



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 3.3.3	Subject: OFFENDER GRIEVANCE PROGRAM
Chapter 3: FACILITY/PROGRAM OPERATIONS	Page 1 of 6
Section 3: Rights and Privileges	Effective Date: April 1, 1997
Signature: /s/ Mike Batista, Director	Revised: 06/28/2016

I. POLICY

The Department of Corrections provides all offenders under its jurisdiction with a grievance and appeal process to resolve complaints and report alleged violations in a timely and confidential manner in accordance with the provisions of this policy.

II. APPLICABILITY

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

III. DEFINITIONS

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Facility/Program – Refers to any division, prison, secure care correctional facility, correctional or training program, or community-based program under Department jurisdiction or contract. This term includes the facility building or residence, including property and land owned or leased and operated by the Department.

Grievance Coordinator – The staff member assigned to administer, investigate, and respond to offender grievances. The responsibilities of this position may also apply to that person's designee.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. Each administrator, or designee, will provide a written offender grievance procedure that complies with federally-mandated requirements, Department policy directives, and national correctional standards prescribed by this policy.
2. Administrators will ensure that staff and offenders are included in the formation, revision, and implementation of grievance procedures.
3. At each level of the offender grievance process, the established periods will be uniform within each Department division, e.g., adult secure facilities, youth services, and community corrections.
4. Secure facilities will provide locked grievance boxes in areas accessible to offenders and one grievance coordinator, or designee, must retrieve submissions to the grievance boxes on a routine and frequent basis.
5. Administrators will ensure that:

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- a. written grievance procedure is reviewed by offenders and staff upon intake or hire with opportunity provided for questions and answers;
- b. grievance procedure is accessible to youth and adult offenders in facilities and programs regardless of classification, status, or disability;
- c. grievance procedure is available in the language spoken by a significant portion of the offender population and appropriate provisions exist to assist visually impaired, hearing impaired, or otherwise disabled offenders, as well as offenders who have limited reading skills, to understand and complete the necessary forms;
- d. necessary forms are readily available, provide clear and concise instructions, and are standardized for each Department division;
- e. procedure applies to a broad scope of complaints that include, but are not limited to, policy and procedures, services and conditions, incidents, staff misconduct, and offender rights;
- f. offenders who use the grievance process are guaranteed protection from reprisals;
- g. the procedure includes the specific complaints that may be grieved and not grieved, e.g., parole decisions, and classification and disciplinary decisions that are subject to a separate appeal process;
- h. the procedure affords meaningful, reasonable remedies, including the opportunity to resolve issues informally, i.e., prior to filing a formal grievance;
- i. responses to grievances are provided according to fixed time limits for each level of the process.
- j. designated staff respond in writing to each grievant at each level of the review by clearly and fully stating the reasons for the decisions reached;
- k. staff process grievance complaints expeditiously to prevent the grievance from becoming moot;
- l. unless the grievant is notified of a time extension for a response, the expiration of the time limit without a response entitles the grievant to move to the next stage of the grievance process;
- m. offenders may file emergency grievances when adhering to established time frames would subject him or her to a substantial risk of personal injury or cause other serious and irreparable harm;
- n. emergency grievances are immediately forwarded without substantive review to the level at which corrective action can be taken;
- o. the grievance process affords all offenders at least one level of review or appeal;
- p. when further review is available to the grievant, the response will inform the grievant of that fact and include instructions on how to obtain such review;
- q. the grievance process provides for an independent review of grievance dispositions, including alleged reprisals, by a person not under the facility or program's supervision or control;
- r. grievances are processed from initiation to final disposition within 180 days with the exception of grievances alleging sexual abuse as outlined in section D below;
- s. a grievance coordinator is assigned to administer the program and is readily available to offenders and staff;
- t. the grievance coordinator maintains accurate, complete, and separate records of each formal grievance, and provides reports and statistics as required by policy and operational procedures;

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- u. staff who participate in the disposition of a grievance will be allowed access to records essential to its resolution;
- v. grievance programs have the option to permit in-person hearings and committees that include staff or offenders, or both, so long as no offender participates in the resolution of any other offender's grievance over the objection of the grievant; and
- w. no offender or staff member who appears to be involved in a grievance complaint will participate in the grievance resolution process.

B. Grievance Program

1. In addition to complying with the general requirements of this policy, administrators will ensure that:
 - a. the grievance program supplements, but does not replace, the informal communication system or the offender disciplinary process;
 - b. newly admitted offenders are informed of the grievance program in accordance with *DOC Policy 4.1.2 Offender Reception and Orientation*;
 - c. procedures include clear, easily understandable information instructing offenders on proper initiation of grievance action at the following levels:
 - 1) informal resolution of grievances;
 - 2) formal standard grievances;
 - 3) formal emergency grievances;
 - 4) grievance appeals to administrator;
 - 5) grievance appeals to Department director; and
 - d. staff are trained to understand the offender grievance process and, if required, participate in the resolution of legitimate complaints.

C. Emergency Grievances

1. Procedures must provide clear information and direction to offenders and staff on the use of emergency grievances to include the following:
 - a. the basis of what constitutes emergency grievances;
 - b. the options offenders have for reporting emergency grievances e.g., verbally or in writing to any staff member;
 - c. the stipulation that emergency grievances will receive immediate attention and corrective action and be verified for offender safety and their legitimacy without undue delay; and
 - d. that such grievances will be expeditiously channeled to the appropriate administrator or resources where action can be taken.

D. Grievances Alleging Sexual Abuse

1. Offenders alleging sexual abuse must not be required to use an informal grievance system nor must they be required to resolve such a grievance with staff or submit the grievance to the staff member who is the subject of the complaint and the grievance will not be referred to the staff member who is the subject of the complaint.
2. There will be no time limit placed on the filing of a grievance alleging sexual abuse. Applicable time limits may be applied to any portion of a grievance that does not allege an incident of sexual abuse.

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3. A final decision on the merits of any portion of a grievance alleging sexual abuse must be issued within 90 days of the initial filing of the grievance. This does not include time consumed by the offender in preparing any appeals.
4. If the 90-day time period for response is insufficient to make an appropriate decision an extension of up to 70 days may be allowed to respond. The offender must be notified in writing of any such extension and provided a date by which a decision will be made.
5. At any level of the process, including the final level, if the offender does not receive a response within the time allotted for reply, including any properly noticed extension, the offender may consider the absence of a response to be a denial at that level.
6. Procedures for the filing of an emergency grievance alleging that an offender is subject to a substantial risk of imminent sexual abuse must include:
 - a. the grievance, or any portion thereof that alleges the substantial risk of imminent sexual abuse, will immediately be forwarded to a level of review at which immediate corrective action may be taken;
 - b. an initial response will be provided within 48 hours;
 - c. a final decision will be made within five calendar days; and
 - d. the initial response and final decision will document the determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.
7. Third parties are permitted to assist offenders in filing requests for administrative remedies relating to allegations of sexual abuse, and are permitted to file such requests on behalf of an offender, with the following exceptions:
 - a. adult offenders must give permission for the third party to file requests and must personally pursue any subsequent steps in the grievance process;
 - b. if the alleged victim is a juvenile a parent or legal guardian is allowed to file a grievance, including appeals, on behalf of the juvenile without the agreement of the juvenile;
 - c. if the alleged victim is a juvenile and the third party is not a parent or legal guardian, the facility may require the juvenile to agree to have the request filed on his or her behalf and may require the juvenile to personally pursue any subsequent steps in the grievance process;
 - d. if the offender declines to have the request processed on his or her behalf the facility will document the offender's decision.
8. The facility or program may discipline an offender for filing a grievance related to alleged sexual abuse only where the facility or program demonstrates that the offender filed the grievance in bad faith.

E. Grievance Coordinator

1. Each facility and program administrator will assign a staff member as grievance coordinator and ensure that he or she is trained to fulfill the program responsibilities.
2. The grievance coordinator, or designee, will:
 - a. ensure the required grievance forms are available to all offenders;
 - b. provide a schedule to all offenders for collecting grievances from locked boxes;

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- c. screen grievances for emergencies, referrals and consultation with other staff, e.g., health care providers on medical issues, investigators for allegations of sexual abuse or sexual harassment, and Americans with Disabilities Act (ADA) coordinator on issues of offender accommodations and rights;
 - d. maintain a log of all grievances and appeals at all levels of the process;
 - e. track and adhere to all established time frames;
 - f. return incomplete or inappropriately filed grievances to offenders with explanations within the prescribed time frames, with the exception of grievances alleging sexual abuse which should be immediately processed according to section D above;
 - g. assign a case number to each grievance for consistency throughout process;
 - h. coordinate investigations and explain decisions in responses; and
 - i. maintain files that include all forms and documents pertaining to each grievance case.
3. Administrators will ensure that grievance coordinator logs are retained for a period of three years from the initial dated data entry.

F. Monthly Grievance Reports

1. Grievance coordinators will document grievance activity and submit reports to respective administrators each month that include the following data:
 - a. number of informal resolutions filed;
 - b. total number of formal grievances filed;
 - c. number filed by category, e.g., standard or emergency;
 - d. number pending final dispositions;
 - e. number filed by type of complaint, e.g., meals, medical, living conditions;
 - f. number filed against staff member;
 - g. number filed by offender location, i.e., living unit;
 - h. number filed by department/unit grieved;
 - i. number and reason grievance not processed, e.g., abusive language, exceeds limit;
 - j. number granted for investigation; and
 - k. number and reason grievance denied.
2. Grievance coordinators will also document and include appeal activity in the monthly reports to administrators that include:
 - a. number of first level appeals granted, denied, or pending; and
 - b. number appeals for independent review granted, denied, or pending.
3. Administrators will ensure that the monthly grievance reports are retained by the facility or program for at least three years following the final grievance disposition.

G. Supervisory Review of the Grievance Program

1. Facility and program administrators will review the monthly grievance reports, analyze the collected data, and address corrective action that may be required to improve operations and/or offender services.
2. Each facility and program administrator will complete an annual grievance program report that summarizes the conclusions and recommendations from monthly reviews and submit it to the Department director.

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3. Monthly and annual reports provide an internal administrative means at the facility/program and Department director level not only to evaluate offender complaints but also to identify and resolve potentially problematic management areas that, when addressed, will further the Department's mission and goals.

V. CLOSING

Questions concerning this policy should be directed to the division, facility or program administrator.

VI. REFERENCES

- A. *42 U.S.C. § 1997 (e)*
- B. *28 C.F.R. 40.1 et. seq.*
- C. *4-4284, 4-4394; ACA Standards for Adult Correctional Institutions, 4th Edition*
- D. *3-JTS-3D-09, ACA Standards for Juvenile Correctional Facilities, 2003*
- E. *DOC Policies 1.1.17, Prison Rape Elimination Act (PREA); 1.3.12 Staff Association and Conduct with Offenders; 4.1.2 Offender Reception and Orientation*

VII. ATTACHMENTS

None