

District of Columbia Corrections Information Council



RECOMMENDATION ASSESSMENT REPORT: BOP ADMINISTRATIVE REMEDIES

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District of Columbia Corrections Information Council

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About the District of Columbia Corrections Information Council

The District of Columbia Corrections Information Council (CIC) is an independent oversight body mandated by the United States Congress and the Council of the District of Columbia to inspect, monitor, and report on the conditions of confinement in correctional facilities where residents from the District of Columbia are incarcerated. This includes facilities operated by the Federal Bureau of Prisons (BOP), the District of Columbia Department of Corrections (DOC), and private contractors.

The CIC reports its observations and recommendations to the District of Columbia Representative in the United States Congress, the Mayor of the District of Columbia, the Council of the District of Columbia, the District of Columbia Deputy Mayor for Public Safety and Justice, the Director of the BOP, the Director of the DOC, and the community.

About the Recommendation Assessment Series

The Corrections Information Council inspects and reports on conditions of confinement in correctional facilities where DC Code offenders are located. The Recommendation Assessment series reviews and reports on common recommendations from previous inspection reports. The series also assesses the implementation of recommendations. In some instances, additional recommendations are provided to better address residents' needs. The CIC will monitor and report on the recommendations and publish updates following significant changes to the implementation or creation of new recommendations.

Introduction

Residents consistently express concerns about the effectiveness and legitimacy of the Bureau of Prisons' (BOP) administrative remedy process. This process, also called the grievance process, is a prerequisite to any resident filing a federal lawsuit regarding their conditions of confinement and is used to address the preponderance of issues residents may face while in BOP custody. To maximize resident utilization, it is imperative that the administrative remedy process is accessible to residents and provide them with outcomes that address their concerns. The CIC's updated recommendations suggest policy changes that remove potential barriers to filing grievances, improve transparency of the process, and establish possible remedies for grievances that are decided in favor of the resident. Many of the policy suggestions are derived from Michigan Law School's review of prison and jail grievance policies across the United States.¹

Previous Recommendation Summary

The below recommendations have been previously made to the BOP in inspection reports over the last five years. The recommendations stem from reports at various facilities and have been edited for clarity and brevity.

Recommendation	Status
Make grievance forms readily available in all housing units and allow for digital submission through the TRULINCS system.	Not resolved
Ensure staff respond to grievances within the appropriate time frame.	Partially resolved

Previous Recommendation: Make grievance forms readily available in all housing units and allow for digital submission through the TRULINCS system.

Status: Not resolved

Under the BOP's current policy, residents must request grievance forms from staff members to initiate the formal administrative remedy process.² Once complete, forms are submitted back to staff for further processing. Making staff members the gatekeepers of the administrative remedy

¹ Kaul, Priyah, Donley Greer, Ben Cavaturo, Anelisa Benavides, Jessica Kincaid, and Joseph Chatham. 2015. "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey." *Michigan Law Prison Information Project*. <https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIAReport10.18.15.2.pdf>

² Bureau of Prisons (BOP), "Administrative Remedy Process", 1330.18, https://www.bop.gov/policy/progstat/1330_018.pdf

process is unnecessary and may discourage residents from utilizing the process due to fear of retaliation by staff.³ Instead, the CIC recommends that all administrative remedy forms are made available in all common areas, housing units, the Law Library, and on TRULINCS. Residents in segregated or restrictive housing should also have access to grievance forms in their cells and through the Law Library.

Updated Recommendation #1: Allow residents to submit grievances through drop boxes and digitally through TRULINCS.

The CIC recommends the use of TRULINCS and drop boxes so residents can confidentially submit grievances without having to interact directly with staff. The Administrative Remedy Clerk or Coordinator should check drop boxes daily to ensure timely processing of forms.

Updated Recommendation #2: Remove the Informal Resolution Requirement from the Administrative Remedy process.

Real or perceived fears of retaliation can deter people from filing legitimate grievances.⁴ The CIC recommends the BOP remove the requirement that residents attempt an informal resolution prior to utilizing the formal administrative remedy process.⁵ While residents should still be permitted to attempt informal resolution, this should be done only at their discretion and should not be an obligation of the administrative remedy process.

Previous Recommendation: Ensure staff respond to grievances within the appropriate time frame.

Status: Partially resolved

Updated Recommendation #3: Allow residents who do not receive a response from the BOP within the specified time frames to file their appeal at the next higher level.

³ Michigan Law, "Prison and Jail Grievance Policies."

⁴ Id.

⁵ BOP, "Administrative Remedy Process."

BOP policy identifies timelines for staff at each level of the administrative grievance process to respond to residents; however, it does not identify remedies for residents who do not receive a response from the BOP within the timeframe specified. Residents cannot appeal issues at a higher level unless they have been addressed in lower-level filings, which means that a delayed response at any level can completely prohibit a resident from moving forward in the administrative remedy process.

Updated Recommendation #4: Confidentially Return supporting exhibits and rejected “sensitive” grievances to residents.

If a resident believes filing a grievance at the institutional level would threaten their safety or well-being, they can file the grievance directly to the Regional Director by mail.⁶ However, if the Regional Director determines the grievance is not sensitive, they reject the request and do not return the submitted grievance back to the resident. Similarly, when residents submit exhibits in support of their grievance, they do not receive those exhibits back when they get a response from the BOP. In both instances, the resident must spend additional time and resources to obtain additional copies of exhibits or recreate their initial grievance to re-file.⁷ This creates an additional burden on the resident who may face barriers in accessing additional forms, documentation, or copies of materials. Instead, the CIC recommends that resident grievances are confidentially returned to them in full, including any exhibits or supporting materials, and that the reviewer create and retain copies of the resident’s paperwork.

Updated Recommendation #5: Include what is grievable and non-grievable in the Administrative Remedy policy.⁸

The BOP does not identify what constitutes a grievance, meaning residents may file an administrative remedy for an issue that is non-grievable. These grievances are immediately rejected, which could contribute to resident frustration with the remedy process. Explaining program parameters will increase transparency and perceptions of legitimacy. Additionally, reviewers at the

⁶ BOP, “Administrative Remedy Process.”

⁷ Id.

⁸ Michigan Law, “Prison and Jail Grievance Policies.”

institutional level should receive fewer grievances which contain non-grievable issues, decreasing their workload.

Updated Recommendation #6: Create a method for filing emergency health care grievances.⁹

Residents with emergency healthcare issues should have their grievances quickly reviewed by a medical provider to determine a response. The BOP should amend the Administrative Remedy policy to define what constitutes a healthcare emergency and establish a channel for residents to file these types of grievances. This process would skip the informal resolution requirement, and require a medical professional to review the grievance within three calendar days of the resident's filing in accordance with the BOP's policy for other emergency grievances.¹⁰

Updated Recommendation #7: For residents filing appeals, start the time limits for filing when the resident receives notification of completion of the previous step.¹¹

All timelines of the administrative remedy process should begin when the resident receives notification of the previous step, not when the previous step occurs. Currently, a delay in the resident receiving a response to their appeal could mean they miss a deadline for continuation of the remedy process. For example, if the Regional Director signs their response but the resident does not receive notice of this until two weeks later, then the resident lost two weeks of their allotted 30 days to create and file an appeal.

Updated Recommendation #8: Amend BOP Policy to state that residents have 20 calendar days from the date the most recent incident occurred or the date the grievant became aware of the incident.

There are some instances where residents are not immediately aware that an incident occurred. For example, missing personal property or inadequate medical care might not be immediately evident. The CIC recommends the addition of a clause to the administrative remedy policy that starts the

⁹ Michigan Law, "Prison and Jail Grievance Policies."

¹⁰ BOP, "Administrative Remedy Process."

¹¹ Michigan Law, "Prison and Jail Grievance Policies."

timeline for initial filing at the time the resident became aware of the incident. Additionally, for reoccurring incidences, the timeline to file should begin at the date of the most recent incident. For example, residents who are continually victimized should be able to file a grievance for the most recent incident of victimization instead of the first time it occurred.¹²

Updated Recommendation #9: Eliminate the single subject rule for filing grievances.¹³

Residents in BOP custody do not readily have access to grievance forms; therefore, the requirement limiting one subject per grievance places an additional burden on residents who seek to address multiple issues and who might face barriers in accessing grievance forms. If grievances with multiple issues on them are returned to residents for individual filing and an extension is not given, residents may exceed the 20-calendar day deadline for initial filings, preventing them from filing those grievances.

Updated Recommendation #10: Create standard remedies that will result from grievances found in favor of the resident and include them in the Administrative Remedy policy. Remedies should include institutional change and restitution and/or resolution.

The BOP should identify a non-exhaustive list of possible outcomes for each type of grievance to set resident expectations and increase resident satisfaction with the process. Remedies should include institutional change when a systemic issue is identified by a resident grievance. Whenever possible, restitution and/or resolution should be implemented to address resident's harm.¹⁴ For example, residents who were erroneously charged copays should be reimbursed for those charges.

Updated Recommendation #11: Create an independent entity not associated with the BOP to review appeals and provide oversight of the administrative remedy process.

Under current policy, the first step of the formal administrative remedy process is a review by the Warden. Residents can appeal the Warden's decision by raising their grievance to the Regional

¹² Id.

¹³ Michigan Law, "Prison and Jail Grievance Policies."

¹⁴ Id.

Director and later to the BOP Central Office; however, each of these reviewers are offices within the BOP. Resident grievances should be reviewed by independent entities not associated with the BOP to prevent bias in the decision-making process.¹⁵ The CIC recommends allowing residents to mail or digitally submit an appeal to an external agency who can impartially review the Warden's decision and provide a response to the resident. Additionally, this entity can serve as an oversight body for the BOP's administrative remedy process, ensuring responses are issued within the prescribed timelines, and decisions rendered at the facility are appropriate.

Conclusion

The scope of the administrative remedy process extends to nearly all aspects of those in custody of the BOP. Therefore, the remedies offered by the process must be effective at addressing resident's concerns, and the process must be accessible and transparent. By implementing the proposed recommendations, the BOP could increase the utilization and belief in the administrative remedy process as a viable means to address harm.

¹⁵ Id.