

<p style="text-align: center;"><b>STATE OF VERMONT</b> <b>AGENCY OF HUMAN SERVICES</b> <b>DEPARTMENT OF CORRECTIONS</b></p>	<p style="text-align: center;"><b>Grievance System</b></p>		<p style="text-align: center;"><b>Page 1 of 9</b></p>						
<p style="text-align: center;"><b>CHAPTER: FACILITIES – GENERAL</b></p>	<p style="text-align: center;"><b>#320.01</b></p>	<p><b>Supersedes:</b> #320.01, dated 01/07/2007; Interim Revision Memo: 320.01, Inmate Grievances, dated 9/23/2014</p>							
<p><b>Local Procedure(s) Required:</b> No  <b>Applicability:</b> All staff (including contractors and volunteers)  <b>Security Level:</b> “B” – Anyone may have access to this document.</p>									
<p><b>Approved:</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"><u>SIGNED</u></td> <td style="width: 33%; border: none;"><u>08/04/2022</u></td> <td style="width: 33%; border: none;"><u>09/19/2022</u></td> </tr> <tr> <td style="border: none;">Nicholas J. Deml, Commissioner</td> <td style="border: none;">Date Signed</td> <td style="border: none;">Date Effective</td> </tr> </table>				<u>SIGNED</u>	<u>08/04/2022</u>	<u>09/19/2022</u>	Nicholas J. Deml, Commissioner	Date Signed	Date Effective
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**PURPOSE**

The purpose of this policy is to convey the Department of Corrections’ (DOC’s) intent and philosophy regarding grievances filed by individuals under the custody or supervision of the DOC and to establish procedures DOC staff shall follow when processing grievances.

**AUTHORITY**

28 V.S.A. § 854; APA Rule #06-006, *Offender Grievance System*, March 15, 2006

**POLICY**

The DOC recognizes its duty to ensure the safety and security of all individuals under its custody and supervision. This duty entails safeguarding the emotional and physical safety of these individuals, as well as their constitutional rights. When conflicts arise, the DOC is committed to resolving them at the lowest, and most immediate, level. In circumstances where this is not possible, all individuals under the custody or supervision of DOC can engage the grievance filing process, to which they are introduced during their orientation.

The grievance system is the administrative process designed to support the needs of individuals under the custody or supervision of the DOC to resolve conflict in a timely manner and identify opportunities for DOC service improvement. Individuals under the custody or supervision of

DOC may file grievances directly with the DOC Commissioner, but they must do so in accordance with this policy.

## **GENERAL GUIDELINES**

### **A. General Process**

The standard grievance process shall consist of a single process involving an informal and formal response. The emergency grievance process is expedited and does not require both an informal and formal response.

### **B. Eligibility**

1. Grievances typically concern issues regarding access to services or conditions of confinement, such as:
  - a. An alleged violation of civil, constitutional or statutory rights;
  - b. An alleged violation of a DOC administrative policy or APA Rule;
  - c. An alleged criminal or prohibited act, including sexual abuse or harassment, by a staff member, volunteer, contractor or another incarcerated or supervised individual;
  - d. Unsafe or unsanitary conditions; or
  - e. Any other matter relating to access to privileges, programs and services, or conditions of care under the authority of the DOC.
2. Individuals should not file duplicate or repeated grievances.
3. Ineligibility of Grievances
  - a. Grievances are ineligible if they:
    - i. Contain profanity, or derogatory or obscene statements;
    - ii. Contain threatening language or tone;
    - iii. Concern a matter previously resolved through the grievance process, formal investigation, appeal, or other adjudicative process, in the DOC or any other venue; or
    - iv. Are filed outside the timelines set in this policy.
  - b. Staff shall review grievances and return ineligible grievances to the individuals who filed them for correction. This may include grievances not filed according to the appropriate process.
  - c. Individuals under the custody or supervision of the DOC shall not file grievances for subjects that have separate appeal procedures, such as:
    - i. Appeals of disciplinary reports (DRs);
    - ii. Appeals of furlough violation hearings;
    - iii. Appeals of administration segregation; and
    - iv. ADA accommodation requests.
4. Staff shall forward all grievances alleging staff misconduct, including abuse, sexual abuse or harassment, and criminal activity, to the site Grievance Coordinator and the applicable Superintendent, Prison Rape Elimination Act (PREA) Compliance

Manager (for allegations of sexual abuse or harassment), District Manager, or Out-of-State (OOS) Facilities Manager.

- a. These grievances shall be investigated, and may be referred to the Vermont Department of Human Resources, as appropriate.
  - b. Staff shall provide the grievant (i.e., the individual who filed the grievance) with an acknowledgement that the grievance was received, but provide no other response (e.g., to the grievance's content or merits).
  - c. Grievances of staff misconduct filed by individuals housed at a supplemental housing correctional facility (SHCF) or out-of-state (OOS) facility shall be referred to the facility for investigation.
5. The availability and use of DOC's grievance procedure does not prevent an individual from filing a complaint of discrimination on the basis of disability with the U.S. Department of Health and Human Services, Office for Civil Rights.

### **C. Notice of Right to Grieve**

Staff shall provide individuals under the custody or supervision of the DOC with notice of their right to grieve and provide them with an orientation to the grievance procedure, as outlined below. Staff shall ensure that orientation materials describe the grievance complaint process.

1. The *Notice of Right to Grieve*:
  - a. Outlines information regarding the right to grieve;
  - b. Provides examples of the issues that can be resolved through the grievance process; and
  - c. Describes how individuals under the custody or supervision of the DOC can appeal a decision.
2. During the intake process, a DOC staff member shall:
  - a. Review the *Notice of Right to Grieve* with individuals under the custody or supervision of the DOC;
  - b. Request the individual's signature on the *Notice of Right to Grieve*;
  - c. Provide the individual with a copy of the signed *Notice of Right to Grieve*; and
  - d. Make themselves available to answer questions.
3. Responsible staff (e.g., Policy Development Unit and Facility Law Library Administrator) shall ensure a copy of this grievance policy is available in all DOC law libraries, on inmate electronic tablets, and on the DOC website.
4. Staff shall respond to requests for grievance forms and provide the forms to individuals under the custody or supervision of the DOC. Staff shall also ensure that these forms can be found in all facility living areas and law libraries.
5. Staff shall assist any individual under the custody or supervision of the DOC who requests help with filing a grievance.
6. Staff shall provide individuals under the custody or supervision of the DOC who have limited English proficiency all grievance documents in accordance with Agency of Human Services (AHS) policy on limited English proficiency.
7. Staff shall provide individuals under the custody or supervision of the DOC with disabilities grievance information in an alternative format, or by an alternative

method of delivery, to aid in their full understanding of the policy, consistent with requirements of the Americans with Disabilities Act (ADA), DOC policies related to that act and effective communication for deaf and hearing-impaired individuals, and state law.

8. In cases when the individual does not sign electronically, intake staff shall upload the individual's signed *Notice of Right to Grieve* into the Offender Management System (OMS).

#### **D. Assignments and Responsibilities**

1. Each Superintendent, District Manager, and OOS Facilities Manager shall ensure that all individuals under the custody or supervision of DOC have access to the grievance system.
2. Each Superintendent and District Manager shall appoint an employee to serve as a Grievance Coordinator at each facility and field office. The Commissioner shall appoint an employee to serve in this role at Central Office.
3. Grievance Coordinators shall:
  - a. Investigate grievances, or assign grievances for investigation;
  - b. Ensure that orientation materials for individuals under the custody or supervision of DOC include accurate information about the grievance process;
  - c. Ensure that all timelines are met;
  - d. Create each grievance in OMS, upload all grievance forms received, and document all responses to grievances in OMS;
  - e. Provide in-service training on the grievance system to staff, as needed;
  - f. Submit reports and other correspondence, as needed, to the Central Office Grievance Coordinator;
  - g. Forward grievance and ensure coordination between facilities and/or field offices for the processing of and response when:
    - i. They involve circumstances, or issues, from both sites; or
    - ii. The individual has been transferred to a new site.

#### **E. Staff Training**

1. The DOC shall include information on the grievance policy, procedures, associated administrative directives, and resolution techniques in its training curriculum or practices.
2. Work site managers, in coordination with the Grievance Coordinator(s), shall ensure that all staff know how the grievance policy, procedures, and associated policies are implemented at their assigned work site.

### **PROCEDURAL APPLICATION**

#### **A. General**

1. Except in emergency situations, or when criminal activity, employee misconduct, or employee sexual abuse or harassment is alleged, DOC staff shall first attempt to resolve all complaints informally. If the informal response is unsuccessful, staff shall

notify grievants that they may file a formal grievance as outlined below under [Section C., Formal Grievance Procedure](#).

2. Staff shall make grievance forms readily accessible and available on request.
3. DOC staff shall not retaliate, or threaten to retaliate, against any individual under the custody or supervision of DOC for filing or withdrawing a grievance, and shall be subject to disciplinary action, in accordance with the terms of the Corrections Bargaining Unit agreement, if they do.

## **B. Informal Complaints**

1. Staff and grievants shall make every effort to resolve concerns before engaging in the documented informal complaint process.
  - a. Staff shall encourage grievants to directly communicate their concerns to the specific staff person responsible for those concerns, whenever possible.
  - b. Staff are encouraged to use techniques such as advanced verbal communication, mediation, negotiation, and other practices to resolve disputes.
2. When such resolution is not possible, the informal resolution process should be used to resolve complaints without the formal grievance process (outlined below under [Section C., Formal Grievance Procedure](#)), whenever possible. Individuals who seek informal resolution first may experience a faster resolution than if they attempt to skip this process.
3. Staff at all levels shall prioritize responding to informal complaints promptly.
4. The informal resolution process does not need to be used for complaints that:
  - a. Are emergencies;
  - b. Allege employee misconduct or sexual abuse or harassment; or
  - c. Allege criminal activity.
5. Staff shall use the following informal resolution process for complaints:
  - a. The grievant shall submit a complaint and plan for resolution form (also known as "Grievance Form 1"):
    - i. To any staff member at the site in which the individual is currently housed, or the field office from which they are currently supervised; and
    - ii. As soon as reasonably possible after the event, or discovery of the cause of the complaint, but no more than 10 business days afterward.
  - b. Staff shall make every effort to resolve, or respond to, the informal complaint.
    - i. Staff may initiate a resolution, if action is within the normal scope of their authority and responsibilities.
    - ii. If resolution is beyond the scope of the staff member's authority or responsibilities, staff shall notify their supervisor by the end of their shift, to attempt to resolve the issue.
    - iii. When responding to the informal complaint, staff shall record their response on the form, and complete the relevant section of the form.
  - c. Staff shall ensure that informal complaints are responded to within 48 hours. If an informal complaint is not resolved, or responded to, in this timeframe, staff shall notify the grievant that they may file a formal grievance.

### C. Formal Grievance Procedure

If a plan of resolution is not agreed upon within 48 hours of when it was first raised (see [Section B., Informal Complaints](#), above), the grievant may file a formal grievance as described below. This must be done no later than 14 business days from the completion of the informal resolution process.

1. An individual under the custody or supervision of the DOC, including one residing in an SHCF or OOS facility, can initiate the formal grievance process by submitting a completed formal grievance submission form (also known as “Grievance Form 2”) to any designated DOC staff member.
  - a. Individuals housed at an SHCF or OOS facility may submit grievances to a staff member at the facility, who will email it to the Vermont DOC OOS Unit, or directly to the appropriate Vermont DOC Corrections Services Specialist (CSS).
  - b. For grievances that allege sexual abuse or harassment:
    - i. An individual who submits a grievance alleging sexual abuse or harassment may submit that grievance without submitting it to a staff member who is the subject of the complaint.
    - ii. A third party, including an incarcerated individual, staff member, family member, attorney, or outside advocate, shall be permitted to assist and file grievances relating to allegations of sexual abuse or harassment on behalf of individuals under the custody or supervision of the DOC.
      - a) If a third party files such a request on behalf of an individual, the PREA Compliance Manager may require the alleged victim to:
        - 1) Agree to have the request filed on their behalf; and
        - 2) Personally pursue any subsequent steps in the grievance process.
      - b) If the individual declines to have the request processed on their behalf, the PREA Compliance Manager shall document the individual’s decision on the formal grievance submission form.
2. The receiving staff member shall:
  - a. Check that the form appears complete;
  - b. Sign the form;
  - c. Record the date and time it was received;
  - d. Attempt to remedy the grievance, if it is within the scope of their authority and responsibilities. If the staff member is able to remedy the grievance, they should record the resolution plan on the form;
  - e. Provide a copy of the form to the individual; and
  - f. Forward the grievance to the site Grievance Coordinator by the end of their shift.
3. The site Grievance Coordinator shall document the formal grievance in OMS, upload the related forms, and assign a staff member to conduct a grievance investigation.
  - a. The assigned investigator may not be named or otherwise involved in the grievance. For example, a grievance alleging sexual abuse or harassment shall not be referred to a staff member who is the subject of the complaint.
  - b. For any grievances related to education, the Corrections Education Supervisor shall be assigned to conduct the grievance investigation.

4. The assigned investigator shall review the grievance and submit recommendations to the site Grievance Coordinator on the appropriate grievance investigation and response form.
5. The site Grievance Coordinator shall review the investigation and findings with the Superintendent, District Manager, or OOS Facilities Manager, as appropriate.
6. The Superintendent, District Manager, or OOS Facility Manager shall then select one of the following outcomes and complete, date, and sign the appropriate grievance investigation and response form:
  - a. Denied: There is no evidence to support the basis of the grievance.
  - b. Meritorious in part: There is evidence to support part of the grievance.
  - c. Resolved: The issue has been acknowledged and a solution is in progress.
7. The following timelines shall apply to formal grievances:
  - a. For all grievances that do not allege sexual misconduct, the site Grievance Coordinator shall ensure a response from the Superintendent, District Manager, or OOS Facilities Manager is provided to the grievant within 20 business days of the day it was filed. (Day 1 of 20 is the first full business day after the grievance is received by site staff).
  - b. For grievances that allege sexual abuse or harassment, the PREA Compliance Manager will include the response to the grievance as part of the investigative process, that shall be completed within 90 business days. This response time may be extended by an additional 70 days, upon written notice to the grievant, including the date by which a decision will be made, if the initial 90-day period is insufficient.
8. The site Grievance Coordinator shall document the investigation, findings, and response in the grievance record in OMS and upload all related forms into OMS.
9. If staff does not issue a timely response to a grievance, the grievant may presume that the grievance was denied, and may submit an appeal to that decision (see [Section E., Appeals](#) below).

#### **D. Emergency Grievances**

1. An individual under the supervision or custody of the DOC may file an emergency grievance, using either a complaint and plan for resolution form or a formal grievance submission form ("Grievance Form 1" or "Grievance Form 2"), when any of the following conditions are present and have not been addressed:
  - a. A threat of physical or emotional harm, injury, or death;
  - b. A threat of disruption of facility or field operations; or
  - c. A need for prompt resolution in order to carry out meaningful action or decision.
2. The designated staff member shall review all grievance forms which are marked as emergencies at their earliest opportunity, but before the end of their shift, to identify if they do, in fact, qualify as emergencies.
  - a. If the designated staff member determines that an informal complaint or grievance marked as an emergency does not meet the qualifications of an emergency outlined above, the staff member shall:

- i. Notify the grievant that the grievance will not be handled as an emergency grievance;
  - ii. Record this assessment on the submitted form; and
    - a) If the grievant submitted a complaint and plan for resolution form (“Grievance Form 1”), the staff member shall treat the submission like an informal complaint; or
    - b) If the grievant submitted a formal grievance submission form (“Grievance Form 2”), the staff member shall treat the grievance like a non-emergency formal grievance. In cases when the grievant did not complete the formal grievance section of the form, the staff member shall return the form to the individual for them to complete and resubmit.
- b. If the designated staff member determines that the grievance meets the qualifications of an emergency outlined above:
- i. When the emergency grievance alleges sexual abuse:
    - a) The staff member shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the PREA Compliance Manager or Superintendent, or designee, so immediate corrective action may be taken.
    - b) Upon receiving an emergency grievance alleging an individual is subject to a substantial risk of imminent sexual abuse, the PREA Compliance Manager or Superintendent or designee shall:
      - 1) Provide their response to the grievant within 48 hours, including:
        - (a) Their determination of whether the individual is in substantial risk of imminent sexual abuse; and
        - (b) The action taken in response to the emergency grievance; and
      - 2) Notify the Superintendent, or designee.
    - c) The Superintendent, or designee shall issue a final agency decision to the grievant within 5 calendar days. This response shall also include:
      - (a) The determination of whether the individual is in substantial risk of imminent sexual abuse; and
      - (b) The action taken in response to the emergency grievance.
  - ii. For all other emergency grievances:
    - a) The designated staff member shall:
      - 1) As soon as possible:
        - (a) Take steps to address any immediate safety concerns; and
        - (b) Notify the appropriate Superintendent, OOS Facilities Manager, or District Manager and:
          - (i) Follow their recommendations to attempt a resolution; or
          - (ii) Assign the grievance to a staff member with the authority to resolve, or respond to, the issue.
      - 2) Provide the grievant with a copy of the emergency grievance response within eight hours.



- 3) Notify the appropriate Shift Supervisor and Superintendent, OOS Facilities Manager, or District Manager if the emergency grievance cannot be resolved within eight hours, including what efforts have been made to respond to the grievance up to that point.
  - 4) Ensure that the emergency grievance and response is provided to the site Grievance Coordinator in a timely manner.
- b) Upon notice that an emergency grievance has not been resolved within eight hours, the Shift Supervisor shall channel the grievance through the DOC chain-of-command until it reaches a level where action can be taken or a resolution can be reached.
  - c) The Grievance Coordinator or PREA Compliance Manager shall create each emergency grievance in OMS, upload all related forms, and document the related investigation, findings, and response in OMS.

#### **E. Appeals**

Grievants dissatisfied with a grievance decision may file an appeal with the Commissioner within 10 business days of receiving the grievance decision.

1. Appeals must be filed using the appropriate decision appeal to Commissioner form ("Grievance Form 3").
2. Individuals submitting an appeal may submit the completed form to the Central Office Grievance Coordinator.
3. The Central Office Grievance Coordinator shall ensure the appeal is documented in the grievance record in OMS, and the appeal and response are uploaded into OMS.
4. The Central Office Grievance Coordinator shall ensure that a response from the Commissioner is provided to the grievant within 20 business days (Day 1 is the first full business day after the grievance complaint is received by site staff.).
5. Individuals who do not receive a timely response to an appeal may presume the appeal was denied and may consider their administrative remedies exhausted.
6. The Commissioner's decision is considered final. There are no further administrative appeals.

#### **F. Reporting**

The Central Office Grievance Coordinator shall prepare and submit an annual report to the Executive Leadership Team for review. The annual reports shall include any identified trends and the frequency with which grievances are filed.