

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.
- (3) Time Limits for Response - The Superintendent shall respond to the grievant, in writing, within thirty (30) working days from receipt of the grievance.
- (4) 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.
- (5) 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.