

	<b>State of Alaska Department of Corrections Policies and Procedures</b>	<b>Index #:</b> 808.03	<b>Page 1 of 8</b>
		<b>Effective:</b> 5/23/02	<b>Reviewed:</b>
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	<b>Chapter:</b> Prisoner Rights		
<b>Subject:</b> Prisoner Grievances			

### Authority

In accordance with 22 AAC 05.155, the Department will maintain a manual comprised of policies and procedures established by the Commissioner to interpret and implement relevant sections of the Alaska Statutes and 22 AAC.

### References

#### Alaska Administrative Codes

22 AAC 05.185

22 AAC 05.190

#### Standards for Adult Correctional Institutions, 1990

3-4271, 3-4393, 3-4434

#### Standards for Adult Local Detention Facilities, 1991

3-ALDF-3E-06, 3E-11, 4G-07, 5D-06

### Purpose

To establish uniform procedures within the Department for processing prisoner grievances.

### Application

All staff and prisoner population.

### Definitions

#### A. Health Care

Health care includes the fields of medical, dental, psychiatric, and mental health.

#### B. Emergency Health Care

Emergency health care is health care needed immediately to protect the life or health of a person.

#### C. Medical Grievance Review Committee

The Medical Grievance Review Committee shall be composed at a minimum of the Health Care Administrator, a physician other than the Medical Director, the Quality Assurance and Utilization Review nurse, and a representative of the Division of Institutions designated by the Director of Institutions.

### Policy

- A. The Grievance and Compliance Administrator and the Director of Institutions shall develop, implement, and monitor a prisoner grievance system within the Department. The Superintendent at each institution shall monitor the grievance process.
  - B. Prisoners shall attempt to resolve their grievances informally through discussion and negotiation with affected staff prior to utilizing the formal grievance procedures.
  - C. The Department shall assign objective staff who are not involved in the subject of the grievance to investigate the grievance and issue a recommendation.
  - D. Staff may not take retaliatory action against any prisoner for the filing or pursuit of a grievance. Retaliatory action could include any form of discipline, placement in
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administrative segregation, transfer, other adverse classification action, or harassment that is imposed upon a prisoner for the prisoner's filing or pursuit of a grievance. It does not include transfers that are in the best interest of the institution or the department.

### Procedures

#### A. General

##### 1. Information

The prisoner handbook provides information about grievance procedures. Prisoners must also be provided information during prisoner orientation. If a prisoner cannot understand the grievance procedure, staff shall explain the procedure to the prisoner, using an interpreter if necessary. See Form 808.03E.

##### 2. Scope of a Grievance

Except as provided below, a prisoner may file a grievance over any matter within the Department's control. This includes: alleging a violation of the Department's regulations, a statute, or a procedure set out in the prisoner handbook or health care grievances. However, prisoners may not file grievances concerning classification or disciplinary decisions, administrative transfers, prohibited conduct of prisoners, Alaska Parole Board procedures or decisions, or court procedures or decisions. A separate grievance must be filed for unrelated subjects or incidents.

##### 3. Grievances Against Superintendent

A grievance may be filed against a Superintendent only for action taken directly by the Superintendent.

##### 4. Filing Period

A prisoner must file a grievance (see Attachment 808.03C) within 30 days from the date the incident occurred or from when the prisoner has knowledge of the incident. Filing a form for informal resolution does not satisfy this time requirement. If not filed within 30 days, the Grievance Coordinator shall screen out the grievance and return it to the prisoner. See section B.2.a. below.

##### 5. Grievance Coordinator

The Superintendent of a facility shall assign an appropriate staff member as the Grievance Coordinator.

##### 6. Where to File a Grievance

Except for an emergency grievance, a prisoner must file all grievances and grievance appeals in the locked box located in the housing unit. The Grievance Coordinator shall make and keep a copy of the grievance and distribute the original in accordance with the procedures set out in this policy.

##### 7. Prisoner Transferred or Released from Custody

If the Department transfers a prisoner while it is processing the prisoner's grievance, the Grievance Coordinator shall continue the grievance process in coordination with the Grievance Coordinator of the receiving institution unless the prisoner's transfer resolves the issue. If the Department releases a prisoner from custody, the prisoner must notify the Grievance Coordinator in writing and leave a contact address if he or she wants the grievance process to continue. The Grievance Coordinator may continue processing the prisoner's grievance, at the discretion of the Superintendent, if a prisoner is transferred or released from custody.

##### 8. Records

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The Grievance Coordinator shall place copies of completed grievances in the prisoner's institutional or medical file, as appropriate.

9. Retaliatory Action

The Department shall promptly investigate any allegations of retaliation against prisoners who use the grievance process to ensure that the prisoner is not subjected to any form of retaliation for the filing or pursuit of a grievance.

B. General Grievance Procedures

All prisoners, officers, and reviewing authorities shall follow the procedures below when filing and responding to a grievance. Special procedures for emergency grievances, health care grievances, and grievances alleging violation of the Cleary Final Order are set out in sections C - E below.

1. Informal Resolution

A prisoner must try to resolve a problem informally before filing a grievance, except for an emergency grievance as defined in section C below, or a grievance involving allegations of staff misconduct, section B.2.a.(5) below. The prisoner must complete a Request For Interview form (808.11) and give the form to the appropriate staff member or place it in the locked box in the housing unit.

2. Filing a Grievance (Level One)

If the prisoner cannot resolve a problem informally, he or she may file a grievance. To file a grievance, the prisoner must fill out Page One of the Prisoner Grievance Form (808.03C), attach the response to the informal resolution attempt, and place the form in the locked box. The Grievance Coordinator shall record the grievance and its subject matter in a grievance log. See policy #803.11, Permanent Record Logs. The grievance process begins when the Grievance Coordinator records and files the grievance.

a. The Grievance Coordinator shall promptly decide whether the grievance should be screened, resolved easily, sent to the Grievance Coordinator of the facility where the incident occurred, sent directly to the Superintendent, or assigned to an investigator.

(1) Screened Grievances

The Grievance Coordinator shall screen out and return a grievance to the prisoner if:

- (a) The action or decision being grieved is not a grievable issue as specified in section A.2. above;
  - (b) The grievance is not within the institution's or Department's jurisdiction;
  - (c) The issue grieved was not first addressed informally;
  - (d) The issue was already grieved by the prisoner or by another prisoner and resolved;
  - (e) The grievance is submitted on behalf of another prisoner who is able to file his or her own grievance;
  - (f) The form is not filled out completely;
  - (g) The grievance is not filed within 30 days;
  - (h) The grievance is grieving an action not yet taken;
  - (i) The grievance contains inappropriate use of obscene or profane words;
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- (j) The grievance is factually incredible or clearly devoid of merit;
- (k) The specific relief sought is unclear;
- (l) The grievance raises unrelated issues that should be presented in separate grievances; or
- (m) The grievance is against the Superintendent, but is not for action taken directly by the Superintendent.

If screened, the Grievance Coordinator must fill out the Grievance Screening form (808.03A), and provide a copy to the prisoner. If a prisoner can correct the deficiency that caused a grievance to be screened, the prisoner shall be permitted to resubmit the grievance. The grievance shall be considered timely if resubmitted within two working days of receipt of the screening form.

If the prisoner believes that a grievance was screened improperly and this is part of a systemic problem, the prisoner may file a separate grievance concerning the screening process.

(2) Appeal of Screened Grievance

- (a) The prisoner must state in writing why the screening decision is incorrect on the Request for Interview form (808.11A), attach it to the grievance and the screening form, and return it to the Grievance Coordinator within two working days after receiving the screening decision.
- (b) The Grievance Coordinator shall record the appeal and forward it to the Superintendent or, if the screened grievance concerns an action taken by the Superintendent, to the Deputy Director of Institutions.
- (c) The Superintendent/Deputy Director has 10 working days after receipt of the appeal to complete the review and issue a written decision through the Grievance Coordinator to the prisoner. If a response is not received by the prisoner within the 10 working days, the appeal is considered denied. However, a late response granting an appeal is valid. This level of review is final.

(3) Easily Resolved Filed Grievance

The Grievance Coordinator has the discretion to attempt to resolve the initially filed grievance if it can be easily resolved with the concurrence of the prisoner. If such a resolution is reached, the Resolved Filed Grievance form (808.03B) must be filled out completely and properly counter-signed by the prisoner and the Grievance Coordinator.

(4) Assign Investigator

If the grievance is not screened out or resolved and withdrawn after its initial filing, the Grievance Coordinator must either investigate or assign another staff member to investigate the grievance. The investigator shall forward a clear and concise written statement of findings and recommendations (on Page Two of form 808.03C) to the Superintendent through the Grievance Coordinator within 10 working days from the date the grievance was filed.

(a) Grievance Against Superintendent

If the grievance is filed against the Superintendent, the Grievance Coordinator shall forward it to the Deputy Director of Institutions for

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assignment to an impartial investigator. The investigator shall forward the findings and recommendations to the Deputy Director of Institutions.

(5) Allegations of Staff Misconduct

When a Grievance Coordinator receives a grievance alleging staff violations of the ethical code or standards of conduct, defined by policy #202.01, the Grievance Coordinator shall record and forward the grievance directly to the Superintendent. The Superintendent shall either:

- (a) Investigate, resolve the grievance, and provide a written decision to the prisoner through the Grievance Coordinator; or
- (b) Return the grievance to the Grievance Coordinator for informal resolution or assignment to an investigator.

3. Formal Review by the Superintendent/Deputy Director The Superintendent/Deputy Director shall, through the Grievance Coordinator, give the prisoner a written response, on form 808.03C, within five working days after receiving the investigator's findings. The decision must note any corrective action, include sufficient findings and conclusions to provide for further review, and include a copy of the investigator's findings and recommendations.

4. Appeal Process (Level Two)

A prisoner may appeal a Superintendent/Deputy Director's decision. The prisoner must complete and file a Prisoner Grievance Appeal Statement form (808.03D) with the Grievance Coordinator within two working days after receiving the Superintendent/Deputy Director's decision. The Grievance Coordinator shall record the appeal and immediately send the appeal to the Deputy Director or, in the case of an appeal from the Deputy Director's decision where the Superintendent has been initially grieved, to the Director.

- a. The Deputy Director/Director shall respond to the prisoner in writing through the Grievance Coordinator within 15 working days after receiving the appeal. The original must be sent to the Grievance Coordinator with a copy to the prisoner. The Deputy Director/Director shall either affirm or reverse the Superintendent's decision, note any corrective action, and set out findings and conclusions sufficient to permit further review. If a response is not received by the prisoner within 15 working days, the appeal is considered denied. However, a late response granting the appeal is valid.
- b. The Deputy Director/Director shall file a copy of the prisoner's appeal and the written response to the appeal with the Grievance and Compliance Administrator. *Hertz v. State*, 869 P.2d 154 (Alaska 1994).
- c. The Department may deny any prisoner's appeal that does not follow these appeal procedures.

5. Review by the Grievance and Compliance Administrator (Level Three)

A prisoner who believes a grievance has not been handled consistent with this policy may seek review by the Grievance and Compliance Administrator after the Deputy Director/Director renders a decision. The prisoner must request a review by writing a letter, and sending it in a sealed envelope directly to the Grievance and Compliance Administrator within 30 days. The Grievance and Compliance Administrator shall respond in writing to the prisoner within 30 days.

C. Emergency Grievances

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A prisoner may make an emergency grievance by notifying the Grievance Coordinator, the Superintendent, or the Superintendent's designee (e.g., Shift Supervisor during nights, weekends and holidays) orally or in writing. Emergency grievances involve issues that threaten life or the security of the facility, or may cause harm to any individual. The Superintendent, or the Superintendent's designee with immediate notification to the Superintendent, shall determine whether the issue grieved is an emergency. The Grievance Coordinator, Superintendent, or the Superintendent's designee shall investigate and resolve the emergency grievance the same day or before the end of the shift. The Grievance Coordinator, the Superintendent, or the Superintendent's designee shall give the prisoner a written decision as soon as practicable.

**D. Health Care Grievances**

**1. Scope of Grievance**

A prisoner may file a medical grievance regarding medical treatment, including:

- a. The prisoner is refused treatment by medical, dental, psychiatric, or mental health staff, whether salaried or contract service personnel;
- b. The Department refuses treatment recommended by a consulting health care professional (non-Department personnel); or
- c. The prisoner is recommended for treatment by a consulting health care professional and the prisoner wants that recommendation reviewed.

**2. Procedures**

Prisoners shall follow sections B.1 and .2 above when filing grievances about health care. In addition, the following procedures apply:

- a. The Grievance Coordinator, in consultation with health care staff not the subject of the grievance, shall promptly decide whether the grievance should be screened or can be resolved easily. If not, the Grievance Coordinator shall assign the grievance to the facility Health Care Officer for investigation and response. The facility Health Care Officer shall send a written response (on form 808.03C) to the prisoner, through the Grievance Coordinator, within 10 working days from the date the grievance was filed.
- b. If the grievance is against the facility Health Care Officer, the Grievance Coordinator shall ask the Anchorage Central Office Health Care Administrator to assign an impartial investigator. If the investigation is to be conducted by a person from outside the facility, the investigator shall have 10 working days from receipt of the assignment to send a written response to the prisoner through the Grievance Coordinator.
- c. The facility Health Care Officer shall investigate and resolve emergency grievances either within the same day or by the end of the officer's shift. The officer shall send a written decision to the prisoner through the Grievance Coordinator as soon as practicable.

**3. Appeal**

If a prisoner is not satisfied with the response to the grievance, the prisoner may appeal the decision. The prisoner must complete form 808.03D and give it to the Grievance Coordinator within two working days after receiving the decision. The Grievance Coordinator shall direct the Health Care Officer to compile copies of all relevant medical records for placement in a sealed envelope. The Grievance Coordinator shall record and forward the grievance appeal and the sealed copies of

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relevant medical records to the Health Care Administrator's office for the assignment of an impartial investigator.

- a. The assigned investigator shall investigate the matter and provide the Medical Director with a written statement of findings and recommendations within 10 working days of receipt.
- b. The Medical Director shall review the investigator's written recommendations and, through the Grievance Coordinator, give the prisoner a written decision within 5 working days of receipt of the investigator's statement of findings and recommendations. The decision must contain findings of fact and conclusions as to the merits of the grievance. The Medical Director shall send copies of all appeal decisions to the Grievance and Compliance Administrator.
- c. If the appeal involves a health care decision made by the Medical Director, the Medical Grievance Review Committee shall review the investigator's written recommendations and, through the Grievance Coordinator, give the prisoner a written decision within 10 working days of receipt of the investigator's statement of findings and recommendations. The decision must contain findings of fact and conclusions as to the merits of the grievance. The Medical Grievance Review Committee shall send copies of all appeal decisions to the Grievance and Compliance Administrator.

#### E. Cleary Non-Compliance Grievances

If a prisoner files a grievance concerning an issue addressed in the Cleary Final Order, the prisoner must: (1) exhaust the administrative grievance procedure set out in this policy; and (2) allow the Grievance and Compliance Administrator 30 working days to review the Department's decision and give the prisoner a written decision. If the prisoner does not agree with the Administrator's decision, the prisoner may file an action with the *Cleary* court. See *Hertz v. State*, 869 P.2d 154 (Alaska 1994).

##### 1. Legal Counsel for *Cleary* Plaintiff Class

- a. Legal counsel for the *Cleary* Plaintiff class has been released. Accordingly, a prisoner must proceed pro se or retain separate counsel to file an action with the *Cleary* Court.

#### F. Records

1. The Grievance and Compliance Administrator shall report annually to the Commissioner about the disposition and the handling of grievances by the Department during the reporting period.
2. The Grievance Coordinator shall keep copies of all individual prisoner grievances and any relevant documents at the institution for at least three years after the final resolution of each grievance.
3. The Grievance and Compliance Administrator shall periodically audit grievance records to ensure that all grievances are properly logged and handled in accordance with this policy.

#### Implementation

This policy and procedure is effective 14 days following the date signed by the Commissioner. Each Manager shall incorporate the contents of this document into local policy and procedure. All local policies and procedures must conform to the contents of this document; any deviation from the contents of this document must be approved in writing by the Division Director.

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