



**DEPARTMENT OF CORRECTIONS
PROGRAMS AND FACILITIES BUREAU
OPERATIONAL PROCEDURE**

Procedure:	PFB 6.1.206 PFB OFFENDER GRIEVANCE APPEALS	
Effective Date:	10/01/2020	Page 1 of 5
Revisions Date(s):		
Reference(s):	DOC 1.1.6; DOC 1.1.17; DOC 1.3.12; DOC 3.3.3; DOC 3.3.20; 41-3-201, MCA; 45-5-501 through 503, MCA; 28 CFR Part 115	
Signature / Title:	/s/ Megan Coy, Programs and Facilities Bureau Chief	

I. PURPOSE:

The Programs and Facilities Bureau provides a process to offenders under the jurisdiction of the Department of Corrections and placed in a PFB facility when they wish to appeal the results of a facility's grievance process.

II. DEFINITIONS:

Discrimination – Unfair treatment including statements, decisions, or acts based on the offender's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

Facility – Refers to the facilities under contract with the PFB. This term includes the facility building or residence, including property and land owned or leased and operated by the facility.

Harassment – Harassment, including sexual harassment, is offensive and unwelcome conduct including, but not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, and offensive objects or pictures, based upon the offender's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin, or in retaliation against an offender because the offender has opposed any discriminatory practices or because the offender has filed a complaint, testified, assisted, or participated in any manner in a discrimination investigation or proceeding.

PFB-Programs and Facilities Bureau – The Bureau oversees the facilities providing assessments and sanctions, prerelease, and treatment services.

Programs and Facilities Contract Manager – The Department's employee(s) who acts as the liaison for services and monitors the contractual agreements between the Department and PFB contract facilities.

Retaliation – A significant adverse act taken against an offender because the offender has opposed any forbidden discriminatory practices or because the offender has filed a complaint, testified, assisted, or participated in any manner in a discrimination investigation or proceeding. As set forth in A.R.M. 24.9.603, significant adverse acts are those that would dissuade a reasonable person from engaging in protected activity.

III. PROCEDURES:

A. GENERAL GUIDELINES:

1. An offender in a PFB facility who has exhausted all levels of a facility's grievance program may appeal the facility's final decision through a three (3)-step process to the Programs and Facilities Bureau within 14 calendar days of the facility's final decision.
 - a. Step-One: *PFB 6.1.206 (B) Grievance Appeal to PFB* may be submitted by offender within 14 calendar days of the facility's final decision. The offender will be deemed to have exhausted his/her administrative remedies if he/she fails to file an appeal within the 14 calendar days.
 - b. Step-Two: If the offender's requested action is not granted, or a response is not received from the Programs and Facilities Contract Manager (Contract Manager) within 20 business days, *PFB 6.1.206(C) Grievance Appeal to PFB Bureau Chief* may be submitted within 14 calendar days.
 - c. Step-Three: If the offender's requested action is not granted, or a response is not received from the PFB Bureau Chief within 20 business days, *PFB 6.1.206(D) Grievance Appeal to Deputy Director* may be submitted within 14 calendar days.
2. Each step of the grievance appeal process should be sent to:
Programs and Facilities Bureau
P.O. Box 201301, Helena, MT 59620
3. During business hours, PFB staff will be available to provide this procedure, the appropriate forms, and instructions on properly completing the forms. PFB staff will also assist offenders who do not speak English, as well as those who are visually or otherwise disabled.
4. Grievance appeals may not be submitted for the following:
 - a. disciplinary decisions made by facility staff or Hearings Officer;
 - b. a determination of ineligibility for rent vouchers based on Administrative Rule of Montana and Montana Code Annotated; and
 - c. actions by outside entities not under the jurisdiction of the Department, including the Sentence Review Board and the Board of Pardons and Parole.
5. Grievance appeals may be submitted for:
 - a. Staff misconduct: Must fit the specific criteria noted in facility policy/procedure.
 - 1) Includes discrimination, harassment, or retaliation.
 - 2) Appeals alleging sexual harassment or sexual misconduct by facility staff will be addressed pursuant to *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*.
 - b. Policy and/or operational procedures: Appeal must specifically demonstrate with factual basis that the offender has been, in some manner, unfairly or personally adversely affected by the application or operation of a facility policy and/or operational procedure.
6. The following apply to all form submissions:
 - a. If an offender does not use the appropriate form, he/she risks having it returned without processing.
 - b. Each form should provide all requested identifying information to ensure contact can be maintained throughout the process:
 - 1) The offender will legibly and clearly state the issue in the space provided.

- 2) The offender must request an action he/she feels will resolve the issue; however, requests for staff termination, reprimand, and/or an apology letter, or for money for punitive reasons, will not be accepted.
 - 3) Incomplete forms will be returned to the offender with a written statement as to why it is not being processed. The offender may resubmit the form with the appropriate corrections, but must do so within 14 calendar days, or it will be rejected.
 - c. An offender may not raise any issue in a grievance appeal that was not raised in the facility's grievance program and may not combine appeals of separate facility responses into a single appeal.
 - d. A single issue, or a reasonable number of closely related issues, will be described on the form and an action will be requested. The name of the individual(s) against whom the offender is making a complaint will be listed.
 - e. If multiple unrelated issues are included on a single form, it will be returned with a response advising the offender to use a separate form for each unrelated issue.
 - f. If two or more offenders file issues on the same form, it will be returned with a response advising the offenders to use separate forms.
 - g. Assistance may be provided by other offenders in filing the form; however, an offender may not submit a form on behalf of another offender.
 - h. Copies of all documentation essential to the resolution of the issue should be attached. The offender is encouraged to retain a copy of all documentation for their personal records.
7. In the course of resolving a grievance appeal, the facility will provide any information and documentation requested by PFB staff. Therefore, because PFB staff may have access to essential records for resolution, the offender's appeal serves as a waiver of confidentiality in this regard.
 8. An offender will not be subjected to retaliation for utilizing a grievance appeal. Persons violating this directive will be subject to disciplinary action.
 9. Abuse of the appeal process by an offender includes the use of threats and submitting multiple grievance appeals in reference to the same issue(s). If it is determined an offender is demonstrating a pattern of abuse, he/she will be notified on the form the reasons for the determination and that future forms continuing the pattern of abuse will be returned as an abuse notice violation.
 10. An appeal filed by an offender in violation of an abuse notice issued by the facility will be reviewed but may be marked as an abuse notice violation and returned to the offender.
 11. If the offender's requested action is granted, it is understood all administrative remedies have been exhausted.
 12. The PFB Administrative Assistant will maintain electronic files to store and track offender grievance appeals.

B. APPEAL OF FACILITY GRIEVANCE RESPONSE:

1. With respect to all time limits established for offenders, extensions may be granted by the respondent for good cause shown in exceptional circumstances, such as physical incapacity or

being in transit while separated from relevant documents.

- a. Respondent will provide written notice to the offender on *PFB 6.1.206(A) Appeal Response Extension*.
 - b. A completed copy of the *Extension* form will be forwarded to corao@mt.gov
3. The PFB staff member receiving *PFB 6.1.206 (B) Grievance Appeal to PFB* will sign the form, fill in the date and time received, and deliver to the appropriate Contract Manager.
 4. Contract Manager will investigate the grievance appeal and attempt to resolve it. The appeal may be referred to another Contract Manager due to any conflict of interest, or to a more appropriate division:
 - a. A copy of the signed response is saved and the original is mailed to the offender within 20 business days and, if appeal was denied, a copy of *PFB 6.1.206(C) Grievance Appeal to PFB Bureau Chief* is included for the offender.
 - b. If Contract Manager determines the appeal is an abuse of the process, he/she will give the reasons for the determination in the response section and state that future appeals continuing the pattern of abuse will be returned as an abuse notice violation on the *Grievance Appeal*. Contract Manager will also mark that the requested action is denied.
 - a. A copy of the form is saved, a chronological entry in offender's OMIS record regarding the abuse notice is made, and the original is mailed to offender.
 - b. If offender submits an appeal form that violates an abuse notice, the Contract Manager will mark that the appeal is an abuse notice violation, save a copy of the form, and mail response to offender.
 5. If offender submits *PFB 6.1.206(C) Grievance Appeal to PFB Bureau Chief* within 14 calendar days:
 - a. Bureau Chief will investigate the appeal and respond on the *Grievance Appeal to PFB Bureau Chief* within 20 business days of receiving the appeal. However, an appeal to the Bureau Chief submitted as an abuse notice violation may be returned to the offender unanswered.
 - b. A copy of the signed response is saved, and the original is mailed to the offender. If appeal was denied by the Bureau Chief, include a copy of *PFB 6.1.206(D) Grievance Appeal to Deputy Director* for offender.
 6. If the offender submits *PFB 6.1.206(D) Grievance Appeal to Deputy Director* for review by the Department's Deputy Director within 14 calendar days:
 - a. Deputy Director will investigate the appeal and respond on the *Grievance Appeal to PFB Deputy Director* within 20 business days of receiving the appeal. However, an appeal submitted as an abuse notice violation may be returned to the offender unanswered.
 - b. A copy of the signed response is saved, and the original is mailed to the offender.
 7. The Deputy Director's response is final and exhausts all administrative remedies available to the offender through the offender grievance appeal process.
 8. If, during any of the appeal reviews, the respondent finds there may be discrimination, harassment, or retaliation against the offender, he/she will contact the facility's human resources office and request it review the offender's grievance with the facility. The facility will provide a summary of its review to PFB.

IV. CLOSING:

Questions regarding this procedure shall be directed to the Programs and Facilities Bureau.

V. FORMS:

- PFB 6.1.206 (A) Appeal Response Extension
- PFB 6.1.206 (B) Grievance Appeal to PFB
- PFB 6.1.206 (C) Grievance Appeal to PFB Bureau Chief
- PFB 6.1.206 (D) Grievance Appeal to Deputy Director