



# Operating Procedure

<b>Effective Date</b> July 1, 2016	<b>Number</b> 866.1
<b>Amended</b> 8/16/16, 11/17/16, 5/3/17, 11/13/17, 8/1/18	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 866.1 (7/1/13)	
<b>Authority</b> COV §8.01-243.2, §53.1-10	
<b>Subject</b> <b>OFFENDER GRIEVANCE PROCEDURE</b>	
<b>ACA/PREA Standards</b> 4-4284, 4-4394; 4-ACRS-6B-03; 2-CO-3C-01; §115.51, §115.52	
<b>Incarcerated Offender Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Office of Primary Responsibility</b> Ombudsman Services Unit
<b>FOIA Exempt</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <b>Attachments</b> Yes <input checked="" type="checkbox"/> #1 No <input type="checkbox"/>	

## I. PURPOSE

This operating procedure provides an administrative process for resolving offender issues and complaints through fair, prompt decisions and actions in response to complaints and grievances from offenders incarcerated in Department of Corrections institutions.

## II. COMPLIANCE

This operating procedure applies to all institutions operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

## III. DEFINITIONS

**Abuse** - The use of these procedures in a manner other than in good faith for resolution of grievances

**Appeal** - The submission of a response to a grievance from the lower level to the next available level detailing the reason(s) the grievant is not satisfied with the lower level response or remedy provided.

**Day** - Any 24-hour day regardless of weekends or holidays

**Emergency** - A situation or condition which may subject the offender to immediate risk of serious personal injury or irreparable harm

**Founded** - When a determination has been made that a remedy is required

**Grievance** - An unresolved issue filed and signed by an individual offender on their own behalf concerning an issue which has affected them personally and meets intake criteria

**Grievance Coordinator** - The employee designated for coordination and monitoring of the facility's *Offender Grievance Procedure* at institutions that do not have an established Human Rights Advocate position

**Informal Procedure** - Those processes, practices, or procedures available to offenders to secure facility services or resolve complaints

**Institution** - A prison facility operated by the Department of Corrections - includes major institutions, field units, and work centers

**Institutional Ombudsman** - The working title of the Human Rights Advocate position designated for the coordination and monitoring of the institution's Grievance Procedure

**Misuse** - Using the grievance procedure other than in accordance with the procedures defined herein

**Regional Ombudsman** - The working title for the Human Rights Advocate Senior employed by the Office of Ombudsman Services responsible for monitoring facility grievance procedures, and providing investigative services for offender grievance appeals

**Remedies** - Actions taken as result of founded grievances

**Repetitive Grievance** - An issue that has been previously grieved through the regular grievance procedure

**Reprisal** - Any action or threat of action against anyone for good faith use of or good faith participation in the grievance procedure

**Threatening Language** - Language written within a grievance expressing the intent to physically injure or kill another person

**Unfounded** - When a determination is made of compliance with properly established procedures

**Vulgar, Insolent Language** - The use of language that is offensive to a reasonable person

**Working Day** - Weekdays, Monday through Friday, except official state holidays

#### IV. OFFENDER GRIEVANCE PROCEDURE

##### A. Institutional Compliance with this Operating Procedure

1. Each institution will prepare an Implementation Memorandum in accordance with Operating Procedure 001.1, *Operating Procedure Development*, which will provide institution-specific information designating staff responsibilities and institutional processes under this operating procedure.
2. This Operating Procedure and the institution's Implementation Memorandum will be known as the *Offender Grievance Procedure*.
3. All attached forms associated with this operating procedure will be used as designed and shall not be customized by institutions.
4. Each facility shall notify each offender upon arrival and during orientation how to access the *Offender Grievance Procedure* including sources of *Informal Complaint*, *Emergency Grievance*, and *Regular Grievance* forms and directions for submitting each document.

##### B. Provision for Institutional Ombudsman/Grievance Coordinator

1. Each institution will have an Institutional Ombudsman/Grievance Coordinator and a designated alternate to ensure procedural compliance in the absence of the Institutional Ombudsman/ Grievance Coordinator. An Institutional Hearings Officer should not serve as an alternate Institutional Ombudsman; exceptions must be specially approved by the Chief of Corrections Operations.
2. The Institutional Ombudsman/Grievance Coordinator and designated alternate should complete any training requirements set by the Chief of Corrections Operations.
3. The Institutional Ombudsman/Grievance Coordinator will be responsible for monitoring for compliance, coordination of the day-to-day operation, conducting investigations of grievances, and preparing proposed responses as needed.
4. The Institutional Ombudsman/Grievance Coordinator will arrange a method of communication with other institutional departments (e.g., Personal Property, Mailroom) so that information about pending grievances can be shared prior to making final disposition.

##### C. Grievances Regarding Sexual Abuse and Sexual Harassment

1. The *Offender Grievance Procedure* is one of multiple internal ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. See Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*, for additional reporting information. (§115.51[a])
2. Staff shall accept any report of PREA related issues made through the *Offender Grievance Procedure* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[c])
3. Each institution shall ensure in its Implementation Memorandum that: (§115.52[c])
  - a. An offender who alleges sexual abuse may submit a grievance without submitting it to a staff

member who is the subject of the complaint.

b. Such grievance is not referred to a staff member who is the subject of the complaint.

#### D. Communication of Procedures

1. All employees and offenders in DOC institutions shall be advised of the *Offender Grievance Procedure*, which shall be available for review in locations accessible to both employees and offenders. (4-4284; 4-ACRS-6B-03; 2-CO-3C-01)
2. Initial Notification at Reception Centers/Parole Violators Unit
  - a. The standardized initial *Offender Grievance Procedure Notification* (see Attachment 1) should be given to each offender during orientation at all reception centers and all parole violator units. Offenders with special needs (i.e., visually or hearing impaired, non-English speaking, non-readers) should be identified and the Institutional Ombudsman/Grievance Coordinator notified of the special need so that necessary services can be obtained prior to the facility's formal orientation.
  - b. If an offender wishes to file a grievance prior to participation in the formal orientation, provisions should be made for staff to provide assistance so that the offender's ability to grieve an issue is in no way hindered.
3. Facility Operation - An explanation of the facility's offender grievance procedure should be provided to all new employees and incoming offenders during orientation. Provisions should be made prior to orientation for those offenders not speaking English, as well as for the impaired, handicapped, and non-readers.
4. The Institutional Ombudsman/Grievance Coordinator will monitor to ensure that appropriate information on the *Offender Grievance Procedure* is provided.

#### E. Accessibility

1. Each offender will be entitled to use the grievance procedure.
2. When an offender is adjudged by the Facility Unit Head as abusing that usage, the offender's filings may be limited in accordance with the *Limiting as a Result of Abuse* Section of this operating procedure.
3. In the event of a widespread facility disruption, natural disaster, or other unusual occurrence which requires emergency action, any or all portions of the *Offender Grievance Procedure* may be temporarily suspended. Once order has been restored, the processing of grievances will resume. The Facility Unit Head shall make the emergency determination in accordance with procedures governing facility emergencies.

#### F. Reprisals

1. Offenders shall not suffer reprisals for filing grievances in good faith. Neither employees nor offenders participating in the resolution of grievances should be subject to reprisal in any form.
2. An offender may pursue a complaint of reprisal through the *Offender Grievance Procedure*.
3. Allegations by employees of reprisals should be reported through their chain-of-command.

#### G. Written Responses with Reasons

1. At each level of the procedure, responses to each grievance will be made in writing, with reasons for the decision stated clearly.
2. Dispositions
  - a. Founded or Substantiated (PREA related grievances only) - an investigation determines that the offender's claim is true or that an alleged incident did occur.
  - b. Unsubstantiated (PREA related grievances only) - an investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
  - c. Unfounded - an investigation determines that the offender's claim is untrue or that an alleged

incident did not occur.

3. Employees who are the subject of the issue being grieved will not be the respondent to a grievance, but may offer information during the investigation of the complaint. (§115.52[c(2)])
4. Employees who are the subject of the issue may respond to an *Informal Complaint*.

#### H. Appeals (4-4284)

1. Administrators or employees of the facility shall not interfere with an offender's right to submit appeals.
2. An offender who is dissatisfied with the response to a grievance may appeal by signing, dating, and indicating in the designated area reasons why they are dissatisfied with the prior response.
3. Any issue not addressed in the original grievance complaint will not be considered in an appeal.
4. Appeals not submitted in accordance with procedures should be returned to the offender with specific reasons for the return.

#### I. Time Limits

Prompt and reasonable time limits will be set for all levels of the procedure with provisions for emergencies.

#### J. Disciplinary Action

1. Offenders are instructed to use the grievance process in good faith for problem resolution. An offender's use of the grievance procedure should not ordinarily be cause to take disciplinary measures.
2. Except when the following statements or claims are made in written *Informal Complaints* or grievances, offenders will not be charged under Operating Procedure 861.1, *Offender Discipline, Institutions*, for use of the grievance procedure.
  - a. Threaten bodily harm to any person (Offense Code 212)
  - b. Use vulgar or insolent language toward an employee (Offense Code 222)
  - c. False claim of medical emergency resulting in unnecessary off-site testing or treatment (Offense Code 141)
3. Disciplinary charges may be brought against an offender for filing a grievance related to alleged sexual abuse only where the institution demonstrates that the offender filed the grievance in bad faith. (§115.52[g])

#### K. Limiting as a Result of Abuse

1. It is imperative that all offenders be able to utilize their available administrative remedies in a timely manner. All offenders should use the grievance procedure in good faith for problem resolution.
2. Offenders who abuse the grievance procedure by excessive filings or habitual misuse of the procedure hinder other offenders' access and impede staff's ability to investigate and resolve complaints within specified time limits.
3. Where an offender is adjudged to be abusing the offender grievance process, it is the responsibility of the Facility Unit Head to regulate that offender's usage of the informal process and of the regular and emergency grievance procedures.
  - a. On a case-by-case basis, the Facility Unit Head should review the offender's usage of the informal process and the grievance procedure to determine whether restriction of informal, regular, and/or emergency filings is needed.
  - b. A face to face interview should be conducted prior to initially placing an offender on a limitation status.
4. An offender may be restricted to no less than one *Informal Complaint* and one grievance per week. The Facility Unit Head will notify the offender in writing of the reason for the limitation, the number

of *Informal Complaints* and grievances they are limited to, and the period of the limitation. Limitations shall not exceed 90 days (per occurrence). A copy of the notice will be provided to the Regional Administrator.

5. Any *Informal Complaint*, regular, or emergency grievance submitted in excess of the limitation will be returned to the offender without a response.
6. The offender may grieve the limitation decision to the Facility Unit Head using the limitation notice as the informal resolution attempt. The offender may appeal application of the limiting procedure to the Regional Administrator at Level II.
7. If an offender transfers to another DOC facility while on limitation, the limitation shall continue until the scheduled expiration date. The Institutional Ombudsman/Grievance Coordinator should inform the new facility that the offender is under limitation.

#### L. Withdrawal of Grievances by Offender

1. An offender may voluntarily withdraw a complaint or grievance at any time, from any level of the procedure by completing the *Withdrawal* section on the [Informal Complaint](#) 866\_F3 or [Regular Grievance](#) 866\_F1 (see page 2).
2. No other withdrawal forms may be created.
3. Subsequent complaints/grievances on the same issue should be determined as repetitive and should not normally be accepted if the offender has formally withdrawn the initial complaint or grievance.

#### M. Grievability

1. Grievable - The following matters are grievable by offenders:
  - a. Procedures of the facility, region, division, and department which affect the grievant personally
  - b. Actions of individual employees and/or offenders which affect the grievant personally, including any denial of access to the grievance procedure
  - c. Reprisals against the grievant for filing a grievance or grievance appeal
  - d. Issues concerning the DOC's administration of the Interstate Compact Agreement which affect the grievant personally
  - e. Any other matters relating to conditions of care or supervision within the authority of the DOC which affect the grievant personally
2. Non-Grievable - The following matters are not grievable.
  - a. Disciplinary hearing decisions, penalties and/or procedural errors, which may be appealed in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions*
  - b. State and Federal court decisions, laws, and regulations
  - c. Policies, procedures, and decisions of the Parole Board, Board of Corrections, Virginia Department of Transportation (VDOT), and other agencies
  - d. Other matters beyond the control of the DOC

#### N. Remedies

The grievance procedure should afford a successful grievant a meaningful remedy when applicable. Although available remedies may vary among facilities, a reasonable range of meaningful remedies in each facility is necessary. All grievances determined as founded will be provided an administrative remedy and should, if necessary, include an offender remedy. Remedies should include, but are not limited to, the following:

1. Administrative Remedies
  - a. Substance of procedure: Written change communicated effectively, promptly, as extensively as necessary, and with instructions including time limits for effecting the change.
  - b. Interpretation of procedure: Written explanation of revised interpretation communicated

effectively, promptly, as extensively as necessary, and with instructions for effecting the change.

- c. Application of procedure: Written direction to the relevant employee or employees to apply the procedure correctly, and, if necessary, with instructions for accomplishing the change. Disciplinary actions against employees, if appropriate, will not be communicated to the offender, but should be documented.

## 2. Individual Offender Remedies

- a. Redress to the grievant as appropriate (protection of the grievant, return or reimbursement of property, appropriate, prompt classification action, re-computation of time, timely medical attention or treatment, improvement of living conditions, etc.).
- b. The redress should be made in a timely manner.

## O. Exhaustion of Remedies

1. The exhaustion-of-remedies doctrine requires that procedures established by the Department of Corrections must be initiated and followed before an aggrieved party may seek relief from the Courts. After all other available remedies have been exhausted, a lawsuit may be filed.
2. An offender meets the exhaustion of remedies requirement only when a Regular Grievance has been carried through the highest eligible level of appeal without satisfactory resolution of the issue.
  - a. Submission of an Emergency Grievance does not satisfy the exhaustion of remedies requirement; the offender must submit the issue on a Regular Grievance if not satisfied with the Emergency Grievance response. The exhaustion of remedies requirement will be met only when the Regular Grievance has been appealed through the highest eligible level without satisfactory resolution of the issue.
  - b. If a Regular Grievance does not meet the criteria for acceptance and review by the Regional Ombudsman does not result in intake into the grievance process, the issue must be resubmitted in accordance with the criteria for acceptance. The exhaustion of remedies requirement will be met only when the Regular Grievance has been accepted into the grievance process and appealed through the highest eligible level without satisfactory resolution of the issue.

## V. INFORMAL COMPLAINT PROCEDURE

- A. The *Informal Complaint* procedure is an administrative process for offenders to resolve their issues informally with facility staff prior to submitting a formal grievance.
  1. The offender should demonstrate without engaging in inappropriate behavior, confrontation, frustration or aggression that they have made a good faith effort to resolve their issue informally and should first verbally communicate their concerns to staff before submitting a written [Informal Complaint](#) 866\_F3.
    - a. Upon receipt of a verbal complaint, the receiving staff member should attempt to resolve the offender's complaint (except Medical and Mental Health) or direct the offender to appropriate staff for assistance.
    - b. When *Informal Complaints* are issued by designated staff, the designated staff member must attempt to resolve the offender's verbal complaint (except Medical and Mental Health) prior to issuing the offender an [Informal Complaint](#) 866\_F3.
    - c. If the issue is not resolved or the offender is not satisfied with the resolution, an *Informal Complaint* must be provided to the offender by the end of the staff member's work day.
    - d. When requested, an [Informal Complaint](#) 866\_F3 must be provided to the offender. Under no circumstances will staff deny offenders access to the *Informal Complaint* procedure.
  2. This good faith effort shall be documented using an [Informal Complaint](#) 866\_F3, except where operating procedures specifically state that other documentation may be used for the informal process, such as for classification hearings, disapproved correspondence/ publications, or confiscated property.
  3. The offender is responsible for submitting the *Informal Complaint* in a timely manner to allow time

for staff response within the time period allowed to file a *Grievance*. If 15 calendar days have expired from the date the *Informal Complaint* was logged without the offender receiving a response, the offender may submit a *Grievance* on the issue and attach the *Informal Complaint* receipt as documentation of the attempt to resolve the issue informally.

4. Upon receipt, each *Informal Complaint* will be logged in VACORIS and the receipt returned to the offender.
5. The facility Implementation Memorandum should specify the following:
  - a. Where offenders can obtain *Informal Complaint* forms
  - b. How and where to submit an *Informal Complaint*
  - c. Staff position(s) designated to log *Informal Complaints*
  - d. The staff positions responsible for responding to *Informal Complaints*
  - e. The time period allowed for staff responses.
- B. The time frame for staff response to an offender's *Informal Complaint* shall be no longer than 15 calendar days to ensure responses are provided prior to the expiration of the 30-day time requirement for an offender to file their grievance.
- C. *Informal Complaints* must be addressed at the facility level and may not be referred to departments outside the facility. Facility staff may contact various departmental staff to ascertain information to respond to the complaint if necessary.
- D. Responses will be made in writing on the *Informal Complaint* form with reasons for the response stated clearly. The *Informal Complaint* response should be returned to the office that logged it and the response forwarded to the offender.
- E. An offender may withdraw an *Informal Complaint* at any time by completing the *Withdrawal* section with a staff witness and submitting it to the person designated to log *Informal Complaints*. Once an *Informal Complaint* is withdrawn, the offender will not receive a response nor may the offender submit a *Grievance* or another *Informal Complaint* on the same issue.
- F. *Informal Complaints* Related to Sexual Abuse or Sexual Harassment
  1. An offender is not required to use the informal complaint process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. (§115.52[b(3)])
  2. Staff shall accept any report of PREA related issues made through an *Informal Complaint* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[c])
  3. The facility PREA Compliance Manager shall notify the Regional PREA Analyst.

## VI. REGULAR GRIEVANCE PROCEDURE

### A. Initiation of Regular Grievance

1. Grievances are to be submitted within 30 calendar days from the date of occurrence/incident or discovery of the occurrence/incident, except in instances:
  - a. Beyond the offender's control
  - b. Where a more restrictive time frame has been established in operating procedures to prevent loss of remedy or the issue from becoming moot
  - c. There is no time limit on when an offender may submit a grievance regarding an allegation of sexual abuse. (§115.52[b])
    - i. Otherwise-applicable time limits shall apply to any portion of a grievance that does not allege an incident of sexual abuse.
    - ii. Nothing in this section shall restrict DOC ability to defend against an offender lawsuit on the ground that the applicable statute of limitations has expired.

2. Offenders are to use the [Regular Grievance](#) 866\_F1 to submit their own grievances. *Regular Grievances* should be available to all offenders during waking hours. Assistance should be made available for offenders who are unable to complete the forms.
  - a. Only one issue per grievance form will be addressed. The offender is to write the issue in the space provided on the *Regular Grievance*, preferably in ink. The offender must attach any required documentation (*Informal Complaint, Notification of Confiscation of Property, Notice of Unauthorized Correspondence, Notification of Publication Disapproval, ICA documents and/or other appropriate documents*), of their attempt to informally resolve the issue.
  - b. The original *Regular Grievance* (no photocopies or carbon copies) should be submitted by the offender through the facility mail system to the Facility Unit Head's Office for processing by the Institutional Ombudsman/Grievance Coordinator.
    - i. If the offender has been transferred, the offender should submit the *Informal Complaint* and subsequent grievance to the facility where the issue originated.
    - ii. When an indigent offender has been transferred, the Institutional Ombudsman/ Grievance Coordinator will forward the *Informal Complaint* and subsequent grievance to the facility where the issue originated.
  - c. Grievances repetitive of a complaint previously filed through the regular grievance procedure or which contain threatening or vulgar language will not be accepted.
3. Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, shall be permitted to assist offenders in filing offender grievances relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of offenders. (§115.52[e])
  - a. Third party filing of a request for administrative remedies relating to allegations of sexual abuse should be submitted through the facility PREA Compliance Manager.
  - b. If a third party files such a request on behalf of an offender, the institution will require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and will also require the alleged victim to personally pursue any subsequent steps in the grievance process.
  - c. If the offender declines to have the request processed on his or her behalf, the institution shall document the offender's decision.

#### B. Intake

1. Incoming grievances are to be dated/date stamped on the working day received in the space provided on Page 1 of the [Regular Grievance](#) 866\_F1.
2. Staff shall accept any report of PREA related issues made through a *Regular Grievance* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[c]) The facility PREA Compliance Manager shall notify the Regional PREA Analyst.
3. If the grievance meets the criteria for acceptance, the grievance should be logged into VACORIS using the working day received. A *Grievance Receipt* will be issued within two working days from the date of receipt.
4. If the grievance does not meet the criteria for acceptance, the grievance should be returned to the offender within two working days from date received by completing the *Intake* section of the *Regular Grievance* (see page 2) on the back of the *Regular Grievance*.
  - a. Grievances filed by an offender concerning their medical care cannot be returned for *Insufficient Information*; all other criteria for acceptance will apply.
  - b. A copy of all returned grievances shall be maintained for documentation purposes in the offender's individual grievance file.
5. If an offender wishes a review of the intake decision on any grievance, they may send the *Regular Grievance* form within five calendar days of receipt to the appropriate Regional Ombudsman for a



determination (address will be posted on the housing unit bulletin board). There is no further review or appeal of intake decisions.

6. In the event of abusive filings or misuse by an offender, the Institutional Ombudsman/Grievance Coordinator should contact the Facility Unit Head for a determination if the limiting procedure should be instituted prior to initiating any intake action. If the Facility Unit Head decides to limit the offender, all filings in question will be returned to the offender with the written notification from the Facility Unit Head of the initiation of the limiting procedure in accordance with the *Limiting as a Result of Abuse* Section of this operating procedure.
7. Special Concerns during the Intake Process
  - a. Allegations of Sexual Abuse, Physical Assault, or Criminal Activity
    - i. Grievances alleging sexual abuse, physical assault, or criminal activity by employees or offenders should be brought to the attention of the Facility Unit Head when received.
    - ii. The grievance should be logged and receipted according to the intake criteria and time limits.
  - b. Disciplinary Action
    - i. If a grievance is received which threatens harm to any person or contains vulgar and/or insolent language toward an employee, the offender may be charged under Operating Procedure 861.1, *Offender Discipline, Institutions*.
    - ii. The original grievance is forwarded to designated staff for review and possible disciplinary charge.
    - iii. The offender is to be advised of this action by a copy of the *Regular Grievance* and referral notice on the back of the *Regular Grievance* form.
  - c. If a grievance is received that references a specific audio or video recording, a copy of the recording shall be made and maintained at the facility.

### C. Levels of Review

There are three possible levels of review available for regular grievances. Each level of response should state if an appeal is available and provide the title and address of the respondent for the next available level of review, if applicable.

1. Level I, Facility Unit Head
  - a. The Facility Unit Head maintains the primary responsibility for providing responses to grievances at this level within the time limits specified. The Facility Unit Head may delegate authority to provide Level I responses to the Assistant Facility Unit Head.
  - b. Once the grievance is logged and receipted, the Institutional Ombudsman/Grievance Coordinator should review the content and determine the course of investigation. A face-to-face interview with offenders is not required for all Level I investigations. A face-to-face interview should not be held on issues that have been resolved.
  - c. Once a grievance is submitted, all records necessary to address the complaint should be made available to the designated person conducting the investigation.
  - d. The response will include the following:
    - The results of the informal process
    - The facts (who, what, where, why)
    - The procedure and content which govern the issue
    - A determination of one of the following:
      - Whether the complaint was founded or unfounded and, if founded, what remedy was taken, or will be taken within what time limit
      - Whether the procedure being challenged needs revision
    - The reason for the determination
    - Instructions on the appeal process
  - e. The Facility Unit Head or designee should ensure that an appropriate investigation has occurred

and any required remedy action has been taken, or will be taken within a specified time limit, prior to issuing the Level 1 response.

2. Level II - Regional Administrator, Health Services Director, Superintendent for Education, or Chief of Operations for Offender Management Services
  - a. Grievance issues which the Regional Administrator has authority over are forwarded to the appropriate Regional Office for a response. The Regional Ombudsman will investigate the grievance and prepare a Level II response for the Regional Administrator's signature.
  - b. Grievances regarding actions or decisions of Offender Management Services (including Central Classification Services decisions, time computation, Court and Legal actions, detainees, etc.) are reviewed and responded to by the Chief of Operations, Office of Offender Management Services.
  - c. Grievances regarding Health Services procedures and issues of medical, dental, and mental health care are reviewed and responded to by the Health Services Director. (4-4394)
  - d. Grievances regarding Educational issues and procedures are reviewed and responded to by the Superintendent for Education or the Assistant Superintendent for Education Operations in the Superintendent's absence.
  - e. If the Level I response does not contain sufficient information to arrive at a decision at Level II, the Level II respondent or designee should request the information from the Facility Unit Head or designee who will ensure that the information is provided within the time frame established by Level II.
  - f. If the review at Level II supports the Level I response, the response should indicate such. If the Level I response is not supported, the response will indicate the results of any additional investigation and any action to be taken within a specified time period.
  - g. The response at this level should indicate whether the issue qualifies for an appeal to the next level, and provide the name and address of respondent at the next level of appeal, if applicable. If there is no further appeal, the offender should be advised that they has exhausted all administrative remedies.
3. Level III, Chief of Corrections Operations or Director
  - a. Appeals to this level shall be mailed directly (Bulk Mail available) to Offender Ombudsman Services, Post Office Box 26963, Richmond, Virginia 23261
  - b. Grievances challenging the substance or interpretation of any DOC Procedures are appealable to the Chief of Corrections Operations.
  - c. Grievances regarding decisions of the Publication Review Committee are appealable to the Chief of Corrections Operations directly from Level I.
  - d. Grievances regarding decisions of the Faith Review Committee are appealable to the Chief of Corrections Operations directly from Level I.
  - e. Grievances appealed to the Chief of Corrections Operations or Director's Office will be reviewed to determine if they qualify for a response by this level. Grievances, which do not qualify, will be returned to the offender indicating such. Grievances, which qualify for a Level III decision, will be responded to by either the Chief of Corrections Operations or the Director, as appropriate. The offender will be advised that this is the last level of appeal and that they have exhausted all administrative remedies.
4. Those grievances concerning the Interstate Compact Agreement from Virginia offenders housed in states participating in the Agreement are to be submitted to the Manager of Central Classification Services in the Office of Offender Management Services for a Level I response. These grievances may be appealed to the Chief of Operations, Office of Offender Management Services for a Level II response. These grievances are not appealable to Level III.

#### D. Time Limits

1. The total time allowed from initial submission of the regular grievance to the last level of review will

not exceed one hundred and eighty calendar days, including any authorized continuances.

2. Responses - Responses should be made within specified time limits at each level of decision. Expedient processing of grievances at each level of decision is essential to prevent grievances from becoming moot. Time limits will be considered as beginning on the day the grievance is received at each level. The grievance form will indicate the date the response is signed. The time between the date received and mailed to the offender should not exceed the time allotted for each level.
3. Specified Time Limits - Time limits for responses at each level for regular grievances are as follows: (§115.52[d])
  - Level I 30 calendar days
  - Level II 20 calendar days
  - Level III 20 calendar days
4. Authorized Continuances - A regular grievance may be continued up to 30 calendar days beyond the specified time limits at any level of the procedure for good reason(s). (§115.52[d(3)])
  - a. The offender must be notified in writing of the continuance prior to the expiration of the specified time limit at any level and provided a date by which a decision will be made.
  - b. Grievances should be completed as soon as the reason justifying the continuance has ended or is no longer applicable.
  - c. Total continuances on a grievance that alleges sexual abuse will not exceed 70 days.
  - d. Continuances must be printed from VACORIS. Authorized continuances may be justified for the following reasons:
    - The principal(s) involved is unavailable to provide the information essential to the issue being grieved
    - Awaiting results of Special Investigation Unit or information from other facilities, divisions, or agencies
    - Unavailability of key staff due to escape, disturbance, or natural disasters
5. Expiration of a time limit (to include any authorized continuance) at any stage of the process shall be considered a denial and shall qualify the grievance for appeal to the next level of review. (§115.52[d(4)])
  - a. The grievance will be returned promptly to the offender.
  - b. The respondent will advise the offender on the grievance form of the option to advance the grievance and the appeal information (name/ address for the next level of review).
6. The offender should be allowed 5 calendar days upon receipt of a response to appeal to the next level, if such appeal is available.

#### E. Distribution and Recordkeeping

1. The original grievance with response(s) should be returned to the offender and a copy of the grievance with responses from all appeals routed to the Institutional Ombudsman/Grievance Coordinator for filing in the offender's grievance folder.
2. The facility maintains the official record of the offender grievance with copies of each level's response.

### VII. EMERGENCY GRIEVANCES

- A. *Emergency Grievances* are provided for offender reporting and expedited staff responses to allegations that an offender is subject to a substantial risk of imminent sexual abuse and to situations or conditions which may subject the offender to immediate risk of serious personal injury or irreparable harm. It is the duty of all corrections employees to be responsive to emergency grievances. (§115.52[f(1)])
- B. The facility's implementation memorandum and offender orientation handbook shall indicate how offenders can obtain and submit *Emergency Grievances*. The facility's implementation memorandum shall provide instructions for proper handling of *Emergency Grievances* including designation of staff

persons responsible for receiving and responding to *Emergency Grievances*.

- C. Initiation - *Emergency Grievance* forms should be available on a 24-hour basis for all offenders regardless of housing status. Offenders are to write their grievances on the pre-printed multipart [Emergency Grievance](#) 866\_F4 and submit the completed *Emergency Grievance* to a staff person. Use of threatening, vulgar or insolent language, or false allegations against staff, may subject the offender to disciplinary charges as outlined in the *Disciplinary Action* Section of this operating procedure.

D. Intake

1. The staff person who received the *Emergency Grievance* will determine what action needs to be taken in accordance with specific instructions in the implementation memorandum.
2. Staff shall accept any report of PREA related issues made through an *Emergency Grievance* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[c]) The facility PREA Compliance Manager shall notify the Regional PREA Analyst.
3. If the *Emergency Grievance* must leave the presence of the offender, the receipt at the bottom of the *Emergency Grievance* form should be completed by the staff person and provided to the offender when the offender submits the *Emergency Grievance*. If a determination is made and the form is completed in the offender's presence, the receipt section of the form should be struck through and the "File" copy retained prior to returning the *Emergency Grievance* form to the offender.

E. Response

1. The implementation memorandum will designate who may serve as respondents to *Emergency Grievances*. The respondent should review the issue, determine the course of action, and provide an appropriate response with reasons.
2. If the issue does not subject the offender to immediate risk of serious personal injury or irreparable harm, it is so indicated on the *Emergency Grievance*, signed with date and time of response by the designated staff person.
3. If the issue subjects the offender to immediate risk of serious personal injury or irreparable harm, the designated staff person should determine if they can address the issue or if the *Emergency Grievance* should be forwarded to a higher authority for resolution. The *Emergency Grievance* should receive response from the level at which corrective action can be taken.
4. After receiving an *Emergency Grievance* alleging an offender is subject to a substantial risk of imminent sexual abuse, the employee receiving it shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Administrative Duty Officer or Shift Commander to provide the response within 8 hours. (§115.52[f(2)]) The initial response and final agency decision shall document the institution's determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the *Emergency Grievance*.
5. If an offender receives a medical or dental assessment based on an *Emergency Grievance* and the Health Care staff determines that the condition is clearly not an emergency, the offender will be subject to medical co-pay charges in accordance with Operating Procedure 720.4, *Co-payment for Health Care Services*.

- F. Time limits - An *Emergency Grievance* should be responded to within eight hours. An *Emergency Grievance* that will be mooted by the passage of the time limit should receive immediate attention with appropriate action taken.

G. Distribution and Recordkeeping

1. The original *Emergency Grievance* form with response goes to the offender and the copy is routed to the Institutional Ombudsman/Grievance Coordinator for retention.

2. Those grievances, which are determined to be emergencies, are logged into VACORIS within two working days of response.
3. Those grievances, which do not meet the definition for an emergency, are not logged.
4. Copies of all *Emergency Grievance* forms submitted by an offender should be filed in the offender's grievance record for documentation.

H. Monitoring - The Institutional Ombudsman/Grievance Coordinator should review the copies of *Emergency Grievance* and bring problem areas (including any allegations of criminal activity or physical assault) to the attention of the Facility Unit Head.

## VIII. GRIEVANCE ADMINISTRATION

### A. Records

1. The Institutional Ombudsman/Grievance Coordinator will maintain records of all regular and emergency grievances submitted at the facility, both logged and un-logged. VACORIS should contain the official information of all logged grievances at each level of review.
2. Retention - Copies of grievances, regular and emergency, and audio/ video records, if applicable will be maintained at the unit for a minimum of three years following final disposition of the grievance. Grievances concerning matters known to be under investigation or litigation will be maintained until completion of the investigation or litigation if that event exceeds the 3-year timeframe.
3. Disposal of Records - Permission for disposal of grievance records must be secured in accordance with Operating Procedure 025.3, *Public Records Retention and Disposition*.
4. Record Content - The facility maintains the official copy of any grievance. Grievances or copies of grievances will not be placed in an offender's Historical Hardcopy Record or Facility Folder. .
5. Confidentiality - Grievance records will be maintained in accordance with Operating Procedure 050.1, *Offender Records Management*. Information on grievances should only be available to employees on a need-to-know basis, as determined by the Facility Unit Head.

### B. Monitoring and Evaluation

1. The *Offender Grievance Procedure* will be monitored by the Institutional Ombudsman/Grievance Coordinator at the facility level and by the Ombudsman Services Unit at the regional and central office levels on a regular basis.
2. The Institutional Ombudsman/Grievance Coordinator will regularly monitor the facility grievance procedure for compliance with this operating procedure and the facility's implementation memorandum.
3. The Offender Grievance Procedure will be monitored by the Ombudsman Services Unit through facility visits, completion of the [\*Monthly Grievance Report\*](#) 866\_F2 and the usage of information contained in VACORIS.

## IX. REFERENCES

Operating Procedure 001.1, *Operating Procedure Development*  
Operating Procedure 025.3, *Public Records Retention and Disposition*  
Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*  
Operating Procedure 050.1, *Offender Records Management*  
Operating Procedure 720.4, *Co-payment for Health Care Services*  
Operating Procedure 861.1, *Offender Discipline, Institutions*  
Federal Prison Litigation Reform Act (PLRA)  
Federal Civil Rights of Institutionalized Persons Act (CRIPA)

X. FORM CITATIONS

[Regular Grievance](#) 866\_F1

[Monthly Grievance Report](#) 866\_F2

[Informal Complaint](#) 866\_F3

[Emergency Grievance](#) 866\_F4

XI. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in July 2017 and no changes are needed at this time.*

*Signature Copy on File*

*5/11/16*

N. H. Scott, Deputy Director of Administration

Date