

ARKANSAS REGISTER

FILED

Transmittal Sheet

JAN 20 1993



W. J. "BILL" McCUEN
SECRETARY OF STATE

W. J. "Bill" McCuen
Secretary of State
State Capitol Rm. 010
Little Rock, Arkansas 72201-1094

For Office

Use Only:

Effective Date

2/9/93

Code Number

004.00.93--001

Name of Agency Arkansas Department of Correction

Department of Correction

Contact Person Roger V. Endell, Director

Statutory Authority for Promulgating Rules Act 50 of 1968, First Extraordinary Session,
as amended

Intended Effective Date

AR835-Grievance Procedures for Inmates

Date

☐ Emergency

Legal Notice Published

11/1-7/91

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Final Date for Public Comment

11/19/91

☒ Other

Filed With Legislative Council

11/14/91

Please date 1/20/93 with an
effective date as February 9, 1993

Reviewed by Legislative Council

12/5/92

Adopted by State Agency

1/19/93

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Roger Endell
Signature

Director

Title

January 19, 1993

Date



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SUBJECT: Grievance Procedures For Inmates

FILED

JAN 20 1993

I. AUTHORITY:

W. J. "BILL" McCUEN
SECRETARY OF STATE

The authority to promulgate this administrative regulation is vested in Act 50 of 1968, First Extraordinary Session, as amended.

II. PURPOSE:

To provide the procedure by which formal complaints or grievances filed by an inmate may be resolved.

III. APPLICABILITY:

To all employees and inmates.

IV. DEFINITIONS:

A. Grievance: A written complaint by an inmate on the inmate's own behalf regarding:

1. A policy applicable within his or her unit/center of assignment which personally affect the grievant;
2. A condition in the unit/center that personally affects the grievant;
3. An action involving an inmate(s) of his or her institution which personally affects the grievant;
4. An action of employee(s) of his or her institution which personally affects the grievant;
5. An incident occurring within his or her institution which personally affects the grievant.

The term does not include a complaint relating to a parole matter. There is a separate procedure for appealing disciplinary action, and the grievance procedure shall not be used to appeal disciplinary action.



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- B. Inmate: An individual confined to an adult institution who has been convicted of a crime.
- C. Reprisals: At a minimum, an act or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure. Inmates are also allowed to pursue complaints of reprisal(s) through these procedures.
- D. Emergency Situation: Matters regarding in which disposition according to the regular time limits would subject the inmate to substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. Emergency grievances must be forwarded immediately to the level at which corrective action can be taken.
- E. Days: Calendar days.

V. POLICY:

Inmates will be provided an opportunity to resolve bona fide grievances, complaints, incidents and problems through established procedures without fear of restraint, interference, coercion, discrimination or reprisal.

Opportunity exists to provide inmates with a meaningful opportunity to resolve grievances, incidents, problems and complaints including those which may result in lawsuits filed pursuant to 42 U.S.C. 1983, and to recognize that this opportunity should be assured by:

- A. Promulgating written procedures that require a plain, speedy, efficient and equitable response to the inmate by the Department.
- B. Providing a mechanism for input by both inmates and Department employees in the implementation, review and evaluation of procedures.



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- C. Communicating the procedures in an effective manner to inmates and employees.
- D. Assuring that inmates shall not suffer any reprisals for their use of the procedures and that if such reprisals do occur, they will be redressed and employees disciplined.
- E. Promoting the credibility of the procedures by providing a participatory role in its operation for inmates and Department employees.
- F. Submitting the dispositions of grievances to independent review.
- G. Recording the filing and disposition of grievances, assuring confidentiality and providing all parties concerned with documentation of all actions taken.
- H. Defining emergency and other special situations, and providing for more speedy dispositions where appropriate.
- I. Evaluating and reporting upon the performance of procedures.
- J. Submitting the procedures to the Attorney General of the United States for Certification pursuant to 42 U.S.C. 1997, when certification requirements may be met in accordance with State law.

VI. PROCEDURES:

The existence of the grievance procedure does not in any way absolve employees from carrying out their full responsibilities. Employees should exercise good judgement, and every attempt should be made to resolve inmate grievances informally; whereas, inmates are encouraged to resolve grievable matters in an informal manner with staff.

A. Adoption of Procedures



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Inmates and employees shall be afforded an advisory role in the formulation and implementation of the grievance procedure. An advisory role shall also be afforded in reviewing compliance with the procedures set herein.

When formulating and implementing a procedure or when adopting changes, notice and/or proposed changes shall be posted in prominent locations (to include employee and inmate bulletin boards) throughout the institutions at least 30 days prior to implementation of the procedure/changes.

1. Changes in the procedure shall be clearly identified.
2. The posting shall state that employees and inmates wishing to comment should address their comments in writing to the unit/center grievance coordinator.
3. All comments shall be considered prior to implementation of the procedure/changes.
4. Proposed changes to a previously certified procedure shall be provided to the Bureau of Prisons, National Inmate Appeals, prior to their effective date.

B. Communication of Procedures

1. Written notification and verbal explanation of the grievance procedure will be made to both inmate and employee upon their arrival. A memorandum addressing those inmates in need of assistance in understanding the grievance procedure will be posted monthly in all inmate living areas. The memorandum shall advise the inmate to contact the appropriate staff (i.e., administrative review officer, grievance officer, counselor, or an assistant warden) for explanation and/or assistance. The opportunity to have questions regarding the grievance procedure answered orally shall be available.



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2. If an inmate is incapable of understanding the English language, a verbal presentation of the grievance procedures will be given in the language the inmate does understand.
3. All employees at the unit/center level shall receive training by the Departmental Training Academy in the skills necessary to operate or participate in the grievance procedure.
4. Inmates are hereby advised that lawsuits filed pursuant to 42 U.S.C. 1983 may be held in abeyance by the court pending the results of grievance procedures.

C. Accessibility

All inmates shall be entitled to invoke the grievance procedure regardless of their security or job classification, disciplinary status, or administrative or legislative decisions affecting the inmate. This procedure shall also be accessible to impaired and handicapped inmates and an effort made to explain the procedure in a manner comprehensible to them.

1. Copies of this policy shall be available in all law libraries.
2. Inmates may seek assistance from staff members when necessary to communicate the problem on the grievance form.
 - a. Staff members are encouraged to assist inmates who are unable to complete the forms without assistance because they cannot articulate a grievance in written form, they are physically unable to write, or because they cannot communicate in English.

D. Remedies



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A grievance with merit will be afforded a reasonable range of meaningful remedies.

1. The responsible authority will attempt to correct or modify objectionable conditions, policies or practices when possible and in accordance with state law and good correctional practice.
2. When it is necessary for objectionable conditions, practices or policies to be modified by a higher authority than the responding authority, the lower authority shall note its agreement or disagreement with the grievant and transmit the completed grievance form to the higher authority. The grievant will receive written notice of this action.
3. The department is to encourage the resolution of successful grievances involving property losses, confiscations or forfeitures through the return of the property, or restitution.
4. Records may be corrected and action by the staff or classification committees may be modified.

E. Staff Training

The Training Academy will implement a training program in reference to grievances. This training will outline various methods and techniques which assist the appropriate staff in writing independent and objective responses to inmate complaints. The training shall be mandatory for administrative review officers, grievance officers, assistant wardens, and wardens/center supervisors.

F. Steps of the Grievance Procedure

1. Initiation

Once an inmate initiates the grievance process, review of the grievance shall occur automatically without



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interference by administrators or employees of the institution, and such review shall be conducted without influence or interference by administrators or employees of the institution.

- a. Forms: Inmates should first attempt to verbally resolve grievances, incidents, problems or complaints through their immediate supervisor. If the problem cannot be resolved informally, they may file a written grievance with the Administrative Review Officer (ARO) or the warden's/center supervisor's designee on a form provided for that purpose (see Attachments I and II). The forms shall be freely available, and when completed, be deposited in locked grievance and mail boxes. The boxes shall be located at accessible places throughout the units/centers. Staff, as requested by an inmate who is confined or physically unable to personally deposit a grievance, will deposit said grievance in one of the locked grievance or mail boxes.
- b. Assistance: Any inmate who is unable to complete the form shall so advise his or her immediate supervisor, who shall make arrangements for assistance without unreasonable delay.
- c. Inmate and employee participation: When a grievance challenges general policy and/or practices, inmates and employees shall be permitted to participate in an advisory capacity in the disposition of the grievance unless the grievant objects. Notice of the grievance should be made available at least 10 days before the first response is due. Notice shall state the general policy question involved and the date the first response is due, but individual names and facts shall be eliminated. The notice shall indicate that comments regarding the general policy and/or practice should be directed in writing to the unit/center grievance coordinator.



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The advisory input shall be achieved by posting a notice on inmate and employee bulletin boards to solicit comments on a grievance that challenges general policy and/or practices. The advisory input must be considered prior to the initial adjudication of the grievance.

No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

Inmates shall be prohibited from a role in the resolution process when the grievant objects.

2. Initial Processing

Completed grievance forms which are deposited in the grievance and mail boxes shall be collected daily, excluding weekends and holidays and delivered to the ARO or the warden's/center supervisor's designee who shall:

- a. Assign a number to the grievance, record the date grievance was received, list name and ADC number of the grievant, and log sufficient information to obtain the nature of the complaint.
- b. Determine whether the grievance:
 - (1) states an emergency situation; or
 - (2) is frivolous; or
 - (3) should be processed within normal guidelines as stated herein.

The ARO or the warden's/center supervisor's designee will note one of the above on the grievance and forward it to the warden's/center



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supervisor's office for review as indicated in this policy.

- c. Transmit an acknowledgement of the grievance filed in writing to the grievant within five days (see Attachment III) after receipt.
- d. If an emergency situation is declared by the grievant but it is not determined as such by the ARO or warden's/center supervisor's designee, the grievance will be processed within the time limits outlined above in preceding section "c".
- e. Should the ARO or warden's/center supervisor's designee determine an emergency situation does exist, the grievance will be immediately forwarded to the warden/center supervisor.

The warden/center supervisor will notify the grievant and advise what action is being taken and approximate time for response (see Attachment III).

3. Initial Decision

Within twenty days after filing (or less, if required in emergency situations), every grievant shall receive a written response to his or her grievance signed by the warden. In cases where a longer period of time is required for a response or for resolution of the problem, the grievant shall be so notified in writing of the reason for the delay and its expected length (see Attachment IV).

All responses shall:

- a. state the reason for the decision, in clear well-reasoned terms.



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- b. include a statement that the grievant is entitled to further review.
- c. include simple directions for obtaining such review.

4. Appeal

Expeditious processing of grievances at each level of decision-making is essential. Responses shall be made within the fixed time limits as stated at each level of decision. Time limits for responding may be extended only with the written agreement of the grievant. Expiration of the time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

- a. Deputy/Assistant Director: If after being responded to by the warden/center supervisor, the inmate is not satisfied, he or she may appeal within five days to the appropriate deputy/assistant director who will attempt to resolve the matter or assign a staff member to do so. The appeal should be written on the original form returned by the warden. If the form is not returned by the warden within the time limit set, the inmate may still appeal to the appropriate deputy/assistant director. Upon receiving the appeal, the deputy/assistant director will request all documentation pertaining to the grievance (if documentation is not attached) and will respond in writing to the inmate concerning the decision within twenty days. Receipt of filing shall be acknowledged in writing within five days to the inmate by the deputy/assistant director's office (see Attachment III).



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- b. Director: If the inmate is still not satisfied with the response received, he or she may file an appeal on the form provided by the appropriate deputy/assistant director within five days to the Compliance Division. The Compliance Division will forward its recommendation(s) to the Director. The Director will decide what action to take and inform the inmate of his decision within thirty days. Receipt of filing shall be acknowledged in writing within five days to the inmate by the Director's office (see Attachment III).

The entire grievance procedure must be completed within 90 calendar days.

G. Emergency Situations

1. Grievants may declare emergency situations if they believe that by observing the regular time limits for disposition, they would be subject to a substantial risk of personal injury or other serious and irreparable harm.
2. Grievants may indicate the existence of an emergency by marking the box provided on the grievance form, and filing the grievance form in the usual manner or by personally delivering it to any officer or employee of the department who shall sign the attached emergency receipt, give the receipt to the inmate, and deliver it without undue delay to the ARO or the warden/center supervisor or, in their absence, to a unit/center assistant warden.
3. If it is determined an emergency exists, the warden/center supervisor or their designee will take immediate corrective action.

H. Reprisals



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1. Prohibition: No grievant shall suffer any action or threat of action against him based on his use of or participation in the grievance procedures. Such behavior is absolutely prohibited, and each grievance form shall so state this policy.
2. Prevention: In addition to the initial and periodic training of department personnel in the grievance procedures, all personnel shall receive written and oral notice that formal and/or informal reprisals will not be tolerated, and to further prevent reprisals:
 - a. grievance records shall be confidential and will be marked as such.
 - b. department personnel who engage in reprisals shall be disciplined in accordance with the severity of the reprisal. At a minimum, those admitting guilt or found to be guilty of reprisals shall have a written reprimand placed in their personnel files but may be subject to further disciplinary action up to and including termination.

I. Records

1. Nature: Each designated administrator at each level of response shall collect and systematically maintain records regarding the filing and disposition of grievances. At a minimum, such records shall include aggregate information regarding the numbers, types, and disposition of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. Such records shall be preserved for at least three years following final disposition of the grievance.
2. Confidentiality: Records regarding the participation of an individual in the grievance proceedings shall not be available to inmates, department personnel



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other than those directly involved in the grievance process, unless the person's job requires access to such records. Grievance records will not be available to non-departmental personnel other than those representing the Department. No entries concerning the above shall be recorded in the inmate's jacket. Records of testimony or evidence regarding an inmate's participation in a grievance proceeding shall also be held confidential.

J. Evaluation

Each designated administrator at each level of response shall submit an annual report to the Director on the inmates' use of the grievance procedure and whether such use has resulted in meaningful consideration of complaints and, where appropriate, adequate remedies for grievances.

AR835

GRIEVANCE FORM

UNIT/CENTER _____

ATTACHMENT I
For Office Use Only

Date Received _____

NAME (Please Print) _____ ADC# _____

BARRACKS _____ JOB ASSIGNMENT _____

Have you discussed this problem with your immediate supervisor? YES _____ NO _____ NATURE OR DESCRIPTION
OF THE PROBLEM:

WHAT DO YOU WANT TO HAPPEN TO SOLVE IT?

Inmate Signature _____ Date _____

IS THIS AN EMERGENCY SITUATION? YES _____ NO _____ If so, why? (Provide Explanation) _____

I object to the posting of issues presented in this grievance: YES _____ NO _____

(An emergency situation is one in which you may be subject to a substantial risk of physical harm. It should not be declared for ordinary problems that are not of a serious nature.) If you marked yes, you may give this completed form to any officer or department employee who shall sign the attached emergency receipt, give you the receipt, and deliver it without undue delay to the ARO, the Warden/Center Supervisor or, in their absence, to the Unit/Center Assistant Warden. **REPRISALS:** If you are harmed or threatened because of your use of the grievance form, report it immediately to the Warden.

(To be filled out by Receiving Officer)

RECEIPT FOR EMERGENCY SITUATIONS

OFFICER (Please Print) _____

FROM WHICH INMATE? _____ ADC# _____

DATE _____

TIME _____

SIGNATURE OF RECEIVING OFFICER

NOTE: Forms to be ordered from Industry Program; original form to be completed on NCR paper.

WARDEN'S/CENTER SUPERVISOR'S DECISION

Signature of ARO or Warden's/
Supervisor's Designee

TITLE

DATE

INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five days by filling in the information requested below and mailing it to the appropriate Deputy/Assistant Director. Keep in mind that you are appealing the decision to the original complaint. Do not list additional issues which are not a part of your complaint.

WHY DO YOU NOT AGREE WITH THE RESPONSE?

Inmate Signature _____ ADC # _____ DATE _____

Date Received _____ By Whom _____

DEPUTY/ASSISTANT DIRECTOR'S DECISION

Signature

Date

INMATE'S APPEAL TO DIRECTOR

If you are not satisfied with the results of your grievance, you may appeal to the Director by telling why you disagree and filing this form as before within five days.

WHY DO YOU NOT AGREE WITH THE RESPONSE?

Inmate Signature _____ ADC # _____ DATE _____

Date Received _____ By Whom _____

DIRECTOR'S DECISION

Signature

Date

ACKNOWLEDGEMENT OF GRIEVANCE

TO: INMATE _____ ADC # _____
FROM: _____
RE: NOTIFICATION OF GRIEVANCE RECEIVED
DATE: _____

PLEASE BE ADVISED I HAVE RECEIVED YOUR GRIEVANCE DATED _____
ON _____.

YOU WILL RECEIVE COMMUNICATION FROM THIS OFFICE REGARDING THE GRIEVANCE
BY _____.

GRIEVANCE OFFICER/ARO SIGNATURE

_____ THIS GRIEVANCE IS OF A MEDICAL NATURE AND HAS BEEN FORWARDED TO INFIRMARY STAFF.

_____ THIS GRIEVANCE HAS BEEN DETERMINED TO BE AN EMERGENCY SITUATION, AS YOU SO
INDICATED. ACTION TAKEN: _____.

_____ THIS GRIEVANCE HAS BEEN DETERMINED TO NOT BE AN EMERGENCY SITUATION BECAUSE YOU
WOULD NOT BE SUBJECT TO A SUBSTANTIAL RISK OF PERSONAL INJURY OR OTHER SERIOUS,
IRREPARABLE HARM. YOUR GRIEVANCE WILL BE PROCESSED AS A NON-EMERGENCY.

WARDEN'S/CENTER SUPERVISOR'S SIGNATURE

DEPUTY/ASSISTANT DIRECTOR'S OR DIRECTOR'S SIGNATURE

GRIEVANCE EXTENSION

TO: INMATE _____ ADC # _____

FROM: _____
GRIEVANCE/ADMINISTRATIVE REVIEW OFFICER

DATE: _____

ADDITIONAL TIME IS NECESSRY IN ORDER FOR YOUR GRIEVANCE TO BE FULLY INVESTIGATED DUE TO:

YOU WILL RECEIVE COMMUNICATION FROM THIS OFFICE BY: _____

SIGNATURE INDICATES AGREEMENT TO THIS EXTENSION.

INMATE'S SIGNATURE_____
ADC #_____
DATE_____
GRIEVANCE/ADMINISTRATIVE REVIEW OFFICER'S SIGNATURE