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CODE OF MARYLAND REGULATIONS
TITLE 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
SUBTITLE 07 INMATE GRIEVANCE OFFICE
CHAPTER 01 GENERAL REGULATIONS
Complete through Maryland Register Vol. 32, Issue 23, dated Nov. 14, 2005

.01 Scope.

A. The Inmate Grievance Office is an agency within the Department of Public Safety and Correctional Services that considers the merits of a grievance filed by an inmate confined in a Division of Correction institution or the Patuxent Institution.

B. Under Correctional Services Article, §10-204, Annotated Code of Maryland, the Office is authorized, subject to the approval of the Secretary of Public Safety and Correctional Services, to adopt regulations necessary to effect the purpose of the statute.

C. The Office has established a procedure for processing all grievances filed with it including, but not limited to, grievances involving property and personal injury.

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.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Administrative remedy procedure" means the procedure established by the Commissioner for inmate complaint resolution.
- (2) "Commissioner" means the Maryland Commissioner of Correction.
- (3) "Disciplinary proceeding" means Division of Correction adjustment proceedings and Patuxent Institution disciplinary proceedings.
- (4) "Division" means the Maryland Division of Correction.
- (5) "Executive Director" means the Executive Director of the Inmate Grievance Office or designee.
- (6) "Fair value" means the value of inmate property at the time of the loss, damage, or theft that is the lesser of the:
 - (a) Actual cost of the property at the time of acquisition, less any amounts attributable to depreciation, wear, use, and other factors which decrease the value of the property; or
 - (b) Reasonable cost of the property at the time of acquisition, less any amounts attributable to depreciation, wear, use, and other factors which decrease the value of the property.
- (7) "Grievance" means the complaint of any individual in the custody of the Commissioner or confined to the Patuxent Institution against any officials or employees of the Division or the Patuxent Institution arising from the circumstances of custody or confinement.
- (8) "Grievant" means an inmate in the custody of the Commissioner or confined to the Patuxent Institution who files a grievance with the Office.
- (9) "Maryland Tort Claims Act" means the law set forth in State Government Article, §§12-101-12-110, Annotated Code of Maryland.
- (10) "Office" means the Inmate Grievance Office.
- (11) "Prejudice" means a finding that one or more procedural errors undermine confidence in the outcome of a proceeding; that is, but for the error or errors there is a reasonable probability that the result would be different. There is always prejudice in the failure to abide by a directive or regulation establishing predisciplinary hearing time constraints.
- (12) "Property grievance" means a grievance filed by an inmate that the inmate's personal property has been improperly withheld, lost, damaged, stolen, or destroyed through the negligence or other wrongful act or omission of an employee or official of the Division of Correction or Patuxent Institution.
- (13) "Secretary" means the Secretary of Public Safety and Correctional Services.
- (14) "Substantial evidence" means such relevant evidence as a reasonable mind could reasonably accept as adequate to support a conclusion without reassessing credibility or substituting judgment.
- (15) "Treasurer" means the Maryland State Treasurer's Office.

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.03 General Procedures.

- A. A State or federal court may refer a complaint or grievance filed with it to the Office for review.
- B. The Office shall receive for preliminary review any grievance submitted by a grievant.
- C. If a grievance arises out of a disciplinary proceeding, the grievant shall exhaust all institutional appeal procedures before the submission of the grievance to the Office.
- D. To the extent that the administrative remedy procedure applies to a particular grievance, the grievant shall exhaust the administrative remedy procedure before the submission of the grievance to the Office.
- E. The Executive Director, when conducting the initial review of a grievance, and the administrative law judge assigned by the Office of Administrative Hearings to consider the grievance, shall construe the grievance liberally in determining whether a cognizable issue is stated. When a grievance is based in whole or in part on an alleged violation of rights secured by the United States Constitution, a determination shall be made concerning compliance with applicable regulations, directives, and procedures in addition to the specific constitutional complaint.

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.04 Duties of the Executive Director.

A. There is an Executive Director of the Inmate Grievance Office appointed as provided in Correctional Services Article, §10-203, Annotated Code of Maryland.

B. It is the responsibility of the Executive Director to:

- (1) Act as chief administrative officer of the Office and maintain all records and files;
- (2) Acknowledge receipt of a grievance without specifying its nature, and docket the grievance in an appropriate register or other form;
- (3) Review a grievance to make a preliminary determination as to whether it, on its face, is wholly lacking in merit;
- (4) Prepare a summary of the grievance that specifies all issues to be considered at any hearing;
- (5) Compile a record for consideration at any hearing that includes, but is not limited to:
 - (a) Institutional reports,
 - (b) Classification records,
 - (c) Disciplinary proceeding records,
 - (d) Administrative remedy procedure decisions, and
 - (e) Any other information or citations of law that may be useful in determining the merits of the grievance;
- (6) Conduct whatever preliminary investigation of the grievance is considered warranted;
- (7) Arrange for the presence at a hearing of any witness or representative requested by the grievant who is preliminarily considered necessary for determination of the merits of the grievance;
- (8) Refer a grievance that requires a hearing to the Office of Administrative Hearings for disposition;
- (9) Prepare the record of the agency, when requested, for judicial review;
- (10) Notify the Treasurer of any action taken with respect to a grievance that has also been filed as a claim under the Maryland Tort Claims Act;
- (11) Prepare and maintain an appropriate index of all grievances received and a docket for each case.

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.05 Grievance Filing Procedures.

A. A grievance may be filed in a typed or handwritten letter, or on an administrative remedy procedure form specifying as much as possible the exact nature of the grievance.

B. The grievance shall include the following:

- (1) Date of the grievance;
- (2) Name and institutional number of the grievant;
- (3) Return address identifying the institution or other place where the grievant is in custody;
- (4) Nature of the grievance;
- (5) Facts or evidence on which the grievance is based, giving dates, times, and names of any individual, official, or other inmate involved;
- (6) Name and address of each witness the grievant wishes to appear;
- (7) Name of a representative requested to appear at a hearing;
- (8) A copy of any claim filed with the Treasurer under the Maryland Tort Claims Act, and, if available, the Treasurer's letter directing the inmate to file a grievance with the Office;
- (9) A copy of all administrative remedy procedure forms, including the warden's response and the Commissioner's response, when the inmate seeks redress following exhaustion of the administrative remedy procedure.

C. The grievance should be placed in a sealed envelope and forwarded to the Executive Director, Inmate Grievance Office, Department of Public Safety and Correctional Services, Suite 302, 6776 Reisterstown Road, Baltimore, Maryland 21215.

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.06 Time Limitations and Procedural Bars.

- A. Subject to the exceptions set forth in this regulation, a grievance shall be filed within 30 days from the date of the occurrence being grieved, or within 30 days after the grievant knew or should have known of the occurrence.
- B. An appeal from the administrative remedy procedure to the Office shall be filed within 30 days from the grievant's receipt of a response from the Commissioner, or within 30 days of the date the Commissioner's response was due.
- C. An appeal from disciplinary proceedings to the Office shall be filed within 30 days of the completion of the institutional appeals process, or within 30 days of the date the response was due from the warden or the director of the Patuxent Institution.
- D. If a court dismisses a complaint because of the grievant's failure to exhaust administrative remedies through the Office, the time limitations set forth in §§A-C of this regulation do not bar consideration of the grievance if it is received by the Office within 30 days of the court's order of dismissal. A copy of the dismissal order from the court shall be filed with the grievance in the court where this exception is invoked.
- E. The Office may dismiss any disciplinary proceeding appeal and any grievance within the scope of the administrative remedy procedure that has not been exhausted through all institutional remedies in a timely manner.
- F. A time limitation or procedural bar may be waived for a grievance which represents a continuing problem or for which good cause is shown for a failure to proceed in a timely fashion.

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.07 Preliminary Review by Executive Director.

A. The Executive Director shall conduct a preliminary review of a grievance to determine whether it should be dismissed or proceed to a hearing.

B. A grievance shall be dismissed on preliminary review as wholly lacking in merit if:

(1) The grievant is not in the custody of the Commissioner and is not confined in the Patuxent Institution at the time the grievance is received by the Office;

(2) The grievance is not brought against any official or employee of the Division or the Patuxent Institution;

(3) The grievance has not been filed in a timely fashion and good cause for the failure has not been shown;

(4) The grievant has failed to exhaust remedies available under the administrative remedy procedure or the disciplinary proceeding in a timely manner, and has not shown good cause for the failure to do so; or

(5) After reviewing the grievance in the light most favorable to the grievant, the grievance fails to state a claim upon which relief can be granted or is otherwise moot.

C. The grievant shall be promptly notified if the grievance is dismissed on preliminary review. The dismissal by the Executive Director constitutes the final decision for purposes of judicial review.

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.08 Hearing Procedures.

A. A formal hearing, after due notice, shall be held at the time and place directed by the Office and shall be open to the public to the extent that security considerations permit. The hearing shall be conducted by an administrative law judge.

B. Prehearing discovery procedures do not apply to inmate grievance proceedings.

C. At a hearing, the grievant may:

(1) Be represented by an attorney, another inmate, or may appear without representation;

(2) Call such witnesses as the Office or an administrative law judge agrees may have relevant testimony to submit and as may be available at reasonable times;

(3) Request the production of such documents and records as the Office or an administrative law judge finds useful and necessary to a determination of the merits of the grievance.

D. The administrative law judge may consider evidence without regard to formal rules of evidence.

E. The administrative law judge may limit the amount of testimony presented when it is cumulative or repetitive, and adjourn the hearing when further testimony or argument is considered unnecessary.

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.09 Standards of Review.

A. Unless otherwise specifically provided, the burden of proof is a preponderance of the evidence and rests with the grievant.

B. Review of Disciplinary Proceedings.

(1) **Review of Sufficiency of Evidence.** In reviewing a case upon the evidence, the decision rendered in a disciplinary proceeding shall be affirmed so long as the decision is based upon substantial evidence. The administrative law judge may not substitute judgment on factual matters for that of the trier of fact who has the ability to observe witnesses and to weigh credibility.

(2) **Review of Interpretations of Law.** In reviewing interpretations of law, including applicable rules, directives, and regulations, the decision in a disciplinary proceeding shall be affirmed so long as the decision is not clearly erroneous.

(3) Review of Procedural Compliance.

(a) In reviewing a claim that proper procedures at or in anticipation of any disciplinary proceeding were not followed, the administrative law judge shall determine whether there was compliance with applicable directives and regulations of the Division of Correction or Patuxent Institution, and whether the directive or regulation was intended to confer a procedural benefit upon the grievant. Reversal is warranted only where there is:

(i) A procedure that confers a benefit on the grievant;

(ii) A violation of that procedure; and

(iii) Prejudice to the grievant.

(b) In reviewing claims of denial of due process, reversal is warranted only when procedural irregularities are so great as to render the proceeding fundamentally unfair under relevant judicial standards.

(c) The appropriate remedy for any procedural violation warranting reversal is to vacate the conviction and remand for a new disciplinary proceeding unless the violation cannot be remedied by a new proceeding.

(4) **Review of Sentence.** In reviewing a sentence imposed in a disciplinary proceeding, the administrative law judge shall consider whether the disciplinary action taken is authorized by directive or regulation of the Division or the Patuxent Institution. An administrative law judge may not reverse the disciplinary measure imposed unless it exceeds authorized limits.

C. Review of Institutional Administrative Decisions.

(1) In reviewing claims relating to administrative decisions, including but not limited to classification matters, the administrative law judge shall affirm the decision unless it is arbitrary and capricious, or inconsistent with the law.

(2) A failure to comply with applicable directives and regulations in reaching the administrative decision renders the decision arbitrary and capricious or inconsistent with the law only if the applicable regulation or directive was intended to confer a procedural benefit on the grievant and there is prejudice to the grievant.

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.10 Property Grievances.

A. Property grievances are within the jurisdiction of the Inmate Grievance Office.

B. A property grievance shall be filed, processed, heard, and decided in the same manner as other grievances, except as those procedures are modified by this regulation.

C. At a hearing on a property grievance, except a hearing concerning property that was properly confiscated, the grievant has the burden of proving the following by a preponderance of the evidence:

- (1) That the property was lost, damaged, stolen, destroyed, or improperly confiscated through the negligence or other wrongful act or omission of an employee or official of the Division or the Patuxent Institution;

- (2) That the grievant was the owner of the property at the time of the alleged loss, damage, theft, destruction, or confiscation;

- (3) That the grievant was authorized to possess the property under the rules of the institution in which the grievant was confined at the time of the alleged loss, damage, theft, destruction, or confiscation; and

- (4) The fair value of the property at the time of the alleged loss, damage, theft, or destruction.

D. At the hearing on a property grievance in which property has been properly confiscated under the rules of the institution in which the grievant was confined, the grievant has the burden of proving the following by a preponderance of the evidence:

- (1) That the property was lost, damaged, stolen, or destroyed through the negligence or other wrongful act or omission of an employee or official of the Division or the Patuxent Institution;

- (2) That an employee or official of the Division or the Patuxent Institution failed to comply with institutional rules governing disposition of confiscated property;

- (3) That the grievant complied with all institutional rules governing inmate disposition of confiscated property;

- (4) That the grievant was the owner of the property at the time of the alleged loss, damage, theft, or destruction; and

- (5) The fair value of the property at the time of the alleged loss, damage, theft, or destruction.

E. A grievance may not be entertained involving property that is unlawful to own or possess under State law. This property includes, but is not limited to:

- (1) Controlled dangerous substances;

- (2) Controlled dangerous substances paraphernalia;

- (3) Gambling paraphernalia; and

- (4) Deadly weapons.

F. If the grievance is found to be meritorious, the administrative law judge may issue a proposed order recommending that:

- (1) The grievant be reimbursed for, or given a replacement for, property which has been lost, damaged, stolen, or destroyed, at the discretion of the Division or Patuxent Institution; or

- (2) Improperly confiscated property which has not been lost, damaged, stolen, or destroyed, be returned to the grievant.

G. If the administrative law judge finds that the grievance is meritorious in whole or in part, the decision and proposed order of the administrative law judge shall be sent to the Secretary. When applicable, the administrative law judge shall notify the Secretary in the order that the grievant has also filed a claim under the Maryland Tort Claims Act.

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.11 Action After Hearing.

A. Decision and Final Order When the Grievance Is Without Merit. If the administrative law judge finds that no part of the grievance has merit, a final decision shall be issued in writing stating the findings of fact and conclusions of law to support the denial of the grievance. The decision of the administrative law judge constitutes the final decision of the Secretary for purposes of judicial review.

B. Submission of Proposed Decision to Secretary When the Grievance Is Meritorious.

(1) A proposed decision issued by an administrative law judge in any proceeding when the grievance is found to be meritorious in whole or in part shall be submitted to the Secretary and shall be marked to show the date of receipt.

(2) The decision of the administrative law judge shall be reviewed by the Secretary to ensure that:

(a) The Inmate Grievance Office has jurisdiction over the subject matter of the grievance;

(b) The findings of fact are supported by the record;

(c) The conclusions of law are supported by the findings of fact;

(d) The proposed decision constitutes a proper interpretation and application of relevant law;

(e) The proposed remedy is appropriate; and

(f) Funds have been appropriated or are otherwise available if a monetary award is recommended.

(3) The Secretary shall issue an order affirming, reversing, remanding, or modifying the proposed decision within 15 days after receipt of the proposed decision.

C. Availability of Monetary Damages.

(1) When an administrative law judge finds a grievance to be meritorious in whole or in part and recommends an award of monetary damages, the Secretary shall first determine whether the grievance was properly found to be meritorious. If the grievance was properly sustained, the Secretary shall separately consider both the appropriateness of the monetary recommendation and the availability of funds.

(2) If a concurrent claim is pending with the Treasurer and the Secretary affirms the administrative law judge's proposed order for an award of monetary damages, the Secretary's order shall state that the award is subject to the Treasurer's decision on the grievant's concurrent tort claim and the Treasurer shall be notified.

(3) If the Treasurer settles the grievance, the claim shall be paid in the same manner as any other tort claim and the Secretary shall be notified.

(4) If the Treasurer denies the grievance, the Treasurer shall notify the Secretary and the claim may then be paid by the Secretary through appropriated funds, if available, or with the approval of the Board of Public Works.

D. Distribution of Final Decision.

(1) An administrative dismissal by the Executive Director without a hearing that constitutes a final decision shall be distributed by the Office on the date of the dismissal to:

(a) The grievant; and

(b) An attorney appearing on the grievant's behalf.

(2) A decision and order by an administrative law judge finding the grievance to be without merit that constitutes a final decision shall be distributed by the Office of Administrative Hearings on the date of the order to:

(a) The grievant;

(b) An attorney appearing on the grievant's behalf;

- (c) The Inmate Grievance Office;
 - (d) The warden or institutional representative; and
 - (e) The Director of the Patuxent Institution or the Commissioner.
- (3) An order by the Secretary in conjunction with a proposed decision finding the grievance meritorious in whole or in part that constitutes a final decision shall be distributed by the Secretary on the date of the order to:
- (a) The grievant;
 - (b) An attorney appearing on the grievant's behalf;
 - (c) The Inmate Grievance Office;
 - (d) The warden or institutional representative;
 - (e) The Director of the Patuxent Institution or the Commissioner; and
 - (f) The Office of Administrative Hearings.
- E. Judicial Review. The grievant is entitled to judicial review by filing a petition for review of administrative decision in conformance with the Maryland Rules of Procedure. The petition shall be filed within 30 days of the issuance of the final decision in the county in which the grievant's institution is located.

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