

POLICY & PROCEDURES  NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION		POLICY & PROCEDURES NUMBER: 3C-10 - Restricted, DO NOT place on the internet
		ACA/ACI/PBS RELATED STANDARDS: ACI 4-4284
		RELATED REFERENCES:
DIVISION: North Dakota State Penitentiary, James River Correctional Center and Missouri River Correctional Center of the North Dakota Department of Corrections and Rehabilitation - Institutional Operations	SECTION: Adult and Juvenile Rights	SUBJECT: Grievance Procedures

Effective Date: July 7, 2011

Revision/Review History

Revised: July 16, 2012
 Revised: February 26, 2014
 Revised: September 16, 2014
 Revised: November 17, 2014
 Revised: April 7, 2015
 Revised: February 25, 2016
 Revised: August 24, 2017
 Revised: August 3, 2018
 Reviewed: October 16, 2019
 Revised: July 10, 2020

Summary of Revisions

Revisions made by Colby Braun and Team. 06/09/2020

1. Revisions of two Appendices: Inmate Grievance Form – Informal Resolution/Step One and Appeal of Step 2 Grievance Decision – to Director of DOCR (completed 07/06/2020)
2. Changed C.3:Grievance Definition
3. Changed C.4: Retaliation definition
4. Revised wording 5.B.1-4
5. ADDED 5.B.3: PREA allegations may be submitted on a grievance form. However, the DOCR does not use administrative procedures to address inmate sexual abuse. If an allegation of sexual abuse is submitted on a grievance form, the DOCR shall process it as outlined in Policy 3C-4 Prison Rape Elimination Act of 2003. If the grievance includes an element regarding staff conduct, such as failure to protect, it also will continue as a grievance (if the grievance otherwise complies with grievance process requirements).
6. ADDED 5.C.1: Issues regarding events that occurred more than fifteen (15) days prior to submission of the grievance. Failure to submit a grievance within fifteen (15) days from the occurrence of the event (without good cause) will cause its dismissal.

7. ADDED 5.C.4.e: Other federal, state, and local governmental agencies, including federal, state, and local law enforcement agencies; and
8. Revised 5.D: Grievance Procedure: Adults in custody are encouraged, but not required, to attempt to resolve their issues outside of the grievance procedure; however, they are required to participate in an informal resolution attempt as part of the grievance procedure. The grievance procedure includes documentation of the grievance, a documented attempt at informal resolution, two levels of documented internal resolution (Step One and Step Two), and an appeal to the Department Director. All grievance information shall be on the grievance form if the Adult in custody attempts to attach additional information, the grievance may be denied for not following proper procedure under section 5.E. The Department shall explain the grievance procedure in the Facility Handbook.
9. Major revisions in entire section of 5.D
10. ADDED in 5.D.5.a.iv: Return the Appeal to Step 2 Grievance Decision form to the housing unit staff. Staff will sign the completed form and the resident will send it to Administrative Services through inside mail
11. ADDED 5.E.1: If upon receiving a grievance or at any point during the grievance procedure Department staff determines (a) the issue is not subject to the grievance procedure or (b) the adult in custody has not properly followed the grievance procedure, Department staff shall document this decision and rationale on the grievance form, enter it into ELITE, scan the grievance and response into Filenet, and forward them to the Warden for review.
12. Deleted 5.D.1.c: Case Managers shall provide the grievance to administrative staff for documentation in ELITE and Filenet as soon as possible after receipt.

<p style="text-align: center;">POLICY & PROCEDURES NORTH DAKOTA STATE PENITENTIARY JAMES RIVER CORRECTIONAL CENTER MISSOURI RIVER CORRECTIONAL CENTER</p>  <p style="text-align: center;">NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION</p>	<p>POLICY & PROCEDURES NUMBER:</p> <p>3C-10</p> <hr/> <p>APPENDICES:</p> <ul style="list-style-type: none"> • Inmate Grievance Form – Informal Resolution-Step One 2020 • Inmate Grievance Form – Step 2 2012 • Appeal of Step 2 Grievance Decision – To Director of DOCR 2020
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1. **AUTHORITY:** Authority for this policy with procedures is found in chapters 54-23.3 and 12-47 of the North Dakota Century Code.
2. **APPLICABILITY:** This policy with procedures applies to all employees of the Department of Corrections and Rehabilitation (“Department”) adult facilities.
3. **DEFINITIONS:**
 - A. **Adult in Custody:** Individual sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation, or individuals transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government.
 - B. **ELITE:** The information management computer system utilized by adult and juvenile facilities, and juvenile community.
 - C. **Grievance:** A written complaint submitted through the grievance procedure by a juvenile or adult in custody about a Department policy, condition of confinement, circumstance, action, or failure to act that the juvenile or adult in custody claims to be unjust, unfair, or unlawful.
 - D. **Retaliation:** Adverse action or conduct taken against an adult in custody for submitting a lawful grievance or the exercise of a legal right.
4. **POLICY:** The Department of Corrections and Rehabilitation adult facilities shall maintain a grievance procedure for adults in custody. The Department of Corrections and Rehabilitation shall provide adults in custody with an opportunity to resolve issues in an informal setting prior to utilizing the formal grievance procedure and require an attempt at information resolution as part of the grievance procedure. Retaliation against adults in custody for use of the grievance procedure and interference with the procedure are prohibited. **(4-4284)**
5. **PROCEDURES:**
 - A. **Grievance Availability:** The grievance procedure must be available to adults in custody in Department facilities, private facilities, and transitional facilities within the State of North Dakota.

- B. Issues Subject to the Grievance Procedure: Adults in custody may only pursue a grievance about a matter subject to the grievance procedure that adversely affected them personally and directly within the last fifteen (15) days, including:
1. Policies, rules, and procedures enforced within the institution (if they personally, negatively, and directly affect the adult in custody who filed the grievance).
 2. Conditions of confinement; policies, rules and procedures that impact conditions of confinement; or the lack of a policy, rule or procedure that affects the conditions of confinement, including the exercise of religious beliefs; recreation; access to medical, dental, vision care and treatment; access to education programs; accounts; commissary; case management; food service; housing conditions; hygiene; jobs; laundry; legal access; mail and mailroom; privileges; programs; property publications; recreation; safety; sanitation; searches; staff conduct (such as failure to protect or excessive use of force); and visitation.
 3. PREA allegations may be submitted on a grievance form. However, the DOCR does not use administrative procedures to address inmate sexual abuse. If an allegation of sexual abuse is submitted on a grievance form, the DOCR shall process it as outlined in Policy 3C-4 Prison Rape Elimination Act of 2003. If the grievance includes an element regarding staff conduct, such as failure to protect, it also will continue as a grievance (if the grievance otherwise complies with grievance process requirements).
 4. Retaliatory actions against adults in custody for submitting a grievance or for their exercise of a legally protected right.
- C. Issues Not Subject to the Grievance Procedure:
1. Issues regarding events that occurred more than fifteen (15) days prior to submission of the grievance. Failure to submit a grievance within fifteen (15) days from the occurrence of the event (without good cause) will cause its dismissal.
 2. The following procedures, which have an established, formalized appeal or review process.
 - a. Disciplinary proceedings;
 - b. Classification proceedings;
 - c. Administrative Segregation placement;
 - d. Medical payment committee or co-pay decisions;
 - e. Removed property;
 - f. Rejection of mail; and
 - g. Financial Obligation hearing decisions.

3. Medical decisions by a doctor, nurse practitioner, physician's assistant, dentist or psychologist.
 4. Actions of persons or entities outside the jurisdiction of the institution including:
 - a. The enactment of state or federal laws, treaties, or administrative rules and regulations;
 - b. State and federal court opinions, rules, orders, and decisions;
 - c. North Dakota Parole Board procedures and decisions;
 - d. North Dakota Pardon Advisory Board procedures and recommendations and the Governor's decisions;
 - e. Other federal, state, and local governmental agencies, including federal, state, and local law enforcement agencies; and
 - f. Medical decisions by outside providers.
- D. Grievance Procedure: Adults in custody are encouraged, but not required, to attempt to resolve their issues outside of the grievance procedure; however, they are required to participate in an informal resolution attempt as part of the grievance procedure. The grievance procedure includes documentation of the grievance, a documented attempt at informal resolution, two levels of documented internal resolution (Step One and Step Two), and an appeal to the Department Director. All grievance information shall be on the grievance form if the Adult in custody attempts to attach additional information, the grievance may be denied for not following proper procedure under section 5.E. The Department shall explain the grievance procedure in the Facility Handbook.
1. Grievance: Adults in custody shall document their grievances on the Informal Resolution/Step 1 Grievance form (SFN 51737).
 - a. Adults in custody shall follow the instructions, including:
 - i. Fill out identifying data legibly in the space provided;
 - ii. Clearly state the basis for the grievance and include the date the occurrence that is the subject of the grievance occurred;
 - iii. State specifically what remedy they are requesting; and
 - iv. Sign and date the grievance.
 - b. Adults in custody shall provide the form to their Case Manager.
 2. Informal Resolution: Case Managers shall coordinate with involved Department staff to ensure an informal resolution recommendation is documented on the Informal Resolution/Step 1 Grievance form. Department staff shall provide the form with the informal resolution recommendation to adults in custody.

- a. Adults in custody shall sign, date, and mark whether they agree or disagree with the informal resolution recommendation. Adults in custody shall return the form to the Department staff who provided the informal resolution recommendation. Department staff shall sign and date the form.
 - i. If adults in custody agree with the informal resolution recommendation, Department staff shall stop the process and send the completed grievance to the Administrative Staff Officer to be scanned into Filenet. After a copy is placed in Filenet, original grievances and response must be returned to adults in custody.
 - ii. If adults in custody disagree with the informal resolution recommendation, Department staff shall provide the grievance to their Case Managers, who shall proceed to Step One.
 - iii. Adults in custody must acknowledge the informal resolution recommendation before their grievances can move to Step One. If adults in custody refuse to sign, date, and mark agree or disagree, Department staff shall stop the process, make a note on the form and process the grievance according to Subsection D.
 - b. Case Managers shall document informal resolution meetings with adults in custody in ELITE.
3. Step One. Unit Management staff shall investigate grievances and provide formal responses in the Step One box on the Informal Resolution/Step 1 Grievance form.
- a. Even if the same Department staff completed the informal resolution recommendations, they may respond to Step One grievances, unless grievances are against them.
 - b. Upon completion of the investigation, Unit Management staff shall meet with adults in custody to discuss the Step One response on the Informal Resolution/Step 1 Grievance form (SFN 51737). Adults in custody shall sign, date, and mark whether they agree or disagree with the Step One response and return the form to the Department staff who conducted the meeting. Department staff who conducted the meeting shall sign and date the form, the case manager shall document the meeting in ELITE and send the grievance to the Administrative Staff Officer to scan into Filenet. After a copy is placed in Filenet, grievances and responses must be returned to adults in custody.
 - i. If adults in custody agree with the Step One response, the Department staff who conducted the meeting shall stop the process.
 - ii. If adults in custody disagree with the Step One response, the Department staff who conducted the meeting may offer them an Inmate Grievance Form – Step 2 (SFN 51738).

- iii. Adults in custody shall acknowledge Step One grievances in order to proceed to Step Two. If adults in custody refuse to sign, date, and mark agree or disagree to a Step One grievance, Department staff who conducted the meeting shall stop the process, make a note on the form, and scan it into Filenet.
 - c. Step One grievance responses shall reply to the grievance, typically within 7 days, excluding weekends and holidays.
- 4. Step Two. If adults in custody disagree with the Step One response, they may submit an Inmate Grievance Form – Step 2 (SFN 51738). If adults in custody did not receive the form, they may request one from unit staff.
 - a. Within five (5) days of the receipt of the response to Step One, adults in custody completing the Grievance Form – Step 2 shall:
 - i. Fill out identifying data legibly in the space provided;
 - ii. Provide comments in response to the Step One response in the grievance area;
 - iii. Sign and date the Inmate Grievance Form – Step 2 (SFN 51738);
 - iv. Attach the Informal Resolution/Step 1 Grievance form (SFN 51737); and
 - v. Submit the form and attachment to their Case Managers.
 - b. Case Managers shall sign and date the Inmate Grievance Form – Step 2 (SFN 51738), send it to the Facility Grievance Officer, and log in ELITE that it was received and sent to the Facility Grievance Officer.
 - c. The Facility Grievance Officer shall investigate, complete the Grievance Officer Findings and Recommendation, sign and date the form, log in Elite, and submit it to the Warden.
 - d. The Warden shall respond in the Warden’s Response, sign and date the form and send the original to the Administrative Staff Officer who shall document the meeting in ELITE and scan into Filenet. After a copy is placed in Filenet, grievances and responses must be returned to adults in custody. For Step Two grievances, the incoming legal/official correspondence card must be used to verify delivery and date received.
 - e. Step Two grievance responses shall reply to the grievance, typically within 15 days, excluding weekends and holidays.
- 5. Appeal. If adults in custody disagree with the Warden’s Response on the Inmate Grievance Form – Step 2 (SFN 51738), they may complete an Appeal of Step 2 Grievance Decision (SFN 17450).

- a. Within five (5) days of receipt of the Inmate Grievance Form – Step 2 (SFN 51738), adults in custody who would like to proceed with an appeal shall:
 - i. Fill out identifying data and date legibly in the space provided;
 - ii. Provide a summary of the original grievance (and limit the response to the topics that were in the grievance) and an explanation of why they disagree with the Step 2 responses;
 - iii. Sign the Appeal of Step 2 Grievance Decision (SFN 17450); and
 - iv. Return the Appeal to Step 2 Grievance Decision form to the housing unit staff. Staff will sign the completed form and the adult in custody will send it to Administrative Services through inside mail.
 - b. Administrative Services shall scan the appeal into FileNet, log the appeal in ELITE, attach copies of the completed Step 1 and Step 2 documentation to the appeal, and forward the appeal documentation to the administrative assistant to the Department Director.
 - c. The Department Director shall reply to the grievance, typically within 30 days, excluding weekends and holidays.
6. Sensitive Grievance: If adults in custody have sensitive complaints and reasonably fear possible adverse effects if their complaints are known at their institution, they may file grievances directly with the Director of the Department through the mail. Adults in custody shall clearly explain their reason for not submitting their grievance to the institution. The Director shall reply to the grievance, typically within 30 days, excluding weekends and holidays.
- E. Process If Adult in Custody Submits an Issue That is Not Subject to the Grievance Process or Does Not Follow Proper Procedure:
1. If upon receiving a grievance or at any point during the grievance procedure Department staff determines (a) the issue is not subject to the grievance procedure or (b) the adult in custody has not properly followed the grievance procedure, Department staff shall document this decision and rationale on the grievance form, enter it into ELITE, scan the grievance and response into FileNet, and forward them to the Warden for review.
 2. If the Warden decides grievances are subject to the grievance procedure, the Warden shall return them to the relevant Department staff for processing.
 3. If the Warden confirms the determination, the Warden shall forward the documentation to the Director of Facility Operations.

4. If the Director of Facility Operations confirms the determination, the Director of Facility Operations shall initial, date and forward to administrative staff officer to scan into Filenet. A copy is sent to the adult in custody by the administrative staff officer. If the Director of Facility Operations disagrees with the determination, the Director of Facility Operations shall return the grievance to the relevant Department staff for continued processing.
- F. Statistical Data: Wardens shall submit statistical data on the number of grievances in their monthly reports. This information is also documented in Elite.
- G. Abuse of the grievance procedure:
 1. Grievances containing profanity, threats, or abusive or demeaning language may be rejected. Adults in custody may resubmit rejected grievances with the noted errors corrected.
 2. Adults in custody may not submit grievances about issues that have been previously addressed through the grievance procedure or issues the Director of Facility Operations already determined were not subject to the grievance procedure. The grievances will be rejected and returned to adults in custody, noting the abuse and that the grievances will not be processed any further.
 3. Adults in custody who submit multiple frivolous grievances that are abusive, harassing, or made in bad faith may have limited use of the grievance procedure, as directed by the Warden. Notice of a limitation shall be made to adults in custody in writing.
6. **SIGNATURE:** This policy with procedures becomes effective when signed by the Director of the Department of Corrections and Rehabilitation.

This copy has been approved by the Director with the original signature on file.