

Report and Recommendations from the Grievance Procedure Workgroup

Submitted to Secretary Sinclair

January 7, 2020

**A Collaboration of the Washington Department of Corrections, the Office of the
Corrections Ombuds, and Disability Rights Washington**



**Disability Rights
WASHINGTON**



**Office of the
CORRECTIONS OMBUDS**

Background

In 2018, the Office of the Corrections Ombuds (OCO) opened its doors to begin accepting complaints. It quickly identified and raised concerns regarding the Department of Corrections' (DOC) grievance procedure, particularly around the quality of grievance investigations. Several concerning examples pertained to incarcerated individuals' grievances about medical care and the failure of the grievance procedure to effectively resolve their concerns. Following discussion with DOC, DOC staff immediately agreed to co-charter a workgroup with OCO that would also include a cross-section of DOC staff who handle grievances, a representative from Disability Rights Washington, the Statewide Family Council,¹ and a formerly incarcerated individual. The workgroup charter is attached to this report as Addendum A.

The workgroup charter, created June 25, 2019, established the purpose of the workgroup as "To evaluate the Grievance Program to better meet its intent, purpose and process in order to achieve best practices and outcomes." The charter further set two main objectives for the group, including identifying points in the grievance procedure where there is room for improvement and producing a report with recommendations by December 31, 2019.² This report is the culmination of those efforts.

Workgroup Members

The following persons were official members of the workgroup:

Rob Herzog, DOC Prisons Director	Zak Kinneman, formerly incarcerated individual
Joanna Carns, OCO Director	Tonya Pleines, DOC Grievance Coordinator
Denise Brewer, DOC Grievance Coordinator	Rachael SeEVERS, Disability Rights Washington
Norm Caldwell, DOC Grievance Program Manager ³	Carianne Shuster, DOC Grievance Coordinator
Suzanne Cook, DOC Statewide Family Council ⁴	Jack Warner, DOC Superintendent
Dr. Patricia David, DOC Medical Director of Quality	Dennis Dahne, DOC Grievance Coordinator
James Key, DOC Superintendent	Ron Frederick, Grievance Program Specialist

¹ The representative from the Statewide Family Council ultimately decided to leave the workgroup due to personal reasons.

² Due to scheduling issues during the holidays, the report is being submitted one week late.

³ Norm Caldwell participated in the first half of the workgroup prior to retiring.

⁴ As mentioned above, the representative from the Statewide Family Council also left the workgroup partway through due to personal reasons.

Workgroup Activities

The workgroup first gathered on July 25, 2019 and then met monthly for the following five months. In order to conduct a full review of the grievance procedure, the workgroup reviewed data from the DOC grievance procedure survey and developed a plan to gain input from both staff and the incarcerated. Zak Kinneman, representing the incarcerated population, conducted focus groups of incarcerated individuals at Airway Heights, Coyote Ridge, and Monroe Corrections Centers. Superintendent Key provided insight from both the incarcerated and staff at AHCC. OCO was also able to provide data from its recent survey of the female incarcerated population regarding the grievance procedure, as well as provided perspective from other states. Each workgroup member actively consulted those in their network regarding draft recommendations.

List of Agreed Upon Recommendations

The following list of recommendations includes only those that received consensus from the group as a whole.

Building Confidence in and Knowledge of the Grievance Procedure

1. Revise the grievance program's philosophy and purpose statement to better reflect the ideal that the grievance program should be implemented without fear of bias or retaliation, to better serve its mission of creating a safer environment.
 - Rationale: The value of the grievance procedure, when implemented in a fair and just manner, without bias or fear of retaliation, is that it ultimately creates a safer environment for all those who live and work inside prison. Effectively resolving issues at the lowest level serves both staff and the incarcerated by providing a more stable, peaceful environment. The philosophy and purpose statement should reflect that.
 - Note: As an early achievement of this workgroup, the workgroup drafted a revised philosophy and purpose statement to better reflect the ideals of a grievance program, which is included as Addendum B at the end of this report.

2. Define retaliation in DOC policy and procedure.
 - Rationale: Retaliation is not currently defined and therefore there is a lack of a shared understanding amongst staff and potentially a lack of accountability if there is no defined action to hold someone accountable to. The two bulleted items below are draft attempts to define retaliation by employees and retaliation by an incarcerated person.
 - Courts have defined retaliation as “an adverse action taken against an incarcerated individual because of that individual’s engagement in a legally protected activity.” Filing a grievance is a legally protected activity.
 - Retaliatory use of the grievance procedure by incarcerated individuals against a DOC employee is covered under current infractions outlined in

Washington Administrative Code § 137-25-030. The section details a 552 infraction as “Causing an innocent person to be penalized or proceeded against by providing false information.”

3. Update Correctional Worker Core training curriculum to address the value and purpose of the grievance procedure, what retaliation is and highlight that it is prohibited by both staff and the incarcerated, and emphasize that grievances should be investigated and responded to in an unbiased manner. Update Grievance Coordinator orientations for the incarcerated population similarly. Create an LMS or in-service training for refresher of veteran staff.
Rationale: See above point regarding the need for improving the understanding of both staff and the incarcerated of the value of the grievance procedure, when implemented in a fair and just manner without bias or fear of retaliation.
4. Provide increased access to training tools for both staff and the incarcerated, including a grievance procedure flowchart for visual learners and a copy of the grievance procedure pocket guide for every incarcerated person as part of their parent institution orientation. The proposed flowchart is attached to this report as Addendum C.
 - Rationale: Providing as many opportunities and methods of communicating information about how to utilize the grievance procedure will ultimately increase access and improve the effectiveness of the grievance procedure overall.
5. Ensure grievance workshops are offered at each institution to the entire population at least twice per year.
 - Rationale: The grievance workshops have received significant praise from the incarcerated population in improving their understanding of how to effectively write grievances. Further, receiving better-written grievances reduces staff time in dealing with rewrites or chasing information that could have been provided at the outset. Offering workshops at least twice a year at each institution to the entire population ensures everyone has an opportunity to learn how to effectively write grievances.
6. Return to using a duplicate form for grievances.⁵
 - Rationale: Numerous incarcerated persons have reported concerns that grievances are often “lost,” resulting in a loss of faith in the overall procedure. A simple solution to increase faith in the procedure is to return to using a duplicate form for grievances, until such time that an electronic or other method verifying submittal and receipt of the grievance is available.
7. Ensure grievants of substantiated staff conduct concerns receive a meaningful response, including both that their grievance has merit and that additional administrative action is being taken.

⁵ Note: Returning to use of a duplicate form for grievances was not a consensus recommendation of the members of the workgroup, but was an agreement that the DOC Director of Prisons made prior to the start of the workgroup.

- Rationale: Currently, grievants alleging staff misconduct may receive little to no information, potentially giving the impression that their grievance did not matter and that no action was taken, ultimately reducing faith in the grievance procedure. Understanding the limitations on how much information can be provided, Grievance Coordinators should utilize approved, standardized language to the effect that a grievance has merit and that additional administrative action is being taken.
8. Ensure all persons investigating grievances receive training on how to conduct grievance investigations.
- Rationale: Ensuring a thorough investigation will necessarily require adequate training of all persons who may conduct a grievance investigation so that they are aware of the proper steps to take, including interviews, evidence collection, and documentation.
 - Note: As an early achievement of this workgroup, DOC staff placed a training power point on the iDOC. Review of this training for all employees who conduct investigations will be required. To ensure accountability that training has been completed the power point will be added to the DOC Learning Management System (LMS), which can track who completes the training. It is expected that this training will be available in LMS as a self-enroll class before the end of December 2019.

Improving the Process

1. Revise the timeframes for investigation and response by DOC staff. The new timeframes for “Routine” grievances would be 10 working days for Level 0, 15 days for a Level 1 response, 15 days for a Level 2 response, and 15 days for a Level 3 response. New timeframes for “Employee Conduct” grievances would be 10 working days for Level 0 (no change), 30 days for Level 2 (increase of 15 days), and 15 days for Level 3 (no change).⁶ A table with all timeframes is provided in Addendum D.
 - Rationale: Expanding the timeframes at the lower levels allow for greater time for a thorough investigation and hopefully resolution at the lowest possible level. The expectation is for a full investigation to occur at Level 1, with additional levels constituting reviews for thoroughness of investigations and appropriateness of responses.
 - Expanding the time frames at Level 2 for employee conduct grievances is expected to produce more thorough and detailed investigations.

2. Revise the complaint form to better capture necessary information.⁷

⁶ Employee Conduct grievances are automatically elevated from Level 1 to Level 2; thus, there is no timeframe for Level 1 employee conduct grievances.

⁷ The complaint form is the initial form that incarcerated individuals write on and submit. When a grievance coordinator accepts a complaint, it is typed onto a formal grievance form for investigation.

- Rationale: Revising the complaint form to more explicitly prompt the grievant to identify necessary elements such as location, date, time, and witnesses will reduce grievances returned for rewrite, reduce staff time in searching for the information, and may also make the form more accessible to lower-functioning individuals.
 - Note: The workgroup created a proposed draft form, which is attached to this report as Addendum E.
3. Require Grievance Coordinators to meet with and provide assistance to grievants whose first grievance was returned for a rewrite, and the second grievance attempt still did not meet the DOC's requirements.
 - Rationale: Meeting with unsuccessful grievants will better ensure that those with cognitive disabilities are able to access the grievance system and that potential critical issues deserving quick resolution are not missed due to a person's inability to follow the guidelines of the grievance procedure without assistance.
 4. Ensure all Grievance Coordinators provide access to devices such as tape recorders to those who have an established need via a documented Accommodation Service Request.
 - Rationale: DOC and DRW previously established a process for persons needing a tape recorder to voice record grievances due to disability; however, the process is not frequently used and a need for additional training exists to ensure all Grievance Coordinators know how to access tape recorders and what to do when an incarcerated person needs such an accommodation.
 5. Consider a proposal for a pilot program of an incarcerated Peer Grievance Assistant at each institution.
 - Rationale: To ensure adequate access to the grievance procedure and recognizing the limited resources of Grievance Coordinators, employing incarcerated persons to assist others in providing information and guidance on how to appropriately write grievances that comply with the grievance program manual may improve meaningful access to the grievance program.

Improving the Handling of Medical Grievances

1. Create a separate appeal process for Care Review Committee (CRC) decisions, resulting in their removal from the grievance procedure.
 - Rationale: CRC decisions are made by medical professionals and grieving them to be reviewed by non-medical staff did not result in meaningful appeal and created barriers. Further, the number of these grievances created a substantial workload for Grievance Coordinators. A direct appeal from the CRC decision to the Chief Medical Officer or Director of Mental Health allows for quicker and more appropriate review by a medical professional.
 - Note: As an early achievement of this workgroup, in December the Assistant Secretary for Health Services distributed a memorandum advising the incarcerated population and employees that CRC decisions will be removed as a

grievable item and established a separate process for appealing decisions from the medical CRC, mental health CRC, trans CRC and dental CRC. This new appeal process will ensure a much more timely review and response for CRC decisions and appeals.

2. Create a separate appeal process for Accommodation Status Requests (ASR), resulting in their removal from the grievance procedure.
 - Rationale: Similar to the above, ASR decisions are made by a committee with greater authority and expertise than facility staff who would be responding to a grievance; a grievance to staff at the facility level did not allow for a meaningful appeal. A direct appeal to a more qualified DOC staff at the HQ level is more appropriate.
 - Note: As an early achievement of this workgroup, the DOC ADA Compliance Manager has drafted a memorandum directive for signature that will implement this new process in the near future.

3. Require Health Service Managers (HSMs) at the major institutions to respond to Level 0 and Level 1 grievances to ensure better quality responses and that critical complaints are reviewed by people with both authority and accountability.
 - Rationale: The current process allows for inconsistency in who responds to Level 0 grievances and although HSMs were already assigned to resolve Level 1 grievances, they could delegate the task to a designee, which resulted at times in inappropriate assignments to persons without requisite expertise. Requiring the HSM at major institutions to respond to lower level grievances ensures that the person with both authority to order corrective action and accountability for failures in health care is reviewing and resolving the grievances, ultimately creating a more efficient system. Given reduced staffing at camps, allowing for a designee to respond is still appropriate.

4. Replace the Superintendent with the Health Service Administrator as the signing authority for Level 2 medical grievance responses.
 - Rationale: Superintendents are not medical professionals, are not in the health services chain of command, and cannot direct change within health services. Health Service Administrators are responsible for the oversight of health services in the institutions and therefore are more appropriate to sign Level 2 grievances; further, it provides necessary feedback information to HSAs regarding issues occurring in health services at the facility level.
 - Note: It is expected that by mid-December medical grievance responses will be managed by the health services division. This change removes the Superintendents from having signature authority and places this into the health services chain of command, which is better suited to respond to medical grievances.

5. Conduct training for health services managers in how to appropriately investigate and respond to grievances.
 - Although healthcare complaints constitute a major portion of grievances, until this point health services managers had not been given specific training on grievance investigations or responses, resulting in inconsistency and lack of thoroughness. Training for HSMs is currently scheduled for March 2020.

Improving Tracking and Reporting

1. Create and implement a workgroup to create standardized reports related to grievance procedure trends and data that includes both quantitative and qualitative analysis. The workgroup would do the following:
 - Create standardized reports at both the institution and headquarters level that provide quantitative and qualitative analysis of grievance procedure trends and information, to be submitted at least four times a year (i.e. quarterly).
 - Evaluate and standardize coding of grievances to provide better data and tracking.
 - Evaluate and improve the grievance procedure survey language and methodology to ensure wider sampling, more targeted, substantive questions, and improved quality of feedback.
 - Consider creating incentives and making results publicly available to the incarcerated population to ensure greater response rates.
 - Rationale: Currently, trend analysis of grievance statistics is done informally and inconsistently across DOC. Further, coding of grievances is inconsistent and/or inaccurate, leading to poor data and therefore unreliable information for analysis. An overall evaluation, standardization, and improvement of reporting and quality assurance feedback is necessary to maximize the grievance procedure's potential function as a bellwether for the entire system.

ADDENDUM A



Team Charter

Grievance Program Workgroup		Meeting Date: 6/25/19
Purpose	To evaluate the Grievance Program to better meet its intent, purpose and process in order to achieve best practices and outcomes.	
Core Values	The group approaches its work by and from these core values: <ul style="list-style-type: none"> • Adhering to a respectful perspective • Keeping an open mind • Being equitable and fair • Enhancing safe and secure environments • Using data to make informed recommendations 	
Group Norms	The group agrees to these norms for interactions: <ol style="list-style-type: none"> 1. Listen to understand 2. Always assume positive intent 3. Work product discussions are confidential 4. No absolute statements – “always” or “never” 5. Respect other’s opinions 6. Show up and be present 7. Listen to those you disagree with 8. Stay within scope 9. Remember the “Why” 10. Designate a facilitator and scribe 11. Raise your hand to be called 12. Decisions = point, counterpoint and thumb vote by majority 13. Be mindful to use person first language 	
Objectives	The overarching objectives for the group are: <ol style="list-style-type: none"> 1. Identify points in the grievance procedure where there is room for improvement by: <ul style="list-style-type: none"> ○ Creating an action plan ○ Engaging all key stakeholders ○ Reviewing data ○ Researching and evaluating 2. Produce a report with recommendations by December 31, 2019 for DOC consideration and implementation 	



Team Charter

Success Measures	The following success measures will be used to evaluate results: <ol style="list-style-type: none">1. A report and recommendations to DOC by December 31, 20192. Any additional identified by the group in their research
Scope	The activities and deliverables for the group Includes: <ul style="list-style-type: none">➤ Policy➤ Procedure➤ Grievance Manual➤ Position Descriptions➤ Org structure➤ Education for Staff and Incarcerated Individuals➤ Grievable and non-grievable protocol➤ DOC workgroup members time away from day job➤ Technology improvements Excludes: <ul style="list-style-type: none">➤ Budget➤ Establishing Full Time Equivalencies (FTEs)➤ Adjudicating active complaints and grievances



Team Charter

Name	Role	Signature
Joanna Carns	Director, OCO	<i>Joanna Carns</i>
Robert Herzog	Prisons Director	<i>Robert Herzog</i>
Denise Brewer	Correctional Specialist – Grievance Program	<i>Denise Brewer</i>
Norm Caldwell	Grievance Program Manager	<i>Norm Caldwell</i>
Suzanne Cook	Family Council	<i>Suzanne Cook</i>
Patricia David	Medical Director of Quality & Care Management	<i>Patricia David</i>
James Key	AHCC Superintendent	<i>James Key</i>
Zak Kinneman	Incarcerated Individuals	<i>Zak Kinneman</i>
Tonya Pleines	OCC Grievance Coordinator	<i>Tonya Pleines</i>
Rachael SeEVERS	Disability Rights Washington, Avid Program Attorney	<i>Rachael SeEVERS</i>
Carianne Shuster	CRCC Grievance Coordinator	<i>Carianne Shuster</i>
Jack Warner	MCC/SOU Superintendent	<i>Jack Warner</i>

Dennis Dahne SCC Grievance Coordinator

ADDENDUM B

Purpose

The DOC Grievance Program is an unbiased internal grievance and appeal system that promotes effective communication between staff and incarcerated individuals in an effort to resolve issues at the lowest possible level.

Philosophy

Having an appropriate administrative avenue for the incarcerated to submit complaints without fear of retaliation is an important element of helping to create safer environments. Staff and ~~offenders~~ incarcerated persons are encouraged to resolve problems together as part of their routine interaction. The “Offender Grievance Program” offers open access to a process which allows for the meaningful negotiation of problems to a just and fair conclusion. It recognizes the human dignity of ~~offenders~~ persons incarcerated and staff, as well as the privileges and limitations of the State. It offers a fair, timely and satisfactory solution to a wide variety of conflict situations.

Since its inception in 1980, the Department of Corrections Offender Grievance Program has been, with certain exception, an open forum through which ~~offenders~~ incarcerated persons can seek administrative remedies to their problems.

CURRENT LANGUAGE BELOW

Purpose

The Offender Grievance Program is an internal grievance and appeal system that promotes proper and effective communication between staff and offenders in an effort to resolve issues at the lowest possible level. Staff and offenders are encouraged to resolve problems together as part of their routine interaction.

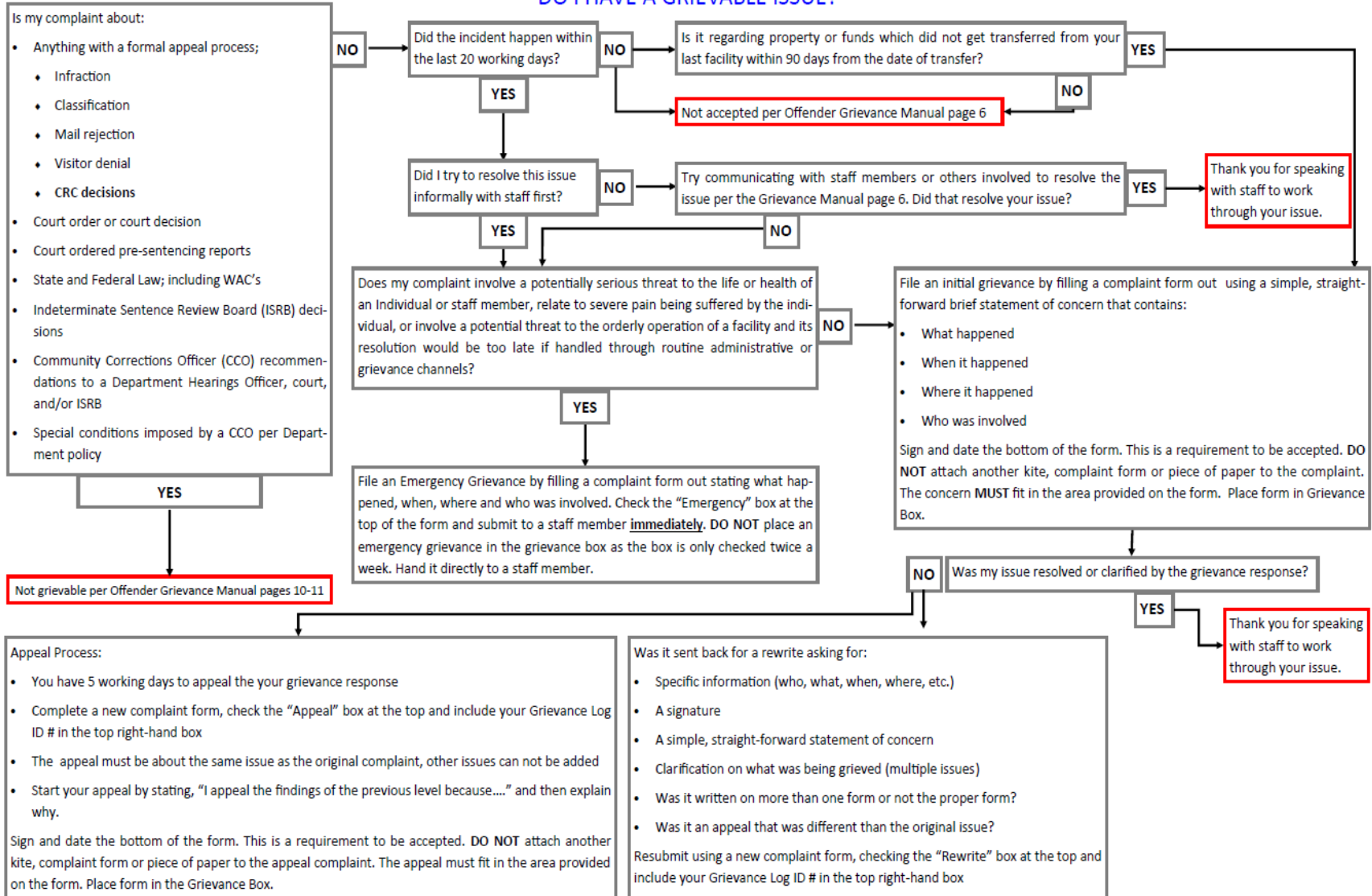
Philosophy

The Offender Grievance Program offers open access to a process which allows for the meaningful negotiation of problems to a just and fair conclusion. It recognizes the human dignity of offenders and staff, as well as the privileges and limitations of the State. It offers a fair and satisfactory solution to a wide variety of conflict situations.

Since its inception in 1980, the Department of Corrections Offender Grievance Program has been, with certain exception, an open forum through which offenders can seek administrative remedies to their problems.

ADDENDUM C

DO I HAVE A GRIEVABLE ISSUE?




ADDENDUM D

Action	Timeframe
Complaint submitted	Within 20 working days of the date of the incident. This timeframe does not apply to complaints against a specific written policy or operational memorandum.
Initial complaint response from coordinator	Within 5 (CHANGE TO 10) working days of the date of receipt. Reasoning: Allow time for and promote informal resolution
Incarcerated individual returns rewrite or provides additional information if required	Within 5 working days of receipt of Grievance Coordinator's response.
Initial grievance response	Within 10 (Change to 15) working days of the Grievance Coordinator formally initiating a level I grievance. Reasoning: Changes in level 1 investigation process and expectation require more time if the expectation is that the investigations will be complete and thorough.
Appeal to Level II	Within 5 working days of receipt of Level I response.
Superintendent/facility supervisor Level II response	Within 20 (Change to 15) working days of the Grievance Coordinator formally initiating a level II grievance (Not including Staff Conduct). Reason: With the expectations placed on the Level 1 investigation the intention is that the level 2 investigation will become more review and less investigation requiring less time (75% review 25% investigation) Though the Level 2 investigators (usually area managers) will have more responsibility to insure a complete and accurate investigation has been done they should be doing less actual investigation unless the Level 1 investigators, which will typically be under their supervision, failed to do due diligence,

	<p>in which case there is a supervisory issue which needs to be addressed and the Level 2 investigator is the proper person to be aware and address that issue.</p> <p>(Staff Conduct timeframes will increase to 30 days) Reason: they will absorb the Level 1 time since they begin at level 2 and require a more thorough investigation “NO LEVEL 1 FOR REVIEW”</p>
Appeal to Level III	Within 5 working days of receipt of Level II response.
Level III response	Within 20 (Change to 15) working days of the date the formal appeal is received by the Grievance Program Office. Reason: The emphasis is being put on conducting complete and thorough Level 1 and Level 2 investigations which should in turn make the Level 3 almost completely a review/fact checking process with minimal to no additional investigation being required

ADDENDUM D

		LOG I.D. NUMBER:			
		COMPLAINT FORM			
CHECK ONE:		<input type="checkbox"/> Initial	<input type="checkbox"/> Emergency	<input type="checkbox"/> Appeal	<input type="checkbox"/> Rewrite
NAME: Last	First	Middle	DOC Number	Facility/Office	Unit/Cell
WHO (names) or WHAT (policy, procedure, or practice) are you grieving?					
LOCATION of incident grieved			DATE of incident	TIME of incident	
WITNESS names and DOC numbers (if relevant):					
SHORT DESCRIPTION of what happened and how it affected you (ONE issue per grievance):					
DRAFT					
SUGGESTED REMEDY:					
MANDATORY SIGNATURE:				Date	
GRIEVANCE COORDINATOR'S RESPONSE:			Facility/Office Received	Date Received	
<input type="checkbox"/> Formal grievance/appeal paperwork being prepared	<input type="checkbox"/> Rewrite (see below)		<input type="checkbox"/> Sent to:		
<input type="checkbox"/> Informally resolved	• Return in 5 working days or by _____		• Date sent:		
<input type="checkbox"/> You didn't attend callout	<input type="checkbox"/> No rewrite received		• Date received:		
<input type="checkbox"/> Administratively withdrawn	<input type="checkbox"/> You requested to withdraw		<input type="checkbox"/> Not grievable		
Comments:			<input type="checkbox"/> Not acceptable		
Coordinator (print)		Coordinator (signature)			Date