

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

103 CMR 491.00 INMATE GRIEVANCES

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491.01 Purpose

The purpose of 103 CMR 491.00 is to establish rules and procedures governing the filing and resolution of grievances by inmates.

491.02 Authorization

103 CMR 491.00 is promulgated pursuant to M.G.L. c. 124, §1(i) and (q) and c. 127, §38E. 103 CMR 491.00 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

491.03 Cancellation

103 CMR 491.00 cancels all previous departmental and institutional policy statements, bulletins, directives, orders, notices, rules or regulations regarding inmate grievances.

491.04 Applicability

103 CMR 491.00 is applicable to all employees and inmates at all state correctional institutions within the Department of Correction.

491.05 Access to Regulations

103 CMR 491.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department employees. A copy of 103 CMR 491.00 shall also be maintained in each Superintendent's Central Policy File and at each inmate library, including all inmate law libraries. Additionally, all new inmate commitments and incoming inmate transfers shall be notified of Department and Institution Grievance Procedures during the inmate's orientation.

491.06 Definitions

Abuse - The filing of repetitive grievances addressing the same issue where sufficient time for response has not elapsed or where a valid response has been provided; the filing of an excessive number of frivolous grievances; the appeal of a grievance settled in the inmate's favor; or the intentional filing of emergency grievances that are not emergencies or grievances concerning issues not grievable hereunder.

Departmental Grievance Coordinator - a designee of the Commissioner who acts as a review authority for grievances.

Emergency Grievance - a grievance processed in an expedited manner to resolve an issue in which a delay may cause substantial risk of personal injury or other damages.

Grievance- a written complaint filed by an inmate on the inmate's own behalf in accordance with 103 CMR 491.00.

Grievant - any Department of Correction inmate who files a grievance in accordance with 103 CMR 491.00.

Institutional Grievance Coordinator - the staff person responsible for attempting resolution of grievances and for coordinating the operation of the grievance procedure at the institutional level.

491.07 Informal Resolution

Each institution should develop informal measures for resolving inmate complaints whereby inmates are encouraged to communicate their problem to the staff person responsible in the particular area of the problem, e.g., Correction Program Officer, the appropriate department head or other institutional staff. Staff awareness as to the need for prompt attention and response to these complaints will minimize the use of formal grievance procedures. While inmates are encouraged to pursue informal measures prior to filing a grievance, they shall not be required to do so.

491.08 General Requirements

- (1) Classification, including identification of an inmate as a sex offender, and disciplinary decisions and recommendations are not grievable under 103 CMR 491.00 as there are existing appeal mechanisms for each of these areas. Decisions and recommendations concerning therapeutic diets are not grievable under 103 CMR 491.00 as there is an existing complaint procedure pursuant to 103 CMR 761.00. Additionally, medical or clinical decisions related to an inmate's physical or mental condition shall not be grievable under 103 CMR 491.00 as the medical contractor is required to maintain its own grievance procedure, however, matters concerning access to medical or mental health care are grievable.
- (2) No grievance shall be accepted which is filed by a group or on behalf of a group of inmates.
- (3) A grievance may only be filed concerning one subject matter.
- (4) A grievance shall be filed within ten working days of the actual incident or situation or within ten working days of the inmate's becoming aware of the incident or situation. Whenever a grievance is returned pursuant to 103 CMR 491.10(2) for improper format, the inmate shall have an additional three working days from the date of receipt to file a grievance in proper format.
- (5) Inmates who are illiterate, who cannot read or write legibly or who cannot speak English are authorized to obtain assistance from their case manager or other staff member. In cases where staff assistance is not available, inmate assistance under staff supervision may be utilized.
- (6) Inmates shall not be subject to adverse action, including disciplinary charges, for utilizing the grievance procedure, except for inmates who abuse the grievance procedure by filing an excessive number of frivolous grievances or who intentionally and in bad faith misrepresent or omit material information.

491.09 Initiating A Grievance

- (1) Forms - Inmates may process their grievance by obtaining an institution grievance form from those locations and staff persons designated by the Superintendent. Grievance forms shall be readily available to all inmates, including those in segregated units.
- (2) Content of Grievance Forms - All grievances should be legible and must contain the following information:
 - (A) the date of occurrence of the incident;
 - (B) the name of current institution;
 - (C) the name of institution of complaint;
 - (D) a brief statement of facts;
 - (E) the remedy being requested;
 - (F) the signatures of both the inmate and staff recipient.
- (3) Filing - Completed grievance forms may be filed as follows:
 - (A) directly with the Superintendent, Deputy Superintendent, Facility Administrator, or Institutional Grievance Coordinator; or;
 - (B) by depositing the completed form in a locked mailbox or drop box. All mailboxes or drop boxes identified for inmate grievances shall be opened at least once each working day;
 - (C) All grievances shall be forwarded to the Institutional Grievance Coordinator on the date received. The Institutional Grievance Coordinator shall sign, date-stamp and number each grievance received.

491.10 Processing a Grievance

- (1) Upon receipt of an inmate's grievance the Institutional Grievance Coordinator shall:
 - (A) acknowledge receipt of the grievance form through a written notification to the inmate;
 - (B) ensure that the grievance complies with 103 CMR 491.09(2) and if not, return the grievance to the inmate with a written explanation;
 - (C) interview the inmate and, if appropriate, the staff person responsible for the area where the problem occurred;

- (D) review staff efforts to resolve the issue informally, and proceed to exhaust all efforts of resolving the grievance;
 - (E) investigate the factual basis of the grievance and propose a resolution or deny the grievance, within ten (10) working days from receipt of the grievance;
 - (F) provide the inmate a written explanation regarding the proposed resolution or the reasons for the denial of the grievance.
- (2) Proposed resolutions shall clearly state what specific corrective action will be taken.
 - (3) If satisfied with the proposed resolution, the inmate shall sign an acknowledgment form and the grievance procedure shall be considered resolved.
 - (4) Denied grievances shall inform the inmate of the right to appeal.
 - (5) Record Keeping and Distribution - Records of all institutional grievances shall be maintained by the Institutional Grievance Coordinator. A grievance log shall be maintained indicating the assigned number of the grievance, the date the grievance was received, the inmate's name and identification number, the facility where the inmate is housed, the subject of the grievance, and the decision made. The original grievance form shall be placed in the inmate's institutional file, a copy shall be maintained by the institutional grievance coordinator and a copy returned to the inmate.

491.11 Emergency Grievances

- (1) An inmate who believes his grievance involves an issue for which a delay in resolution may cause a substantial risk of personal injury or other damages shall plainly mark the grievance form "EMERGENCY."
- (2) Emergency grievances shall be evaluated by the Institutional Grievance Coordinator to determine whether it is, in fact, an emergency. If the matter is determined not to be an emergency, the grievance form shall be returned to the inmate for proper filing.
- (3) Emergency grievances shall be processed in the same manner as other grievances, except that the process shall be completed within three working days of the filing of the grievance.

- (4) The Superintendent shall decide an appeal from the denial of an emergency grievance within five working days.

491.12 Appeal Process

The appeal process at each institution shall include the following:

- (1) Filing - An inmate whose grievance has been denied may appeal to the Superintendent. Appeal forms shall be made available from designated institutional staff. The original grievance form must accompany all appeal forms. The appeal form must be filed within ten (10) working days from receipt of a decision to the Superintendent unless 491.11 or 491.17 are applicable.
- (2) Duties and Responsibilities - Upon receipt of an inmate's appeal, the Superintendent's office shall date the form. Written notification of receipt of the grievance shall be forwarded to the inmate.
- (2) Time Limits for Response - The Superintendent shall respond to the grievant, in writing, within thirty (30) working days from receipt of the grievance.
- (3) Approvals and Denials - The Superintendent should specify in writing the reason(s) for his decision on each appeal. The Superintendent shall sign and date all appeal forms. In cases where the Institutional Grievance Coordinator's decision is modified or overturned, the specific corrective action which, is to be taken, if any, should be clearly stated. If satisfied with the proposed resolution, the inmate shall sign an acknowledgement form.
- (4) Record keeping and Distribution - The Superintendent shall maintain a record of all grievance appeals. The appeal and original grievance will be returned to the inmate, with copies distributed to the inmate's institutional file, and forwarded to the respective Institutional Grievance Coordinator.

491.13 Central Office Review

Whenever a grievance appeal to the Superintendent is denied, the appeal package and any relevant documentation shall be forwarded to the departmental grievance coordinator. The departmental grievance coordinator may take any action upon review of a grievance that the Superintendent is authorized to take under 103 CMR 491.12. Whenever a superintendent places limitations on an inmate's ability to file grievances pursuant to 103 CMR 491.17, a copy of the decision and any relevant documentation shall be forwarded to the departmental grievance coordinator.

491.14 Settlements

All property or monetary settlements resulting from grievances or appeals are to be approved by the Superintendent of the facility from which the grievance originated or by the departmental grievance coordinator.

The Institutional Grievance Coordinator shall ensure that all required information is on the form, i.e., physical description, monetary value, inmate signature, and witness.

The Superintendent or departmental grievance coordinator shall determine if the settlement is appropriate. All settlements will be recorded by the Institutional Grievance Coordinator in a Settlement Log and assigned a number.

491.15 Inmate Transfers

When an inmate is transferred after a grievance has been filed, but prior to its being resolved, the grievance, if still applicable, shall be processed by staff at the originating institution. When a transferred inmate files a grievance concerning a matter which arose at the sending institution, the Institutional Grievance Coordinator at the inmate's present institution shall process the grievance.

491.16 Grievance Withdrawals

Inmates wishing to withdraw grievance appeals should contact the Institutional Grievance Coordinator in writing. Grievance withdrawals and withdrawals of grievance appeals shall be maintained on file by the Institutional Grievance Coordinator and may be used for research, officer training and statistical data but shall not be placed in either the inmate's institution or Central Files.

491.17 Abuse Of the Grievance Process

- (1) Punishment or disciplinary actions shall not result from the inmate's filing of a complaint, or grievance unless the inmate demonstrates a pattern of abuse of this process by filing clearly frivolous, repetitious, or knowingly false documents.
- (2) An inmate who files five or more grievances in a week or twenty or more grievances in any 180 consecutive day period may be determined to be abusing the grievance procedure.
- (3) An inmate may be limited to not more than 10 active grievances at any one time, not including any emergency grievance(s).
- (4) Abuse of the grievance process shall be determined by the Superintendent where the inmate is housed. Upon a determination of abuse, limitations on the inmate's ability to file grievances may be imposed as follows:

- (A) The Superintendent may impose a suspension of the inmate's ability to file grievances for a length of time commensurate with the degree of abuse.
- (B) The length of suspension may be up to six months and may be increased for second and subsequent offenses in increments not to exceed six months.
- (C) Inmates under suspension shall normally be allowed to file emergency grievances.
- (D) Abuse of the emergency grievance procedures may lead to suspension of the ability to file emergency grievances as well.

491.18 Extension of Time Periods

The time periods referred to in 103 CMR 491.000 for filing a grievance or appeal or for response to any inmate grievance may be extended for a like period if the Institutional Grievance Coordinator or Superintendent determines that the initial period is insufficient to make an appropriate decision or if the inmate presents a legitimate reason for requesting an extension.

Written notice of all extensions shall be provided to the grievant.

491.19 Grievant's Failure to Comply with Time Limits

Failure by a grievant to comply with the time restrictions imposed by 103 CMR 491.000, unless waived by the Institutional Grievance Coordinator or Superintendent, shall terminate the grievance process.

491.20 Emergencies

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 491.00, a suspension may be ordered, except that any such suspension lasting beyond 48 hours must be authorized by the Commissioner.

491.21 Responsible Staff

The Superintendent of each institution shall be responsible for implementing and monitoring 103 CMR 491.00.

491.22 Annual Review Date

103 CMR 491.00 shall be reviewed at least annually by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions, or deletions which shall be included for the Commissioner's written approval.

491.23 Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 491.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 491.00.

REGULATORY AUTHORITY

103 CMR 491.000: M.G.L. c.124, 1 (i) and (q) and c.127, 38E.

DEPARTMENT OF CORRECTION

INMATE GRIEVANCE PROCEDURES

PURPOSE: To develop standardized inmate grievance procedures throughout the Department of Correction.

1. Inmates filing an institution grievance shall complete the Institution Grievance Form (Attachment A) and forward this form to the Institution Grievance Coordinator within ten (10) working days from the date of the incident/situation or within ten (10) days of the inmate becoming aware of the incident/situation.

The Institution Grievance Coordinator shall process the inmate grievance as follows:

- A. Date stamp the top portion of the Inmate Grievance Form.
- B. Receipt the inmate by completing and removing the bottom portion of the Inmate Grievance Form (Section C) and forward it to the inmate. This shall be done as soon as practicable.
- C. Provide the grievance a number and document the grievance information in a log- book.
- D. Ensure the grievance is written for only the inmate with the concern.
- E. Investigate the inmate's concern and prepare a brief summary of the findings. Additionally, ensure that any relevant documentation to support the finding is attached.
- F. The Institution Grievance Coordinator shall render his/her decision on section "B" of the grievance form within ten (10) working days from the receipt of the grievance.

The Institution Grievance Coordinator shall provide the inmate with a copy of the decision and request that the inmate sign the Acknowledgement Sheet, if he/she agrees with the decision (Attachment B) outlining the resolution and or denial. The Inmate Grievance Coordinator shall also sign the Acknowledgement Sheet as a witness.

Lastly, the Acknowledgment sheet shall be sent to the Superintendent for final approval.

2. If the inmate indicates he/she will be appealing the decision they shall be provided with the appropriate Institution Appeal Form (Attachment C) which shall be submitted to the Superintendent within ten (10) working days from the decision of the Institution Grievance Coordinator. In addition, the Institution Grievance Coordinator shall provide the Superintendent with the original grievance, the summary of findings and supporting documentation.

The Superintendent shall process the grievance as follows:

- A. Date stamp the top portion of the Institution Appeal Form.
- B. Receipt the inmate by completing and removing the bottom portion (Section C) of the Institution Grievance Appeal Form and forward it to the inmate. This shall be done as soon as practicable.
- C. Indicate the original grievance number on the Institution Appeal Form, assign the appeal an appeal number and record all information in a logbook.
- D. The Superintendent shall review the documentation on the original grievance, all supporting documentation and render a decision within thirty (30) days from receipt of the appeal.
- E. In the event the Superintendent modifies or overturns the Institution Grievance Coordinators decision the plan of action shall be clearly stated under the Summary of Findings (Section B).

When the process is complete the Institution Grievance Coordinator will provide the inmate with the Superintendent's decision and an Acknowledgement Sheet (Attachment B). The inmate shall sign his/her name to the form if he/she agrees with the decision rendered. The Institution Grievance Coordinator shall sign the Acknowledgement Sheet as a witness.

Lastly, the Acknowledgement Sheet shall be forwarded to the Superintendent for final approval.

- F. If the grievance is denied, the Inmate Grievance Coordinator shall provide a copy of the original grievance, the denied institution appeal form and all supporting documentation to the Department Grievance Coordinator as soon as possible.
3. After a thorough review of the denied grievance appeal and relevant supporting documentation, the Department Grievance Coordinator has the ability to overturn the Superintendent's decision if warranted.
- A. The Department Grievance may conduct staff/inmate interviews if necessary.
4. Inmates may file "EMERGENCY GRIEVANCES" on the regular grievance form however, they must plainly mark the grievance form "EMERGENCY". When an "EMERGENCY GRIEVANCE" is filed by an inmate the Institution Grievance Coordinator shall be responsible for the following actions:
- A. Date stamp the top of the grievance form and forward the receipt portion of the "Emergency Grievance" to the inmate.
 - B. Provide the "Emergency Grievance with a number and record the information in the log book.
 - C. Determine if the "Emergency Grievance" filed is an actual emergency.

** If the Grievance is determined to be an Emergency, The Institution Grievance Coordinator shall notify the Department Grievance Coordinator as soon as possible.

** If the Grievance is determined NOT to be an emergency the grievance shall be returned to the inmate for proper grievance filing.

- D. The IGC shall render a decision on Emergency Grievances (Section "B") within three (3) working days from the filing of the Emergency Grievance.
 - E. The Superintendent shall decide an appeal on all Emergency Grievances within five (5) working days.
 - F. All denied Emergency Grievances, denied institution appeals and supporting documentation shall be submitted to the Department Grievance Coordinator for review. The institution appeal may be overturned by the DGC if it is determined to be appropriate.
5. Inmate's who are found to abuse the grievance/emergency grievance process in accordance with 103 CMR 491.17 shall be provided with a Suspension of Grievances Letter (Attachment D). This letter shall be completed by the Superintendent/designee and signed by the Superintendent. Copies of this letter shall be provided to the Institution Grievance Coordinator and the Department Grievance Coordinator.

Please note however, that an inmate under a grievance suspension shall normally be allowed to file emergency grievances.

6. All Monetary Settlements shall be outlined on the Monetary Settlement of Claim form (Attachment E) and shall signed by the inmate, the Institution Grievance Coordinator and the Superintendent. A copy of the Monetary Settlement form shall be forwarded to the Department Grievance Coordinator for tracking purposes.
7. All other sections of the 103 CMR 491, Inmate Grievance Policy shall apply.

DEPARTMENT OF CORRECTION
INMATE GRIEVANCE FORM
FORWARD TO THE INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

SECTION "A"

NAME: _____ INSTITUTION: _____

NUMBER: _____ HOUSING UNIT: _____ DATE OF INCIDENT: _____

COMPLAINT: _____

(ATTACH ADDITIONAL PAGE IF NECESSARY)

REMEDY
REQUESTED: _____

INMATE SIGNATURE: _____ DATE: _____

STAFF RECIPIENT: _____ DATE: _____

DATE RECEIVED: _____

SECTION "B"

ASSIGNED GRIEVANCE NUMBER: _____

DECISION RENDERED: ___ APPROVED
 ___ DENIED

SUMMARY OF FINDINGS:

IGC SIGNATURE: _____ DATE: _____
(DENIED GRIEVANCES MAY BE APPEALED TO THE SUPERINTENDENT WITH 10 DAYS OF IGC'S DECISION.)

SECTION "C"

INMATE GRIEVANCE RECEIPT

INMATE NAME: _____ INSTITUTION: _____

NUMBER: _____ DATE RECEIVED: _____

SIGNATURE (IGC): _____ TITLE: _____

DEPARTMENT OF CORRECTION
INSTITUTION APPEAL FORM
FORWARD TO THE INSTITUTIONAL SUPERINTENDENT

SECTION A

NAME: _____ INSTITUTION: _____

NUMBER: _____ HOUSING UNIT: _____ DATE OF INCIDENT: _____

APPEAL: _____

(ATTACH ADDITIONAL PAGE IF NECESSARY)

REMEDY
REQUESTED: _____

INMATE SIGNATURE: _____ DATE: _____

STAFF RECIPIENT: _____ DATE: _____

DATE RECEIVED: _____

SECTION B

ASSIGNED GRIEVANCE NUMBER: _____

ASSIGNED INSTITUTION APPEAL NUMBER: _____

DECISION RENDERED: ___ APPROVED
 ___ DENIED

SUMMARY OF FINDINGS:

SUPERINTENDENT'S
SIGNATURE: _____ DATE: _____

SECTION C

INMATE APPEAL RECEIPT

INMATE NAME: _____ INSTITUTION: _____

NUMBER: _____ DATE RECEIVED: _____

RECEIPTING STAFF: _____ TITLE: _____

ACKNOWLEDGEMENT SHEET

I _____, an inmate of the Massachusetts
Department of correction agree to settle grievance # _____ as I am
satisfied with the resolution as follows:

Furthermore, I release the Department of Correction and its employees of all
liability arising out of the subject matter of the grievance.

Inmate's Signature: _____ Date: _____

Witness: _____ Date: _____

INSTITUTION APPROVAL

I have reviewed the facts of the above grievance and find that the settlement is
appropriate.

Superintendent: _____ Date: _____

**MONETARY SETTLEMENT OF CLAIM
M.G.L. C. 258, INCLUDING
SETTLEMENT AND RELEASE OF CLAIM**

I, _____, an inmate of the
Massachusetts Department of Correction, hereby make claim pursuant to M.G. L. ,
C. 258 against the Commonwealth for (Please be specific as possible as to dates,
places, value, physical description and identifying information etc.):

In the interests of a speedy and efficient disposition of said claim, I hereby settle said
claim in full and release the Department of Correction and its employees of all
liability arising out of this claim, in consideration of the receipt of:

Signed : _____ Dated: _____

Witness: _____ Dated: _____

IGC

INSTITUTION APPROVAL

I have reviewed the facts of the above-described claim and find that the described
settlement is appropriate. Claim is to be paid from an appropriate account.

Superintendent

Dated

ATTACHMENT "D"

MEMORANDUM

TO: INMATE: _____ **ID#** _____

FR: _____

DATE: _____

RE: SUSPENSION OF GRIEVANCES NOTIFICATION

Please be advised that you have been determined to be an abuser of the grievance process in accordance with 103 CMR 491, Inmate Grievance Policy. As a result, your ability to file grievances has been suspended until _____.

Please note that your ability to file an emergency grievance is still in effect however, if you are found to abuse this process, your ability to file emergency grievances may also be suspended in the future.

cc. DGC
Superintendent
IGC
Inmate file