the Department; and

11. Decisions by Facility Heads to designate an offender as an abuser of the offender grievance process and, thereby, restrict the offender's access to the offender grievance process.

In those cases where an offender submits a grievance concerning a non-grievable issue, such as those listed above, staff shall deny the grievance for that reason.

VI. <u>REMEDIES</u>:

If a grievance is decided in favor of an offender, staff shall ensure that the appropriate remedy or resolution to the grievance is provided in a timely manner. The remedy need not directly benefit the offender and need not be the remedy the offender seeks. No grievance will be rejected because an offender seeks an improper or unavailable remedy, except that a grievance will be rejected if the offender seeks:

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A. A remedy available through classification staff;

B. A remedy for an error allegedly occurring during a disciplinary proceeding; or

C. A remedy to a situation or event that is outside the authority of the Department.

The Department may, at its discretion, provide one or more of the following remedies:

A. Provide or replace state-issued items that have been lost, stolen, or damaged through the negligence of staff;

B. Report possible staff negligence to the Attorney General for consideration of providing a remedy through the Tort Claims fund in the event a notice is submitted under the Indiana Tort Claims Act;

C. Change Department or facility procedures or practices;

D. Correct Department records; or

E. Provide other remedies as deemed appropriate by the Facility Head.

The Department will not pay money damages through the grievance procedure. Any money damages will be paid through the Attorney General's Office, either through the Tort Claims procedure or by way of settlement or court judgment.

VII. COMMUNICATION OF OFFENDER GRIEVANCE PROCEDURES:

A. Intake Units

Upon arrival at an intake unit, each offender shall be advised of the offender grievance process during the orientation to the facility and Department. Staff shall ensure that each offender is made aware of the Offender Grievance Process and how he or she may obtain access to a copy of this policy and its administrative procedures. Each offender shall be provided with a copy of the Department's Offender Orientation Handbook which includes a section on the Offender Grievance Process.

Each intake unit shall ensure that the Offender Grievance Process is explained to any offender whose primary language is other than English or

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who has a visual, hearing, or mental impairment that may make it difficult for the offender to understand the Offender Grievance Process.

B. Housing and Supervising Facilities:

All facilities housing or supervising offenders shall ensure that a complete explanation of the Offender Grievance Process is included in the offender's orientation to the facility. This explanation of the Offender Grievance Process shall include, at a minimum, the following:

1. A discussion of the intent of the Offender Grievance Process and the types of issues that may be addressed by it;

2. A description of the Offender Grievance Process forms and how and where these forms may be obtained;

3. A description of the Offender Grievance Process at the facility, including identification of the Executive Assistant;

4. A description of the steps taken to ensure confidentiality;

5. A description of Abuse or misuse of the Offender Grievance Process; and,

6. Where and how offenders may have access to this policy and administrative procedures.

C. Staff Training

Each facility shall ensure that the Offender Grievance Process is included in the orientation given to new staff. This orientation shall include a brief description of the process and its purpose. This orientation shall emphasize the intent of the Department that the offender Grievance Process shall be handled in a fair and equitable manner and that staff shall attempt to resolve complaints and concerns informally whenever possible and that in all cases complaints and grievances shall be resolved as quickly as possible. This training is to include information on conflict resolution and mediation.

All staff shall be provided annual refresher information on the Offender Grievance Process. Additionally, all Executive Assistants and other designated staff who are involved in the Offender Grievance Process routinely shall participate in annual training which may include updates on

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the Offender Grievance System (OGRE), how to address specific issues, and proper methods of communication and dispute resolution.

VIII. USE OF OFFENDER GRIEVANCE PROCESS WITHOUT FEAR OF REPRISAL:

Offenders who choose to use the Offender Grievance Process in good faith, at any step, shall not be subject to reprisal by staff or other offenders. Offenders shall not be the subject of disciplinary action for the good faith use of the Offender Grievance Process.

Any offender who believes that he or she has been the subject of reprisal for using the Offender Grievance Process may file a grievance explaining what action or threat of action has been taken against him or her as a direct result of using the Offender Grievance Process. Such Grievances shall be thoroughly investigated and, if found to be accurate, appropriate action shall be taken against those staff persons or offenders involved in the reprisal.

A disciplinary action filed against an offender for submitting a grievance form that threatens staff, a facility, other offenders, visitors, or volunteers, or that uses insolent or vulgar language other than to explain a statement by staff, shall not be considered reprisal for using the Offender Grievance Process. A disciplinary action shall not be filed against an offender for providing false information on a grievance form unless staff can show that the offender deliberately provided false information in an attempt to harm another person, impair the operation of the facility or misuse the Offender Grievance Process. Only the Executive Assistant or designee may file a disciplinary action for an offense described in this paragraph.

An offender's restriction in the use of the Offender Grievance Process for misuse or abuse of the process shall not be considered a reprisal for use of the Offender Grievance Process and no grievance may be filed regarding this action.

IX. INVOLVEMENT OF STAFF IN THE OFFENDER GRIEVANCE PROCESS:

A. Participation of Person Involved in the Matter at Issue

Any staff person directly involved in the situation giving rise to an offender's complaint or grievance shall not participate in the investigation or resolution of the complaint or grievance other than to provide necessary information during the investigation. For the purpose of these administrative procedures, direct involvement means being the subject of the complaint or grievance, being personally involved in the alleged

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conduct or incident at issue, or being a witness to the conduct or incident. Direct involvement does not include routine administrative actions, such as being a reviewing authority in a matter arising under other administrative procedures (e.g., reviewing correspondence to determine whether action should be taken on it). Staff shall avoid the appearance of a "conflict of interest" when attempting to resolve an offender's complaint or grievance.

If the Facility Head or Executive Assistant is the person directly involved in the situation giving rise to the complaint or grievance, the Facility Head shall appoint a designee (if possible an Assistant Facility Head) to conduct the investigation and provide a resolution to the complaint or grievance. The designee shall serve in the place of the Facility Head and shall indicate the reason why he or she has responded to the grievance rather than the normal responder.

B. Assistance with Preparation of Grievance

In segregation units or other units where an offender does not have access to other offenders, the complaining offender may request that a staff person in that unit assist in the preparation of a grievance or an appeal. Assistance may include writing or, where available, typing the grievance for an offender who cannot write or has limited understanding of English, whose handwriting is not legible, or who is unable to type the grievance. Staff may assist by explaining the grievance process to the offender. However, the complaining offender must sign the grievance and submit the grievance in accordance with any facility procedures for filing grievances. If a staff person assists the offender in preparing a grievance, that staff person shall have no other role in investigating or responding to the grievance.

X. OFFENDER ASSISTANCE IN SUBMITTING A GRIEVANCE:

An offender may assist another offender at the same facility in preparing a grievance or an appeal. Assistance in preparing the grievance or appeal may include an offender writing or typing the document for another offender who either cannot write, has limited understanding of English, whose handwriting is not legible, or who is unable to type it. The complaining offender must sign the grievance or appeal and submit it to staff personally.

XI. EXECUTIVE ASSISTANT:

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Each Facility Head shall appoint a staff person of that facility to the position of Executive Assistant. This staff person shall be of sufficient rank or classification as to have the ability to review offender grievances, conduct any necessary investigation of each grievance, and render a decision on behalf of the facility. This position shall report directly to the Facility Head and shall serve as the Facility Head's assistant. The Executive Assistant may be a full-time or part-time position based upon the volume of grievances normally processed by the facility.

In the absence of the Executive Assistant, the Facility Head shall ensure that an Acting Executive Assistant is appointed to ensure that there is no significant disruption in the operation of the Offender Grievance Process. Additionally, the Facility Head may appoint other staff to assist the Executive Assistant during any prolonged absence of the Executive Assistant or if the volume of grievances is more than one (1) staff person can handle in an efficient and effective manner. The Facility Head shall notify the Department Offender Grievance Manager as to the name, title, telephone and extension number and e-mail address of the staff person designated as the Executive Assistant. This information shall be provided to the Department Offender Grievance Manager within 48 hours of the staff person being assigned to these duties. Additionally, if the Executive Assistant is changed, the Facility Head shall advise the Department Offender Grievance Manager within 48 hours of the selection of the Executive Assistant's replacement. These notifications shall be sent to the Department Offender Grievance Manager via e-mail. The Department Offender Grievance Manager shall determine what training may be necessary for a replacement of an Executive Assistant.

If possible, the Executive Assistant shall be provided with clerical support to assist in the logging of grievances and the preparation of any necessary documentation. The need for the provision of clerical support shall be determined by the Facility Head.

The duties of the Executive Assistant shall be to oversee the Offender Grievance Process at the facility level including, but not limited to:

A. Receive all grievance forms and review them in an impartial manner to determine those that may need priority handling due to their nature and to ensure that all grievances comply with this policy and administrative procedures;

B. Assist staff as needed to resolve offender complaints, grievances, and appeals;

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C. Monitor the informal resolution process through frequent contact with Unit Team staff and offenders to determine the nature of the complaints being received and the types of remedies being provided to the offenders to determine whether any trends are appearing;

D. Investigate and resolve any offender's allegation that he or she has submitted a grievance form that the Executive Assistant has not received;

E. Log grievances upon acceptance and make appropriate entries regarding each grievance and appeal in the Offender Grievance System;

F. Either scan all grievance documents into the Offender Grievance System or maintain a file containing copies of each grievance and all documents generated with regard to each grievance;

G. Note on each hard copy of a grievance the number assigned to that grievance by the Offender Grievance System;

H. Maintain, in the file described above in Section XI.E., all hard copies with respect to each grievance for a minimum of four (4) years from the date of the final action taken as to that grievance;

I. Investigate offender grievances and render an impartial decision on each grievance;

J. Notify the offender of the decision on every grievance and any remedy ordered;

K. Receive all appeals and ensure that they are scanned and logged into the Offender Grievance System and, together with pertinent documents, are sent electronically to the Department Offender Grievance Manager for review;

L. Provide assistance to the Department Offender Grievance Manager in the investigation and resolution of all appeals as requested;

M. Receive the appeal response from the Department Offender Grievance Manager, forward the response to the offender, and discuss the response with the offender as needed:

N. Submit reports as requested to the Facility Head relating to the grievance process in the facility and ensure that the Facility Head is informed of any

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significant activity regarding the operation of the Offender Grievance Process;

O. Assist in the training of staff and offenders in the Offender Grievance Process and ensure compliance with this policy and its administrative procedures, including educating staff in regards to possible errors or inappropriate actions that may impact the operation of the Offender Grievance Process;

P. Remain current on all training relating to the Offender Grievance Process and assist staff involved in the process to keep up-to-date on all appropriate training related to the process; and

Q. Communicate to the Facility Head and the Department Offender Grievance Manager, as needed, serious or systemic issues arising through the Offender Grievance Process.

XII. DEPARTMENT OFFENDER GRIEVANCE MANAGER:

The Commissioner shall appoint a staff person in the Department's Central Office to serve as the Department Offender Grievance Manager. The staff person assigned the duties of Department Offender Grievance Manager shall have an overall working knowledge of the Department and a thorough understanding of the Offender Grievance Process. This staff person shall be given the authority to investigate and resolve all appeals submitted to Central Office and shall work under the supervision of the Director of Operational Support.

The duties of the Department Offender Grievance Manager shall include, but are not limited to, the following:

A. Receive and respond to all offender appeals;

B. Serve as a resource for the Executive Assistants and other staff as needed;

C. Maintain appropriate files regarding the operation of the Offender Grievance Process;

D. Receive information submitted by the Executive Assistants and prepare reports from the Offender Grievance System for submission to the Commissioner and other designated staff as requested;

E. Assist in the development and training of staff in the use and operation of the Offender Grievance Process and the Offender Grievance System, as

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needed but at least annually, in conjunction with the Division of Emergency Operations and Staff Development and the Division of Research and Technology;

F. Report to the Commissioner, Deputy Commissioner/Operations, Director of Operational Support, and other staff, as instructed, on trends or significant issues discovered through the Offender Grievance Process; and,

G. Meet with the Executive Assistants as needed to ensure that the Offender Grievance Process is operating as intended at each facility and to determine with the help of the Executive Assistants trends or issues that need to be addressed relating to the operation of the Department and the facilities.

XIII. INFORMAL RESOLUTION OF COMPLAINT:

It is the intent of the Department to resolve all offender complaints and concerns as quickly and informally as possible. Both staff and offenders are to attempt to resolve problems through open and courteous discussion before turning to the grievance process.

A. Basic Procedure:

Before filing a grievance, an offender is required to attempt to resolve a complaint informally. The offender will do this by discussing the complaint with the staff member responsible for the situation or, if there is no such single person, with the person who is in charge of the area where the situation occurs. If the offender is in fear of that staff member or is threatened by that staff member, or if the staff member is not available, then the offender will discuss the matter with a Counselor, Casework Manager, or other Unit Team member. The Executive Assistant may require the offender to talk to several people to attempt an informal resolution before filing a grievance.

If the offender has a problem with a Department contractor, such as a food contractor or a medical contractor, then the issue should be raised informally with a member of that company's staff. The facility's Executive Assistant may designate the proper contact person in such a case.

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B. Mainline staff:

Additionally, the Facility Head shall ensure that administrative staff of the facility is available at each Mainline movement. Offenders shall be encouraged to discuss concerns with these administrative staff persons while they are "standing Mainline." These staff persons shall attempt to assist the offenders in the resolution of concerns whenever possible. If the administrative staff person is not able to resolve the concern, the staff person shall be prepared to direct the offender to an appropriate staff person who may be able to assist the offender or explain why the concern cannot be addressed. An offender who discusses a concern with an administrative staff person during Mainline, and with such other staff as that administrator may identify, has satisfied the informal resolution requirement of the grievance process.

C. Time Requirements:

The offender is to attempt to contact the staff member as soon as possible after the incident, but in no case should the time period be more than five (5) working days from the date of the incident, unless the offender can provide a reasonable explanation for a delay. Normally, the offender should discuss the incident with this staff person and provide the staff person with all available information to assist in the resolution of the complaint.

When discussing the complaint with staff, the offender is to be courteous and present the complaint in as much detail as possible. The staff person receiving the complaint shall determine whether he or she can address the problem. If not, the staff person shall, within two (2) working days, contact staff who may be able to resolve the complaint.

The staff person discussing the complaint with the offender shall attempt to resolve the complaint as soon as possible. If the complaint is not resolved by the staff person within 10 working days of the day the offender first approached him or her, the offender shall be permitted to submit a grievance form.

Failure of the offender to properly attempt to resolve the complaint may result in a grievance form being rejected. If the staff person contacted by

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the offender does not attempt to resolve the complaint to the best of his or her ability and in good faith during the 10 day period set out above, the offender may report that fact on the grievance form and shall be permitted to submit a grievance form as to the issue presented to staff. Staff shall do nothing to impede the offender's ability to resolve the complaint informally or to submit a grievance form, except that the Executive Assistant may reject a grievance form as set out below.

The time to submit a Grievance form begins on the earliest of these days and ends five (5) working days later:

1. The day the staff member tells the offender that there will be no informal resolution;

2. The day that the offender refuses an informal resolution offered by staff; or,

3. The tenth working day after the offender first seeks an informal resolution from staff.

D. Documentation:

Because this step of the process is intended to be informal, the Department prescribes no form for it. A facility is free, however, to generate its forms as a means of documenting the issue raised in an attempted informal resolution, as well as dates and people involved in the matter. Any such documents should become part of the official record of the grievance process dealing with that complaint.

XIV. THE GRIEVANCE:

A. Submitting the Grievance Form:

If the offender has been unable to resolve his or her complaint or concern informally, the offender shall be permitted to file a grievance. An offender wishing to file a grievance shall submit a completed grievance form within the time set out in Section XIII.C. above and no later than 20 working days from the date of the incident giving rise to the complaint or concern. The time limit is extended if a form submitted within that time is returned to the offender after screening as explained below in Section XIV.C.

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A supply of State Form 45471, OFFENDER GRIEVANCE, is to be maintained in each housing unit and in other locations, such as the Law Library. If the offender cannot obtain this form in the offender's housing unit, the offender shall contact his or her Counselor or the Executive Assistant. The offender shall be provided with the State Form 45471 within one (1) working day from the date the form is requested.

An offender shall submit a grievance form to the person, or in the manner, or both, that the facility designates for persons living in the offender's housing unit. Staff shall forward a completed grievance form to the Executive Assistant within one (1) working day of receiving it. As stated below, the Executive Assistant must either return an unacceptable form or provide a receipt for an accepted form. If an offender does not receive either a receipt or a rejected form from the Executive Assistant within seven (7) working days of submitting it, the offender shall immediately notify the Executive Assistant of that fact (retaining a copy of the notice) and the Executive Assistant shall investigate the matter and respond to the offender's notification.

The grievance form shall explain how the situation or incident affects the offender personally. The offender must explain what actions he or she has taken to try to resolve the complaint or concern informally including the date he or she informally contacted staff about the complaint, the name and title of the staff person with whom he or she discussed the complaint, and the response from the staff person.

The facility shall ensure that a mechanism is in place in each housing unit or Unit Team to ensure that offenders who are illiterate, who do not speak or write English fluently, or who have medical or psychological disabilities have assistance in preparing and submitting a grievance form in accordance with this policy and administrative procedure. This assistance may be from other offenders or from staff if other offenders can not or will not assist.

Each Grievance must meet the following standards:

1. Each part of the grievance form must be completed;

2. It must be written legibly, in plain and simple English;

3. It must avoid the use of legal terminology;

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4. It must raise the same issue that the offender raised in trying to get the informal resolution;

5. It must relate to only one event or issue;

6. It must be submitted by an offender on his or her own behalf, although it can be written by another offender or staff member if the offender is unable to do so due to a physical, language, or other problem;

7. It must explain how the situation or incident affects the offender;

8. It must show how the offender tried for informal resolution of the complaint or concern;

9. The offender must sign the grievance form unless unable to do so because of a transfer, an inability to write, or physical inability caused by restraint or infirmity, and in any such case a staff member must indicate the reason why the offender did not sign the form;

10. The grievance form must be dated; and,

11. The offender must suggest some relief or remedy.

B. Screening the Grievance:

The Executive Assistant will review the grievance form within two (2) working days of receiving it and will either accept it and log it, as described in Subsection C below, or reject it.

The Executive Assistant may reject the grievance form and return it to the offender unfiled if any of the conditions specified above in Subsection A are not met. In addition, the form may be returned to the offender for any of the following reasons:

1. It is clear on the face of the grievance form that the form was not submitted within the time limit;

2. One offender submitted it on behalf of another offender or on behalf of a visitor;

3. It is a “class action” grievance;

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4. It uses profanity or vulgarity in a manner other than as a direct quote (which may result also in disciplinary action);

5. It concerns a classification matter;

6. It concerns the conduct of disciplinary proceedings (see below);

7. It concerns a matter beyond the power of the Department and its contractors to remedy;

8. It deals with more than one event or issue;

9. The grievance constitutes abuse in that it was not submitted in good faith but is frivolous or retaliatory;

10. The matter addressed in the grievance has been raised and addressed before or is being addressed in another grievance submitted by the same offender.

With respect to subsection B.6. above, an offender may not grieve the procedure used in disciplinary proceedings or a finding of guilt. He or she is not barred, however, from filing a grievance about an event that is merely related to an event that is the subject of disciplinary proceedings. For example, an offender who has been found guilty of battery on staff would not necessarily be barred from filing a grievance that the staff member had treated him or his property improperly in the same course of events. An offender who has been found guilty of destroying State property, however, is not permitted to assert in a grievance that a staff member destroyed the property.

The Executive Assistant has the discretion to consider a grievance that does not conform to the foregoing rules if there is good cause for the violation. An example of good cause is an inability to comply for reasons outside of the offender's control.

If the Executive Assistant determines from a review of the grievance form that the form does not meet the requirements of these administrative procedures and there is no good cause shown, the Executive Assistant shall return the grievance form to the offender with an explanation as to why the form was returned and how it may be corrected. State Form 45475, RETURN OF GRIEVANCE, shall be used for this purpose. It will be the responsibility of the offender to make the necessary revisions to the grievance form and to return the revised form to the Executive Assistant

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within five (5) working days from the date that it is returned to the offender.

The first issue the Executive Assistant considers should normally be timeliness. If a grievance form is not submitted in a timely manner and the offender does not provide an acceptable explanation for the period of delay, the grievance form should ordinarily be returned for that reason. An Executive Assistant may choose to respond to the substance of a grievance as well, but any untimeliness should always be noted as the first, and separate, reason for rejecting a grievance form.

NOTE: If the grievance form is returned to the offender because the offender has not attempted to resolve the complaint informally, the offender shall be given five (5) working days from the date the State Form 45475 is completed to seek an informal resolution, and his failure to do so will disqualify him from filing a grievance. If he does seek an informal resolution within five (5) working days and there is no resolution within fifteen (15) working days of the date the grievance form was returned, the offender shall have five (5) working days after that to submit the revised grievance form reporting that fact. (It is recognized that the 15-day time period will be slightly longer than the same period in Section XIII if the offender does not wait the full five (5) days to contact staff. This is done for simplicity's sake.) To clarify these time limits, if on Day 1 the Executive Assistant returns a grievance form to an offender because the offender did not seek an informal resolution, the offender shall have until working day 6 to approach staff and seek informal resolution. If he or she does so and there is no informal resolution by working day 16, the offender must submit a revised grievance form by working day 21. The normal time frames otherwise apply to the grievance.

The Executive Assistant is not authorized to combine or rewrite similar complaints into one grievance. Grievance forms with similar complaints are to be returned to the offender with instructions to submit them on one (1) grievance form.

The Executive Assistant shall make no changes or corrections to a grievance form. If the offender has not provided adequate information, the Executive Assistant may return the grievance form or, in his or her discretion, may contact the offender either through correspondence or personally to request the needed information.

C. Receiving and Logging the Grievance:

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Within two (2) working days of the receipt of an adequate grievance form, the Executive Assistant or designee is to log the grievance and assign a case number. All adequate grievance forms received by the Executive Assistant shall be logged and assigned a case number. The Executive Assistant shall generate a receipt for the grievance and shall return the receipt to the offender within one (1) working day from the date the grievance is logged.

The Executive Assistant shall retain a hard copy or an electronic copy of the grievance and all documents assembled or generated in conjunction with the grievance, including any appeal, for not less than three (3) years from the date of the last action taken with respect to the matter.

D. Responding to the Substance (Merits) of the Grievance:

After receiving and logging an apparently adequate grievance, the Executive Assistant shall begin to investigate the matter by contacting appropriate personnel and reviewing appropriate documents. The identity of appropriate personnel will depend upon the nature of the grievance. The Executive Assistant or other person designated by the Facility Head may contact facility staff or others, including representatives of companies doing business under contract with the Department.

The Executive Assistant or designee shall have 15 working days from the date that the grievance is received to complete an investigation and provide a response to the offender, unless the time has been extended as provided below in Section XV.F. If the offender is pursuing other courses with regard to the subject matter of the grievance, such as letters or court cases, that shall not be cause to delay resolution of the grievance. In the event of a pending law suit raising the same issue as the grievance, the Executive Assistant shall contact defense counsel to advise counsel of the existence of the grievance, which may provide a defense to the law suit.

If there are questions about the timeliness of the grievance, the Executive Assistant should investigate those as well. If such investigation shows that the grievance has not been submitted in a timely manner and the offender shows no good reason for missing the deadline, the grievance ordinarily should be denied for that reason. The Executive Assistant may then proceed to consider the merits of the grievance if he or she wishes to do so, but in that event the Executive Assistant must make it clear that the grievance is being rejected as untimely and any other comments are made in addition to that determination.

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In investigating the merits of the grievance, the Executive Assistant or designated staff may:

1. Interview staff or offenders or request written statements from relevant staff or offenders;

2. Review facility administrative and operational procedures;

3. Review relevant Department and facility policies and procedures or other guidelines;

4. Review as necessary inventories, daily logs, medical records, etc;

5. Interview witnesses as appropriate;

6. Interview resource staff (doctors, supervisors, chaplain, counsel, etc.) for additional information as necessary;

7. Inspect tangible evidence; or

8. Take such other responsible action as he or she deems advisable or as directed by the Facility Head.

Upon completion of the investigation, the Executive Assistant may discuss the substance of the grievance with the offender and reach a resolution orally. An offender may be asked to sign a statement affirming his or her satisfaction with the resolution. In every case, the Executive Assistant shall write a response to the grievance using the response form in the Offender Grievance System and print a copy of the response. The Executive Assistant shall ensure that the response is logged in the Offender Grievance System and that the grievance response is appropriate and approved by the Facility Head. The response shall include the following information, if applicable:

1. Name of the designated staff person who investigated the grievance, if other than the Executive Assistant;

2. Names of witnesses interviewed and resource staff consulted (sources of confidential information shall not be disclosed);

3. Policy or other guidelines as necessary;

4. Evidence found or inability to find evidence;

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5. Conclusion or decision reached by the Executive Assistant or other designated staff person and the reason(s) for this conclusion or decision;

6. Corrective action that has been or shall be taken to resolve the issue and a completion date for that action, when known, and actions taken to ensure that all appropriate staff are notified when corrective action is to be taken; and

7. The dates and times of any discussions of remedies with the offender.

The response must address the issue grieved. In cases where multiple offenders have filed grievances regarding the same incident or situation, the Facility Head may provide one (1) response and distribute or post the response in a manner that will provide the appropriate notification to all impacted offenders.

Following the determination that the grievance response contains all of the required information, the Executive Assistant shall sign and date the grievance response, send it to the offender, and place copies in the offender's facility packet and any file copy retained by the Executive Assistant

E. Appeals from Grievance Responses:

Upon receipt of the grievance response from the Executive Assistant, the offender shall be responsible for reviewing the response and determining whether the response adequately addresses the issues in the grievance. The offender shall be permitted to appeal the response to the Department Offender Grievance Manager if the offender disagrees with the response. The right to appeal is absolute and the offender will not be told otherwise or asked to waive this right.

Appeals must address the basic issue of the grievance. The appeal may contain additional facts or information regarding the original issue and may raise concerns regarding the response from the previous level, but it shall not raise new or unrelated issues. The offender must state why the previous response was unacceptable, thereby establishing a rationale for the appeal and the basis for a reinvestigation. The appeal must be legible, signed and dated by the offender, unless the offender cannot sign the

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appeal and a staff member has indicated why the offender was not able to sign.

An appeal must be submitted to the person, or in the manner, or both as designated by the facility for persons living in the offender's housing unit, and within 10 working days from the date of receipt of the grievance response. If the offender receives no grievance response within 25 working days of the day he or she submitted the grievance, he or she may appeal as though the grievance had been denied. In that event, the time to appeal begins on the 26th working day after the grievance was submitted and ends 10 working days later. This time frame may be waived by the Department Offender Grievance Manager if it is determined that there are valid reasons to do so.

The original grievance, any grievance response, and any other information submitted with the original grievance must be included with the appeal.

Staff receiving the appeal shall forward it to the Executive Assistant within one (1) working day after receiving it. The Executive Assistant shall indicate the date he or she received the appeal and shall generate a receipt for the appeal. The receipt shall be given to the offender within one (1) working day from the date the appeal is logged. The Executive Assistant shall log the appeal and determine whether all pertinent information is included. If the appeal is complete, the Executive Assistant or designee shall scan all of the pertinent information relating to the grievance and appeal into the Offender Grievance System and send all of the information to the Department Offender Grievance Manager electronically. The Executive Assistant is to complete these actions within five (5) working days of receipt. When the Department Offender Grievance Manager receives the appeal and related materials, he or she shall confirm that fact by e-mail to the Executive Assistant.
The Department Offender Grievance Manager shall review all of the information received with the appeal and then:

1. Concur with the initial grievance response and deny the appeal;

2. Grant the appeal, in whole or in part, with the approval of the Director of Operational Support;

3. Contact the facility or other sources for additional information or recommendations concerning an appropriate response; or

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4. Return the grievance to the facility if it appears that the initial grievance response investigation did not address the issues raised in the grievance.

When completing the response to an appeal, the Department Offender Grievance Manager shall include the following elements:

1. The names of witnesses interviewed and resource staff consulted (sources of confidential information need not be disclosed), if additional witnesses or staff members are contacted;

2. Any policies, administrative or operational procedures, operation directives, statutes and other guidelines that have been relied upon to formulate a response, as necessary;

3. Any evidence that is found or the inability to find evidence to support the grievance or grievance response;

4. The decision reached by the Department Offender Grievance Manager and the reasons that such decision was reached; and

5. Any corrective action that has been or shall be taken to resolve the issue, including a projected completion date for the action, if available.

The response must address the original issue grieved. The Department Offender Grievance Manager will indicate approval of the appeal response by placing his or her name, and the date, upon the response. Any copies of relevant and newly discovered documents that are sent to the Executive Assistant are to be maintained with the grievance files, within the Offender Grievance System, or both.

The Department Offender Grievance Manager shall complete his or her investigation and submit a response to the appeal within 20 working days from the date of receipt, unless the Department Offender Grievance Manager notifies the offender and the facility housing the offender in writing within that 20-day period that the appeal will take additional time to complete. The Department Offender Grievance Manager may take one (1) extension of 20 working days; after that time, the appeal is deemed denied.

The appeal response shall be prepared using the response form as found in the Offender Grievance System.

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The decision of the Department Offender Grievance Manager shall be final. Once the response is completed, it shall be returned to the Executive Assistant electronically. It shall be the responsibility of the Executive Assistant to review the response, print a copy of the response, and ensure that the offender receives the response within two (2) working days from the date that the Executive Assistant receives the response from the Department Offender Grievance Manager.

XV. SUMMARY OF TIME FRAMES:

The time limits applicable to the offender grievance process are summarized below. The summary does not describe all of the steps in the process, only the time limits that apply. An offender's unexcused failure to meet any applicable time limit will result in the offender losing the right to grieve. All days specified are working days.

A. Informal Resolution:

- Offender contacts staff by 5th day after incident.
- Staff may refer to other staff by 2nd day after offender contact.
- Informal Resolution period ends no later than 10th day after first contact.

B. Grievance period:

- Staff forwards grievance form, if necessary, to offender within 1 day of request.
- Offender submits grievance form by 20th day after incident.

- Offender submits grievance form also by 5th day after the earliest of:

  1. Learning that staff does not offer an Informal Resolution,
  2. Offender rejecting Remedy offered in Informal Resolution, or,
  3. 10th day after offender approached staff for Informal Resolution.

- Staff forwards form to Executive Assistant within one (1) day of receiving it.

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- Executive Assistant screens grievance by 2nd day after receiving it.
- Offender notifies Counselor/Case Manager and Executive Assistant promptly if he or she receives no notice that Executive Assistant has received the grievance form by 7th day.

C. If Executive Assistant rejects grievance form as inadequate:

- If for failure to seek Informal Resolution, offender must seek it by 5th day after receiving return.
- If no resolution from that, offender must appeal by 15th day after receiving return.
- If for any other reason, offender corrects and resubmits by 5th day after receiving return.

D. If Executive Assistant does not reject grievance form as inadequate:

- Executive Assistant logs grievance and assigns number by 2nd day after receiving it.
- Executive Assistant sends offender receipt within one (1) day of logging grievance.
- Executive Assistant responds by 15th day after receiving Grievance.

E. Appeal period:

- Offender submits appeal by 10th day after receiving response to grievance.
- If no grievance response, appeal due by 25th day after submitting grievance.
- Staff forwards appeal to Executive Assistant within one (1) day of receiving it.
- Executive Assistant sends receipt for appeal within one (1) day of receiving it.
- Executive Assistant logs, processes, and forwards appeal by 5th day after receiving it.
- Offender Grievance Manager responds to appeal by 20th day after receiving it.
- Executive Assistant notifies offender of response by 2nd day after receiving it.

F. Extensions of time:

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1. For an offender:

   An offender who does not follow the time limits set out in this administrative procedure should expect to have his grievance or appeal denied for that reason unless he or she is able to show good cause. The place for setting out the good cause for delay in seeking an Informal Resolution or submitting a grievance form is on the grievance form or an extra sheet of paper submitted with that form. The place for setting out the good cause for delay in an appeal is in an attachment to the appeal form.

2. For the Executive Assistant or the Dept. Offender Grievance Manager:

   The Executive Assistant or Department Offender Grievance Manager may extend his or her deadline once, for fifteen (15) working days in the case of the Executive Assistant and for twenty (20) working days in the case of the Department Offender Grievance Manager. This shall be done by notifying the offender of the extension within the original period for responding. When there has been delay in responding to a request for Informal Resolution, a grievance, or an appeal, the result is that the request, the grievance, or the appeal is deemed to have been denied and the offender is permitted to proceed to the next step of the grievance process, if any step remains. If no step remains, the offender has completed the grievance process.

G. Emergency extensions

When the Facility Head declares a facility emergency in accordance with Policy 02-03-102, "Emergency Response Operations," all time limits shall be suspended. During facility lockdowns that last for an extended period of time, the Facility Head may elect to allow offenders to submit grievances; in such cases, the time limits shall apply unless the Facility Head designates in writing an extension for a fixed period. Grievances that concern life threatening situations shall not be subject to a suspension of the time frames.

XVI. <u>TRANSFER OR RELEASE FROM SUPERVISION</u>:

An offender may pursue or originate a grievance at a facility from which he or she has been transferred or released from supervision only under the following conditions:

A. If the offender sought an Informal Resolution prior to the transfer or release, the offender may exhaust the administrative remedies available

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through the Offender Grievance Process at the former facility. If the offender did not seek an Informal Resolution prior to transfer or release, the failure to do so may prevent him or her from filing a grievance unless the offender shows good cause for the failure.

B. A new complaint against a former facility regarding transfer of property or funds may be initiated within 20 working days from the date of transfer or release. In such cases, the informal step of the Offender Grievance Process shall be waived.

C. The offender shall deal directly with the Executive Assistant at the facility where the complaint arose. In most instances, it is expected that this will be done by mail. The Executive Assistant and Departmental Offender Grievance Manager will make reasonable allowance for the increase in time caused by the use of mail, including the time required to route incoming and outgoing mail at the former facility and the current facility. The offender is required to follow the normal time limits that apply to him or her.

D. If the offender does not agree with the response from the previous facility, the offender may pursue an appeal. The offender shall follow the procedures for appealing the grievance and shall submit the appeal to the Executive Assistant of the previous facility. That Executive Assistant shall follow the normal procedures for processing an appeal.

A grace period should be allowed at each level for both the offender and the Executive Assistant due to the need to communicate with another facility.

XVII. OFFENDER ABUSE OF GRIEVANCE MECHANISM:

Offenders shall not be allowed to abuse or misuse the Offender Grievance Process by attempting to flood the process with excessive numbers of grievances or frivolous grievances. The determination as to whether an offender is attempting to abuse the process shall not be based solely on the quantity of grievances filed by the offender; but shall include the types of grievances and the subject matter of the grievances. The grievances submitted to satisfy the order of a court shall not be included in documentation alleging abuse of the Offender Grievance Process. Nor shall the offender be limited in the number of grievances which may be submitted in order to satisfy such an order from a court.

An offender who appears to be abusing the Offender Grievance Process shall not be automatically referred to the Facility Head as an alleged abuser but shall first be interviewed by the Executive Assistant to determine the rationale and need of

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the offender to file the amount and type of grievances currently under consideration. The ramifications of abuse of the process shall be explained to the offender. Should the offender elect to continue to attempt to abuse the Offender Grievance Process, the offender may be referred by the Executive Assistant to the Facility Head as an alleged abuser of the Offender Grievance Process.

The Facility Head shall determine whether the offender is an abuser and may restrict the offender to having up to ten (10) active grievances in the grievance system at one time, not including emergency (life threatening) or court-remanded grievances. The offender shall be placed on such restriction for a period of ninety (90) calendar days from the date of determination. An offender's ability to seek resolution of grievances through the informal process shall not be restricted.

The Executive Assistant shall return to the offender any grievances in excess of the approved number of grievances submitted by an offender determined to be an abuser. These grievances shall be returned in reverse order of receipt (i.e., the last ones submitted will be the first ones returned). The Executive Assistant shall include a written notice that the offender has exceeded the limit. During the ninety (90) calendar day restriction period, the offender may elect to withdraw one (1) or more grievances filed during that restriction period and which are already in progress at any level and initiate an identical number of new grievances if the offender believes the new issue(s) have greater priority.

A decision to restrict an offender's access to the Offender Grievance Process shall be automatically forwarded to Central Office. The Department Offender Grievance Manager shall review this decision and determine whether these administrative procedures have been followed.

XVIII. DATA COLLECTION GUIDELINES:

The Executive Assistant shall be responsible for ensuring that data regarding the grievances submitted and resolved during the month are collected and maintained. This data shall be entered into the Department's Offender Grievance System, which shall be kept up-to-date at all times and shall reflect the current status of all grievances and appeals. The information to be collected by the Executive Assistant shall be determined by the Department Offender Grievance Manager and other staff who may need to use this information.

The Executive Assistant shall review the entries in the database monthly to determine whether there are any noticeable trends or issues. The Executive Assistant shall report to the Facility Head the results of this review and whether any action may be necessary. Additionally, if the Executive Assistant notes any significant issues or trends that may have a Department-wide impact, the

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Department Offender Grievance Manager shall be advised as to the findings. The Department Offender Grievance Manager shall determine whether a significant issue or trend does exist and, if so, shall report this finding to the Deputy Commissioner/Operations and the Executive Director of Adult Facilities.

XIX. EVALUATION OF THE OFFENDER GRIEVANCE PROCESS:

The Offender Grievance Process shall be evaluated for its effectiveness and accountability annually. The Department Offender Grievance Manager shall work with the Division of Planning to develop and implement an evaluation mechanism for the Offender Grievance Process. Jointly, the Department Offender Grievance Manager and the Division of Planning shall report to the Executive Staff and Facility Heads the results of the evaluation of the Offender Grievance Process and make any recommendations for revision to the process for review and approval. Copies of the evaluation and recommendations shall be given to the Department Policy Manager for possible revisions to the policy and administrative procedures.

XX. APPLICABILITY:

This policy and its administrative procedures are applicable to all facilities housing adult offenders and to all adult offenders committed to the Department.

__Signature on File_____
Edwin G. Buss
Commissioner

__11/30/09_____
Date