

DATE:	NOVEMBER 7, 2023
NUMBER:	N.1
SUBJECT:	GRIEVANCE PROCEDURE
RELATED SECTIONS:	O.1 ; O.3 ; N.3 ; Prison Rape Elimination Act (2003)

PURPOSE

To establish uniform procedures by which an incarcerated person has the opportunity for a formal administrative review of issues impacting conditions of confinement which personally affect the incarcerated person, and to comply with a U.S. District Court order in *Armstrong v. Schwarzenegger*.

POLICY

Each facility shall attempt to resolve grievances from incarcerated persons in compliance with the California Code of Regulations, Title 15, Section 1073 and the Prison Rape Elimination Act of 2003, Section 115-52. Informal resolution of an issue is both desirable and recommended. Furthermore, written grievances can often be resolved without the intervention of a supervisor, and every effort should be made by a deputy or staff member who receives a grievance to handle it at their level. Incarcerated persons are required to exhaust the grievance process prior to filing a lawsuit [42 U.S. Code section 1997e(a)]. Grievances alleging that an incarcerated person is subject to a substantial risk of imminent sexual abuse shall be referred to as an "Emergency Grievance" and immediately forwarded to the watch commander or designee.

PROCEDURE

I. GRIEVANCES

A. The incarcerated person grievance procedure is designed to address incarcerated person complaints related to any aspect of condition of confinement that directly and personally affects the incarcerated person grievant, including, but not limited to:

1. Medical/Mental Health care
2. Classification actions
3. Disciplinary actions
4. Program participation
5. Telephone, mail and visitation procedures
6. Food, clothing and bedding
7. Conditions that cause an incarcerated person to believe they are at a substantial risk of sexual abuse.

B. The following are not grievable under this policy section:

1. Actions of the Governor or State Legislature, laws and regulations
2. Judicial proceedings or decisions of the Courts
3. Parole/Probation Board actions and/or decisions
4. Requests under the Freedom of Information Act and Health Insurance Portability and Accountability Act (HIPAA)

5. Final decisions on grievances after all appeals
 6. Rejected mail [see Detention Services Bureau Policies and Procedures (DSB P&P) section P.3 for mail appeal process]
 7. Claims seeking monetary compensation
 8. Medical diagnosis, medication or treatment/care provided by a private/contract community hospital
 9. Staff discipline, assignment, duties and/or training
 10. Any issue not within the authority and control of the Sheriff's Department
- C. Pursuant to the Prison Litigation Reform Act of 1996 and 42 U.S. Code section 1997e(a), incarcerated person(s) shall completely exhaust the Department's internal grievance and administrative processes prior to filing any complaint with any state board or federal court.
- D. Incarcerated person(s) may utilize the grievance procedure regardless of their disciplinary status, housing location or classification.
- E. Appropriate provisions shall be made at each facility to ensure incarcerated person(s) who are not fluent in English, persons with disabilities, person(s) with low literacy levels, the elderly and the mentally ill have access to the incarcerated person grievance procedure.
- F. Facility Commanders shall ensure there are no barriers for incarcerated person access to Incarcerated Person Grievance (J-22) forms and incarcerated person(s) can file grievances and appeals in a timely and confidential manner.
- G. Incarcerated person(s) shall place a single complaint on one J-22 form. Grievances containing multiple, unrelated issues will be rejected and returned to the grievant. The grievant may resubmit the grievances on separate J-22 forms.
- H. Staff shall not handle grievance reviews or investigations if they are the subject of the grievance.

II. COMPLAINT RESOLUTION

- A. Incarcerated person(s) may submit their grievances on a J-22 form or any other writing material. The reverse side of the J-22 form describes the grievance procedure in English and Spanish. J-22 forms shall be available and accessible to all incarcerated persons.
- B. Incarcerated person(s) may submit written grievances directly to deputies or other employees at any time when they are in a place, they have permission to be. Absent exigent circumstances, any deputy or other staff member who is presented with a written grievance will accept it.
- C. The deputy or other employee who initially receives a grievance will print their name, ARJIS number, date and time on the J-22 form. The second page of the J-22 form will immediately be given to the incarcerated person as a signed receipt for the grievance.
- D. As an alternate means for submitting grievances, secured boxes may be provided for incarcerated person(s) to deposit their grievances into.

1. A sergeant or designee will collect grievances from the grievance boxes at least once per shift. The collection of grievances will be logged in the Area Activity Log of the Jail Information Management System (JIMS) utilizing the "Grievances Collected" drop-down.
 2. Any grievance retrieved from one of these dedicated grievance boxes will be signed by the sergeant or designee who collected it, and the signed second page of the J-22 form will be returned to the corresponding incarcerated person as soon as practical.
- E. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS
1. The incarcerated person(s) will be linked to the grievance report.
 2. When completing the "Summary" in JIMS, the incarcerated person's grievance may be summarized, but must clearly articulate the nature of the grievance.
 3. The JIMS generated grievance number will be entered on the J-22 form, along with the date and time that the grievance is entered into JIMS.
 4. Medical grievances shall be given directly to health staff without first being entered into JIMS.
- F. Anonymous or group grievances in which no primary grievant can be identified will be reviewed by the watch commander and forwarded to the Facility Commander for review. Anonymous or group grievances will not be entered into JIMS. They will serve as a tool for management oversight only. The Facility Commander or designee will maintain a file containing anonymous and group grievances, along with a description of any action taken.
- G. A grievance in which the primary grievant can be identified will be handled as a normal grievance, even if other incarcerated people sign the form. The incarcerated person completing the J-22 form by including their name, booking number, and signature in the appropriate spaces, will be considered the primary grievant. In these cases, only the primary grievant will be linked to the grievance.
- H. The deputy or staff member who responds to the grievance shall determine if the grievance alleges the incarcerated person's health or safety is being threatened by a condition of confinement, or a condition of confinement has prevented the incarcerated person's effective communication/participation in any court or administrative hearing. If any of the above are alleged, check the corresponding box on the J-22 form and respond within the time frame outlined in paragraph III.B.1.
- I. If the grievance must be routed to another individual or unit for resolution (e.g. the shift sergeant, food services, commissary.), the person who initially received the grievance will make an entry into the "action taken" area of the grievance in JIMS. This entry will include the name of the person the grievance is being forwarded to, and the date and time it was forwarded.

- J. After investigating the nature of the grievance, a written response to the incarcerated person will be drafted on a Grievance Response (J-10) form and also entered in the “Narrative” section of the grievance in JIMS. Two copies of the J-10 form shall be printed. The action officer will deliver the response to the incarcerated person. The incarcerated person will sign and date one copy of the J-10 form. The signed copy will serve as an acknowledgement that a written response was delivered to the incarcerated person. In the event the incarcerated person refuses to sign the response, the action officer and a witness will notate the refusal on the copy of the J-10 form.
- K. There may be instances that will prevent the action officer from delivering a grievance response to an incarcerated person (e.g., the action officer is assigned to another division, facility, etc.). In those situations, the action officer may request assistance or designate someone to deliver the response to the inmate.
- L. After a grievance has been resolved, it must be closed out appropriately.
 - 1. The original copy of the J-22, along with the signed copy of the J-10 form, shall be filed in the inmate's custody record.
 - 2. The grievance must also be closed out in JIMS. The staff member resolving the grievance must complete the grievance detail section in JIMS by entering:
 - a. Their name as the “action officer;”
 - b. The “action date” of the resolution; and
 - c. The “action taken” that resolved the grievance
 - d. Unless these three fields are completed with the appropriate information, JIMS will not remove the grievance from the pending grievance queue.
- M. All grievances entered into JIMS will be reviewed daily by the Facility Commander or designee.

III. GRIEVANCE REVIEW

- A. A grievance not resolved to the incarcerated person's satisfaction may be appealed by the incarcerated person in writing through successive levels of command until a resolution is obtained, or until the Facility Commander reviews the grievance.
 - 1. The reviewing command staff member at any level can affect a resolution of the grievance.
 - 2. At each subsequent level of review of the grievance, a written response containing the details of the resolution or the reasons for denial will be documented in JIMS, and a JIMSWeb “Inmate Grievance Report” will be provided to the incarcerated person.

B. The level of review time frames for grievances are as follows:

1. First level – A deputy, sergeant or other staff member at the lowest appropriate level will investigate the grievance, resolve the issue, and direct a written response to the incarcerated person within seven calendar days of the receipt of the grievance.

When a grievance alleges the incarcerated person's health or safety is being threatened by a condition of their confinement or that the conditions of confinement prevent their effective communication or participation in a court or administrative proceeding (including a CDCR parole revocation hearing), the period for response shall be reduced to four calendar days.

2. Second level – The grievance review officer has 10 calendar days to respond.
3. Third level – The Facility Commander has 10 calendar days to respond. The decision of the Facility Commander is final.

IV. APPEALS OF DISCIPLINE

Appeals of discipline will be processed in accordance with DSB P&P section O.1. They will not be processed as grievances.

V. EMERGENCY GRIEVANCES

When an emergency grievance is received alleging that an incarcerated person is subject to substantial risk of imminent sexual abuse, the deputy shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the watch commander or designee, at which time immediate corrective action (separate the alleged victim) shall be taken. The watch commander or designee shall provide an initial written response, via JIMS using the PREA dropdown, within 48 hours, and shall issue a final decision/response within 5 calendar days. The initial response and final decision/response shall document the determination whether the incarcerated person is in substantial risk of imminent sexual abuse, and the action taken in response to the emergency grievance.

VI. FRIVOLOUS GRIEVANCES

- A. No grievance will be deemed frivolous if it directly pertains to an incarcerated person's health or safety.
- B. A grievance may be deemed frivolous by the Facility Commander if it clearly falls into any of the categories below:
 1. The grievance concerns a matter that is trivial or minor.
 2. The grievance addresses an issue that has previously been brought to the attention of detention facility staff by the same incarcerated person.

3. The grievance alleges a single instance of non-compliance with policy by staff, and such non-compliance does not affect the fundamental rights of the incarcerated person.
 4. The grievance concerns an established policy or practice of the Sheriff's Department that the incarcerated person claims violate their rights, when no good faith legal argument exists that the policy or practice amounts to violation of the incarcerated person's statutory or constitutional rights.
- C. If the Facility Commander finds a grievance to be frivolous, they shall state so in the response to the grievance and enter it into JIMS in the normal manner.
1. In the narrative section, the Facility Commander will note their finding and justification for determining the grievance is frivolous.
 2. The Facility Commander will direct that the incarcerated person receives a copy of this policy and procedure section.

VII. VEXATIOUS GRIEVANCE WRITER

- A. An incarcerated person may be considered a vexatious grievance writer if they have filed repetitive grievances that are frivolous in nature or concern an established policy or practice of the Sheriff's Department that the incarcerated person claims violates their rights, when no good faith legal argument exists that the policy or practice amounts to a violation of the incarcerated person's statutory or constitutional rights.
1. Only the Facility Commander can determine when an incarcerated person will be classified as a vexatious grievance writer. If so determined, the incarcerated person shall be considered a vexatious grievance writer for a period of 90 days.
 2. A JIMS incident report will be written documenting the determination of a vexatious grievant and establish the 90-day timeline.
 3. The incarcerated person will be given a copy of this policy and procedure section.
 4. A Jail Population Management Unit deputy will add "VEX" to the incarcerated person's hazard alerts in JIMS, via the classification evaluation update screen, thus identifying the incarcerated person as a vexatious grievance writer.
- B. A vexatious grievant shall continue to have the right to file grievances; however, their grievance(s) may, at the discretion of the Facility Commander, be denied without a hearing or any right of appeal.
1. The Facility Commander will note at the bottom of the grievance form: "This is a frivolous grievance," return the second page to the incarcerated person and place original copy in the incarcerated person's custody record. The grievance will be entered into JIMS. In the "actions" area, the staff member will indicate the Facility Commander has determined the grievance to be frivolous, and the incarcerated person has been classified as a vexatious grievance writer.

2. If a grievance filed by a vexatious grievant is deemed frivolous, the vexatious grievant shall have their 90-day period reset and a new 90-day period shall commence. This will be documented in a JIMS incident report.

VIII. GRIEVANCE AS DISTINGUISHED FROM A PERSONNEL COMPLAINT

- A. Some grievances submitted by incarcerated person are actually complaints about employee misconduct. Conversely, some allegations of employee misconduct are grievances about detention facility conditions and practices. The procedures described in this policy section apply only to grievances. Supervisors must be able to effectively distinguish between grievances that are truly grievances, and grievances that are complaints alleging misconduct by staff.
- B. If the incarcerated person is alleging that a particular practice is unfair or unlawful, this is a grievance. If the incarcerated person is alleging that an employee's actions violated policy, this is a personnel complaint.
- C. If a grievance addresses the actions of a specific deputy or staff member, the deputy or staff member who receives and signs for the grievance will:
 1. Return the second page to the incarcerated person
 2. Give the J-22 form to a supervisor for review.
 3. The supervisor will enter the grievance into JIMS, omitting the name(s) of the subject employee(s).
 4. Using the criteria described below, the supervisor will determine whether it is a grievance about detention facility conditions/practices, or a complaint about an employee.
 5. If it is determined to be a grievance about facility conditions, the supervisor will handle it as a grievance pursuant to this policy section.
 6. If it is to be handled as a complaint against staff, the supervisor will contact the complainant to obtain a detailed statement about the allegation(s) and document it on the J-22 form, omitting the name(s) of the subject employee.
 - a. The corresponding box on the form will be checked and the grievance will be closed in JIMS.
 - b. The supervisor will give the J-22 form to their watch commander for review and determination of the appropriate action. If immediate action is not required, the J-22 form will be forwarded to the immediate supervisor of the employee named in the complaint to determine if a formal investigation is warranted.

- c. If a formal investigation is recommended, the supervisor will complete the Complaint Form (IA-1) and forward it to Internal Affairs who will determine if the personnel complaint should be handled at the facility level or Internal Affairs.
- D. Naming a specific deputy or other employee does not automatically turn the grievance into a personnel complaint. Often, incarcerated person(s) will file complaints against a deputy for enforcing a DSB P&P section that the incarcerated person believes is unlawful or unfair. Such complaints are grievances rather than personnel complaints because the incarcerated person's issue is with the policy itself, not the deputy who enforced the policy.

IX. GRIEVANCES DETERMINED TO BE A REQUEST

- A. Grievances received may not meet the criteria for grievances as described in section I of this policy.
- B. If a grievance is determined to be a request:
 - 1. Check the two corresponding boxes, "This is not a grievance," and, "This is a request" on the J-22 form.
 - 2. Give the second page of the J-22 form to the incarcerated person as a signed receipt.
 - 3. Provide a Request (J-21) form to the incarcerated person and advise the incarcerated person to submit the request on the appropriate form.
 - 4. No entry in JIMS is required.
 - 5. File the original copy of the J-22 form in the incarcerated person's custody record.
 - 6. Resolve the incarcerated person's request according to DSB P&P section N.3.