



TEXAS DEPARTMENT  
OF  
CRIMINAL JUSTICE

**NUMBER:** AD-03.82 (rev. 7)

**DATE:** January 4, 2012

**PAGE:** 1 of 9

**SUPERSEDES:** AD-03.82 (rev. 6)  
December 11, 2009

## **ADMINISTRATIVE DIRECTIVE**

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**SUBJECT:** MANAGEMENT OF OFFENDER GRIEVANCES

**AUTHORITY:** Texas Civil Practice and Remedies Code § 14.005 and Chapter 110; Texas Government Code §§ 493.014 and 501.008; and 42 U.S.C. § 1997e

References: American Correctional Association (ACA) Standard 4-4284

**APPLICABILITY:** Texas Department of Criminal Justice (TDCJ)

**POLICY:**

The TDCJ shall establish processes for the management and resolution of grievances submitted by offenders.

**DEFINITIONS:**

“Emergency Grievance” is a written complaint about matters for which the disposition within regular time limits would subject the grieving offender to a substantial risk of personal injury or cause other serious or irreparable harm, such as sexual assault, life endangerment, extortion, or medical emergencies.

“Grievance” is a written complaint.

“Offender,” for the purpose of this directive, is a person in the physical custody of the TDCJ.

“Reprisal” is any coercion, threat, or harassment against anyone for the use of, or participation in, the offender grievance procedure.

“Resolution Support Manager” is the position in the Administrative Review and Risk Management (ARRM) Division responsible for oversight of Access to Courts, Offender Grievance, and the Ombudsman Program.

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“Specialty Grievance” is a written complaint regarding matters that require prompt attention or special processing, such as allegations of criminal acts by staff, and excessive or unreported use of force.

### **PROCEDURES:**

An effective offender grievance program has many valuable benefits for the TDCJ, including conflict resolution, cost savings and efficiency from improved management information, averting litigation, and minimizing judicial oversight through comprehensive self-monitoring. The following procedures shall generally guide the management and resolution of offender grievances. More specific, detailed guidelines and forms are provided in the *Offender Grievance Operations Manual* (OGOM).

#### **I. Grievable Issues**

- A. The interpretation and application of TDCJ policies, rules, regulations, and procedures as they apply to the offender personally;
- B. Offender or employee action, including any denial of access to the grievance procedure;
- C. Reprisals against offenders for submitting a complaint under the procedures of this directive;
- D. The loss or damage of authorized offender personal property possessed by persons in the physical custody of the TDCJ and for which the TDCJ or its employees, through negligence, are the cause of any damage or loss; and
- E. Any other matter within the authority of the TDCJ.

#### **II. Non-Grievable Issues**

- A. State and federal court decisions, laws, and regulations;
- B. Parole decisions;
- C. Time-served credit disputes, which should be directed to the Classification and Records Office, Time Section;
- D. Matters for which other formal appeal mechanisms exist; and
- E. Any matter beyond the control of the TDCJ.

### III. Formulation and Implementation

- A. Changes in the offender grievance procedure shall be posted in prominent locations within each unit for the offender population. A Spanish translation shall be available for those offenders whose primary language is Spanish. In addition, the changes shall be explained to those offenders who are illiterate or whose primary language is neither English nor Spanish.
- B. The resolution support manager shall develop, coordinate, and initiate training programs to ensure all employees and offenders are knowledgeable in the purpose, intent, and operation of the offender grievance procedure.
- C. Any person having comments on the effectiveness and credibility of the offender grievance procedure may write to the resolution support manager, TDCJ, P.O. Box 99, Huntsville, Texas, 77342-0099.

### IV. Offender Accessibility

- A. Copies of BP-03.77, "Offender Grievances" and this directive, as well as the instructions on how to use the offender grievance procedure shall be available at each unit, to include copies in the law library. In addition, the instructions on how to use the offender grievance procedure shall be posted in prominent locations throughout the unit.
- B. Provisions shall be made to ensure offenders who are impaired, have a disability or who speak a language that is not spoken by a substantial portion of the population are adequately apprised of the purpose, intent, and operation of the offender grievance procedure, as well as provided an opportunity to ask questions regarding the procedure.
- C. All offenders shall be entitled to use the offender grievance procedure.
- D. Offenders may not submit a grievance on behalf of another offender; however, assistance may be sought from an employee or another offender when necessary to communicate the issue on the grievance form.
- E. The I-127, Step 1 Offender Grievance Form and I-128, Step 2 Offender Grievance Form shall be readily available to all offenders.

### V. Reprisal

Persons participating in the offender grievance procedure shall not be subject to reprisal. Allegations of this nature may be pursued by an offender through the offender grievance procedure.

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## VI. Responsibility

- A. The resolution support manager shall direct, administer, supervise, and manage the implementation and operation of the offender grievance procedure without interference by any employee.
- B. In order to ensure the proper handling of grievances, each unit shall have staff members selected as grievance investigators in accordance with the TDCJ selection procedures.
  - 1. The investigator shall be responsible for carrying out the duties outlined in the OGOM.
  - 2. An alternate grievance investigator may be designated to carry out the duties as deemed appropriate and necessary by the warden.
- C. Grievance staff shall have access to all documents necessary to conduct an investigation of a specific grievance.
- D. All employees are required to cooperate with grievance staff conducting an investigation. Failure to cooperate with an official grievance investigation shall subject an employee to appropriate disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."
- E. Access to the offender grievance procedure shall not be inhibited by any policy, procedure, rule, or action.
- F. Grievance staff shall be professional, objective, and sensitive to cultural diversity at all times.

## VII. Emergency and Specialty Grievances

- A. Every grievance shall be reviewed by the unit grievance investigator, at which time the determination shall be made as to the status of the complaint.
  - 1. Grievances alleging sexual assault or sexual abuse shall be coordinated with the Office of the Inspector General (OIG) and the *Prison Rape Elimination Act* (PREA) ombudsman as provided for in the TDCJ *Safe Prisons Plan*.
  - 2. Grievances determined to involve an offender protection or extortion issue shall be processed in accordance with the TDCJ *Safe Prisons Plan*.

3. Grievances alleging excessive or unreported use of force, criminal acts by staff, or harassment or retaliation for exercising access to courts rights shall be given priority attention and shall be coordinated with the OIG.
  4. Grievances involving health care issues of a quality of care or technical nature shall be coordinated with the Health Services Division.
  5. Grievances involving *Americans with Disabilities Act* (ADA) issues shall be coordinated with the Risk Management Department.
  6. Grievances involving claims of burden on the free exercise of religion shall be coordinated with the Chaplaincy Department.
  7. Allegations of impermissible conduct by offenders as defined in AD-03.02, "Impermissible Offender Conduct" shall be coordinated between grievance and monitoring and standards staff.
- B. If the unit grievance investigator determines a grievance does not qualify as an emergency or specialty grievance, the grievance may be processed as a regular grievance.

#### VIII. Processing

Emergency grievances shall be processed regardless of any of the following requirements or screening criteria.

##### A. Informal Resolution

1. All staff shall informally resolve issues when possible.
2. Offenders shall pursue an informal resolution with staff, when possible, prior to filing a formal grievance. When an attempt to informally resolve an issue is not documented on the grievance form, the unit grievance investigator may return the grievance to the offender without an investigation.
3. When informal resolution is not possible, for example, the outcome of a disciplinary hearing or use of force, the unit grievance investigator shall accept and process the grievance as outlined in this directive.

##### B. Step 1 Grievance - Processed at the unit level (Form I-127)

1. An offender may submit one step 1 grievance within a seven calendar day period.

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2. The incident or issue grieved must be stated on the I-127, Step 1 Grievance Form and in the space provided. Only official documents to support the issue presented may be attached, such as I-60s, property receipts, or other official documents.
  3. The offender shall submit the grievance within 15 days from:
    - a. The date of the alleged incident or problem; or
    - b. When the offender became aware or should have become aware of the incident or problem.
  4. The grievance shall state the relief requested.
  5. Grievance staff shall have 40 calendar days from the receipt of the grievance in which to investigate, respond, sign, and return the grievance to the offender. Grievances concerning the outcome of a disciplinary hearing shall be processed within 30 days of receipt from the offender.
- C. Step 2 Grievance - Appeal of the step 1 grievance decisions by grievance staff not under the control of the unit (Form I-128)
1. The offender has 15 calendar days from the receipt of the step 1 response in which to appeal to step 2, via the unit grievance investigator.
  2. The completed I-128, Step 2 Grievance Form, along with the original I-127, Step 1 Grievance Form, shall be submitted to the unit grievance investigator.
  3. The unit grievance investigator shall forward the original I-127, Step 1 Grievance Form and I-128, Step 2 Grievance Form and all investigative notes to the administrator of the Offender Grievance Program using the most expeditious, yet cost effective method possible.
  4. Grievance staff shall have 35 calendar days from receipt of the I-128, Step 2 Grievance Form in which to investigate, respond, sign, and return the grievance to the offender. Medical staff shall have 45 calendar days from the receipt of the I-128.

An offender may not withdraw a grievance at any time during the process. Once a step 1 or step 2 grievance has been submitted, the grievance shall be processed according to the guidelines set forth in the OGOM.



D. Screening

Unit grievance staff shall review incoming offender grievances to identify emergency grievances and to ensure the grievances are submitted according to established procedures. Emergency grievances are exempt from all screening criteria. Specialty grievances and grievances involving offender disciplinary are exempt from the submission criteria of one grievance within a seven calendar day period.

Grievances that meet the established criteria shall be processed, have an appropriate response, a reason for the response, and provide closure of the issue. Offenders shall be notified when grievances are submitted that do not meet the established criteria. Grievances that do not meet the established criteria shall be entered into the GR00 Tracking System, a copy of the grievance placed in the offender's unit grievance file, and the original returned to the offender. The following are reasons for screening a grievance:

1. The grievable time period has expired;
2. Submission is in excess of one grievance within a seven calendar day period;
3. The original was not submitted;
4. Inappropriate or excessive attachments;
5. No documented attempt at informal resolution;
6. No requested relief is stated;
7. Malicious use of vulgar, indecent, or physically threatening language directed at an individual;
8. The issue presented is not grievable;
9. Redundant issue;
10. Illegible or incomprehensible; and
11. Inappropriate requests for employee disciplinary action or compensation for punitive damages.

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**E. Investigations**

1. The unit grievance investigator is responsible for the investigation of step 1 grievances. Supervisory staff and departmental supervisors shall actively participate in the investigation and resolution of grievance issues. When requests are made by the unit grievance investigator, assistance shall be provided in a timely manner. Employees or persons in custody who appear to be involved in the matter of a grievance are prohibited from participating in any capacity in the review and resolution of that grievance.
2. The following are signature authorities for the response at step 1.
  - a. Regular step 1 grievances – warden or assistant warden
  - b. Multiple issue grievances that include at least one regular grievance issue and one medical grievance issue – warden or assistant warden. The unit practice manager, facility health administrator, unit director of nursing, or nurse administrator, as appropriate, shall acknowledge a review of the multiple issue grievance response by initialing the front, upper left-hand corner of the original form.
  - c. Medical step 1 grievances – unit practice manager, facility health administrator, unit director of nursing, or nurse administrator, as appropriate. The warden shall acknowledge a review of the medical grievance response by initialing the front, upper left-hand corner of the original form.
3. Investigation responsibility and signature authority for step 2 grievances are defined in the OGOM.

**F. Time Limits and Extensions**

If staff need more than the allotted time to complete an investigation and formulate a response at either step, written notification shall be provided to the offender that an additional 40 days at step 1 and 35 days at step 2, or 45 days at step 2 for medical grievances is necessary before a response shall be given.

**G. Remedies**

The following are possible remedies:

1. Restitution of property, either monetary or compensatory;
2. Change of policy, procedure, rule, or practice;



3. Correction of records; and
4. Other relief, as appropriate.

Requests for disciplinary action against employees or compensation for punitive damages shall not be addressed through the offender grievance procedure.

#### H. Responses

Responses to grievances shall clearly state the result of the investigation and the reasons for the decision. When a grievance response specifies that an action is to be taken, it shall include a date for completing the action when possible. When no corrective action is warranted, an explanation shall be provided to the offender.

#### IX. Records

- A. A copy of each completed grievance shall be maintained by grievance staff and retained in accordance with the TDCJ *Records Retention Schedule*. Step 1 grievance records shall be maintained at the offender's current unit of assignment. When an offender is transferred, the step 1 grievance records shall be forwarded to the offender's new unit of assignment. The resolution support manager shall establish an office of record for all step 2 grievance appeals.
- B. Grievance records are confidential. Records may only be processed, investigated, or analyzed by authorized staff as defined in the OGOM.

#### X. Evaluation

The resolution support manager is responsible for developing internal performance measures that assess the quality and timeliness of the offender grievance procedure.

  
Brad Livingston  
Executive Director

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