
 <p>NEW YORK STATE Corrections and Community Supervision</p> <p>DIRECTIVE</p>	TITLE		NO. 9402
	Parolee Grievance Program		DATE 03/07/2017
SUPERSEDES	DISTRIBUTION A B	PAGES PAGE 1 OF 8	DATE LAST REVISED
REFERENCES (Include but are not limited to) Directive 4040; 4490; OMH Article 10; NYS Penal Law §70.40(2); PREA Standards (28 C.F.R. 115.06)	APPROVING AUTHORITY 		

I. PURPOSE: The purpose of this directive is to establish requirements and procedures for parolees to submit complaints and formal grievances. This directive outlines and defines the orderly, fair, and expeditious method for resolving grievances and the procedures by which Community Supervision staff shall evaluate, investigate, and respond to complaints and formal grievances by parolees. This directive also establishes the requirements for receiving and maintaining grievance records.

Note: References to “parolee” and “releasee” are intended to refer to individuals released to Community Supervision and presently under the jurisdiction of the Department of Corrections and Community Supervision (DOCCS). References to “parolee,” for purposes of this directive, shall also include any OMH Article 10 identified respondents who are presently under the jurisdiction of DOCCS.

II. APPLICABILITY: This directive shall apply to all individuals released and under the supervision of Community Supervision staff to include individuals paroled, conditionally released, released to a period of post-release supervision, and released to the community via an order of strict and intensive supervision and treatment (OMH Article 10). This directive shall also apply to individuals granted discretionary release under NYS Penal Law §70.40(2) – Local Conditional Release (LCR).

III. POLICY: It is the policy of DOCCS to establish and maintain a formal written grievance procedure that shall be made available to all parolees under Community Supervision.

IV. DEFINITIONS

A. Grievance: A written complaint submitted by a parolee to the Senior Parole Officer (SPO), about the substance or application of any written or unwritten policy, regulation, procedure, rule, or condition of Community Supervision or any of its program units, or the lack of a policy, regulation, procedure, or rule. A letter addressed to other bureau, regional staff, or central office staff will not be considered a grievance. A grievance will only be accepted from a parolee on a “Parolee Grievance Complaint Form,” [Form #9402BCS](#). [Form #9402BCS](#) is to be submitted to the attention of the SPO via U.S. Mail utilizing the appropriate Community Supervision Bureau address. [Form #9402BCS](#) may also be submitted via the appropriate Community Supervision Bureau shared mailbox (electronic mailbox).

Note: Any individual who is currently not under Community Supervision but would like to file a complaint with DOCCS, specifically with the Office of Special Investigations (OSI), may do so online or in writing to OSI.

B. Grievant: A parolee directly supervised by DOCCS.

- C. Bureau Specific Grievance: A grievance where the grievant is affected only as long as he or she remains a parolee in that bureau where the grievance was filed.
- D. Like Grievances: Those grievances emanating from a substantially similar set of facts, situations, or circumstances with a similar action requested, or complaints which could be resolved through a single disposition.
- E. Harassment Grievances: Those grievances that allege non-sexual employee misconduct meant to annoy, intimidate, or harm a parolee.
- F. Staff Assistance: Authorized uninvolved staff may assist the grievant upon request to explain the form, filing requirements, and to review the grievance.
- G. Definitions Related to Sexual Abuse and Sexual Harassment: The terms of sexual abuse and sexual harassment shall have the definitions as set forth in the Prison Rape Elimination Act (PREA) standards (28 C.F.R. 115.06).
- H. Unlawful Discrimination Grievances: Those grievances that allege acts or policies which adversely affect individuals based on race, color, religion, national origin, sex (including gender identity), sexual orientation, age, disability, marital status, military status, and arrest and/or conviction record.

V. GENERAL POLICIES

- A. Parolee's Responsibility: A parolee is encouraged to resolve his or her complaints through his or her assigned Parole Officer (PO) and/or the SPO, or other existing channels (informal and formal) prior to submitting a grievance. Although a bureau may not impose preconditions for submission of a grievance, the failure of a parolee to attempt to resolve a problem on his or her own may affect the outcome of the grievance.
- B. Grievances must be Personal: A parolee must be personally affected by the policy or issue he or she is grieving or must show that he or she will be personally affected by that policy or issue unless some relief is granted. All grievances must be filed by the grievant in an individual capacity.
- C. Class Actions not Accepted: Individuals personally affected by a matter which affects a class of parolees may only file a grievance on their own behalf. Grievances raised in terms of class actions will not be accepted.
- D. Non-grievable Issues
 - 1. An individual decision or disposition of any current or subsequent program or procedure having a written appeal mechanism which extends review to outside the bureau.
 - 2. Parole Board imposed conditions and mandatory conditions of Community Supervision.
 - 3. A decision or disposition of the Commissioner, Deputy Commissioner for Community Supervision, or other authorized designee of DOCCS.
 - 4. Decisions by the Parole Board regarding Three Year Discharges (3YD) and Five Year Discharges (5YD).

5. Any arrest by Department (DOCCS) personnel for an alleged violation of the condition of release or an arrest by any law enforcement agency that results in the issuance of a parole violation warrant for an alleged violation of the conditions of release, or any subsequent revocation decision.
 6. Policies, decisions, or procedures unrelated to Community Supervision, legislative action, or judicial proceedings.
- E. Outside Agencies Excluded: Any policy, regulation, or rule of an outside agency (e.g., Office of Mental Health, Immigration and Customs Enforcement, etc.) or action taken by an entity not under the supervision, including the Board of Parole, of the Commissioner is not within the jurisdiction of the Parolee Grievance Program (PGP).
- F. Reasonable Accommodations: The SPO will ensure that disabled parolees are provided the necessary assistance to facilitate their access to and use of the PGP. Reasonable accommodations shall include, but not be limited to, meetings with parolees at accessible sites and the provision of qualified sign language interpreters for deaf and hard-of-hearing parolees who use sign language to communicate. Copies of all grievance decisions concerning reasonable accommodations for disabled parolees shall be sent to the ADA coordinator in DOCCS Central Office.
- G. Language Assistance Services: Interpretation and translation services will be used to facilitate access to the PGP for those parolees with Limited English Proficiency (LEP) (see Departmental Directive #4490, "Cultural and Language Access Services").
- H. Sexual Abuse and Sexual Harassment Complaints: The Department has zero tolerance for sexual abuse and sexual harassment and all reports will be thoroughly investigated. A parolee is not required to file a grievance form concerning an alleged incident of sexual abuse or sexual harassment. In addition, a parolee may also report a sexual abuse incident by writing to OSI. Any parolee grievance filed regarding a complaint of sexual abuse or sexual harassment shall immediately be reported to the Regional Director (RD) for further handling in accordance with Department (DOCCS) policies.

VI. PROCEDURES

A. Filing the Complaint

1. *Notice to Parolees*: All parolees shall be informed of the PGP and appeal procedures at the initial interview with the field PO and will acknowledge understanding of the PGP by signing the "Parolee Grievance Program Acknowledgement," [Form #9402ACS](#). The grievant (parolee) is to be provided with a copy of [Form #9402ACS](#) and service of this form is to be documented in the Case Management System (CMS). A copy of [Form #9402ACS](#) is to be placed in the subject's case folder and a copy is to be submitted to the Community Supervision Central Files Unit.
2. *Time Limit for Filing*: A parolee must submit a written grievance to the SPO within thirty (30) calendar days of an alleged occurrence on a "Parolee Grievance Complaint Form," [Form #9402BCS](#). The grievance may only be filed at the bureau where the parolee is currently supervised even if it pertains to another bureau.

Note: Only one "Grievance Continuation Form," [Form #9402ECS](#), may be utilized.

3. *Method of Filing:* A parolee (grievant) must submit all grievance complaint forms and appeal forms via U.S. Mail utilizing the appropriate Community Supervision Bureau address or to the Regional Office as applicable. [Form #9402BCS](#), "Parolee Grievance Complaint Form" is to be submitted to the attention of the Senior Parole Officer (SPO). [Form #9402CCS](#), "Grievance Appeal to Bureau Chief," is to be submitted to the attention of the Bureau Chief and [Form #9402DCS](#), "Grievance Appeal to Regional Director," is to be submitted to the attention of the Regional Director at the Regional Community Supervision Office. Grievance complaint forms and appeal forms may also be submitted via the appropriate Community Supervision shared mailbox (electronic mailbox). All grievances received that are marked confidential should be handled accordingly. Information shared on a grievance is confidential and should be handled in accordance with Department policy and procedure.

Note: Designated bureau staff will retrieve forms and documents from the PGP drop box at the start of each business day. All forms retrieved will be logged, coded, and assigned to the appropriate SPO of record by designated Community Supervision staff.

4. *Contents:* All grievances must be accurate, truthful, and contain the following information:
 - a. Grievant's name;
 - b. Department Identification Number (DIN);
 - c. Phone number;
 - d. Current address;
 - e. Current assigned area office;
 - f. Concise, specific description of the complaint and action requested; and
 - g. Describe what actions the grievant has taken to resolve the complaint (e.g., specific persons/areas contacted and responses received).

B. Processing of the Complaint

1. *Logging, Coding, and Titling:* Upon receipt of a grievance, the SPO will designate a staff member to review the complaint. All regions and bureaus will use the "Parolee Grievance Log," [Form #9402FCS](#) to record receipt of the grievance form and record each of the case-specific actions (grievance response dates, appeal tracking, and appeal response dates). Each grievance will be consecutively numbered with a grievance log number and coded with a grievance type and documented in the Case Management System (CMS).
2. *Case Management System (CMS):* Staff responsible for processing the grievance shall utilize the following CMS contact codes for purposes of adherence to the required workflow and to support the collection of historical case-specific data.
 - a. "PG" – Parolee Grievance Complaint Form ([Form #9402BCS](#)) received
 - b. "RG" – Grievance response by Senior Parole Officer
 - c. "GA" – Appealed to level of Bureau Chief

- d. "RB" – Grievance response by Bureau Chief
 - e. "GD" – Appealed to level of Regional Director
 - f. "RR" – Grievance response by Regional Director
3. *Like Grievances*: "Like Grievances" may be consolidated at the discretion of the SPO and assigned one grievance log number. Any subsequent like complaint may be consolidated and assigned the same log number until the SPO provides a decision. Like complaints received after the SPO's decision will receive a new log number. All grievants shall be provided an initial written reasoned decision from the SPO; only those grievants that appeal will receive a response and a decision to an appeal.
 4. *Emergencies*: Grievances related to PREA, sexual assault or harassment, or physical assault or injury are to be considered emergent and shall be forwarded to the Bureau Chief within 24 hours of receipt. The Bureau Chief or designee will respond immediately.
 5. *Allegations of Unlawful Discrimination*: Allegations of acts or policies which adversely affect individuals based on race, color, religion, national origin, sex (including gender identity), sexual orientation, age, disability, marital status, military status, and arrest and/or conviction record are of a particular concern to the administrators of this Department and Community Supervision offices. Therefore, the following expedited procedure for the review of grievances alleging unlawful discrimination shall be followed:
 - a. A Parolee who wishes to file a grievance complaint alleging discrimination by an employee, program, policy or procedure shall follow the procedures set forth in this directive.

Note: A Parolee who feels he or she is being unlawfully discriminated against by an employee, program, policy or procedure shall report such incident to the appropriate SPO.
 - b. The SPO must process the grievance in accordance with this directive and forward a copy of the grievance, within 24 hours, to the appropriate bureau Chief. The Bureau Chief will forward the grievance to the appropriate Regional Director and the Office of Diversity Management for immediate action.

Note: The Regional Director shall initiate an investigation and/or request assistance from the Office of Diversity Management to conduct the investigation.
 - c. Within 25 business days of receipt of the grievance, the Regional Director will render a decision on the grievance and transmit said decisions, with reasons stated, to the grievant, the Office of Diversity Management, and any direct party of interest.
 6. *Step 1, Senior Parole Officer Decision*
 - a. The SPO will have fourteen (14) calendar days to respond to a grievance. The SPO may only exceed the fourteen (14) day time limit for good cause, and written notice is to be provided to the parolee.

- b. If a grievance is coded as “non-grievable” a response indicating such will be returned to the grievant, placed in the case file and documented in CMS.
 - c. A grievance decision must provide direction on how the grievant can resolve his or her issue, indicate the corrective action taken to grant in full or in part their complaint or information explaining why no action will be taken.
 - d. Allegations of employee misconduct will be forwarded to the Bureau Chief and allegations of sexual abuse or harassment will be forwarded to the attention of the Regional Director for appropriate handling in accordance with Department policies.
 - e. A copy of the decision and the original grievance shall be placed in the case file and documented in CMS.
 - f. In all cases where action by the Bureau Chief or Regional Director is required, the grievance documents and all relevant supplemental information shall be transmitted to either the Bureau Chief or Regional Director in a timely manner. All Community Supervision documentation regarding disposition of the grievance shall be placed in the central file and documented in CMS.
7. *Step 2, Appeal to the Bureau Chief*
- a. If the grievant wishes to appeal the SPO’s decision to the Bureau Chief, he or she must complete and sign the “Grievance Appeal to Bureau Chief,” [Form #9402CCS](#), and submit it to the BC via U.S. Postal Mail or via the Community Supervision shared mailbox within seven (7) calendar days after receipt of the SPO’s written decision. If no appeal is filed in response to the decision of the SPO, the SPO disposition shall be considered a final determination.
 - b. The Bureau Chief will have twenty (20) calendar days to provide a written decision to the appeal. The BC may only exceed the twenty (20) day time limit for good cause, and written notice is to be provided to the parolee.
 - c. A copy of the BC decision is to be provided to the grievant (parolee) and documented in CMS. A copy of the decision is to be placed in the subject’s case folder and a copy is to be submitted to the Community Supervision Central Files Unit.
 - d. In all cases where action by the Regional Director is required, the grievance forms and all relevant supplemental information shall be transmitted to the Regional Director in a timely manner.
8. *Step 3, Appeal to the Regional Director*
- a. If the grievant wishes to appeal to the Regional Director (RD), he or she must complete and sign the “Grievance Appeal to the Regional Director,” [Form #9402DCS](#), and submit it to RD via U.S. Postal Mail or via the Community Supervision shared mailbox within fourteen (14) calendar days of receipt of the Bureau Chief’s written determination to the appeal. If no appeal is filed following the decision by the Bureau Chief, it will be presumed that the grievant accepts the determination.

- b. The Regional Director (RD) will have thirty (30) calendar days to provide a written determination.
- c. A copy of the RD's decision is to be provided to the grievant (parolee) and documented in CMS. A copy of the decision is to be placed in the subject's case folder and a copy is to be submitted to the Community Supervision Central Files Unit.
- d. The decision of the RD shall be considered final.

VII. CORRECTIVE ACTION

- A. When a complaint or grievance is upheld or upheld in part and corrective action is warranted, the corrective action will be completed within thirty (30) calendar days. The corrective action shall be clearly noted in the case file and central file and documented in CMS.
- B. The appropriate designee responsible for implementing the corrective action will provide written confirmation and documentation to the decision maker indicating that corrective action was taken.
- C. The grievant may submit a grievance to the next level of the process when the corrective action was not completed within the required timeframes.

VIII. PROCEDURAL SAFEGUARDS

- A. Processing Grievances after Transfer to Another Bureau: A parolee who has transferred to another bureau may continue an appeal of any grievance. If the grievant wishes to appeal, he or she must mail the signed appeal form back to the BC or RD at the bureau where the grievance was originally filed within seven (7) days of receipt of the decision.
- B. Processing Pending Grievances or Appeals at a Parolee's Discharge: A grievance pending at the time the parolee has been discharged from supervision which still personally affects him or her shall be automatically appealed to the Regional Director for final determination. For all others, the SPO will respond to the grievance as required and forward the decision to the grievant. If a forwarding address cannot be verified or bureau personnel are unable to contact the grievant, the original decision will be placed in the central file and documented in CMS.
- C. Withdrawal of Complaints and/or Grievances
 1. A grievance may only be withdrawn by a parolee in writing.
 2. A parolee may not withdraw a grievance alleging staff on parolee sexual misconduct, sexual harassment, or staff misconduct of a sexual nature while the matter is presently under investigation by a law enforcement agency or Department personnel.
- D. Confidentiality/file Maintenance
 1. Grievance records shall be maintained in accordance with NYS Record and Retention requirements, and in accordance with DOCCS policy and procedure.

IX. EMPLOYEE MISCONDUCT

- A. A grievance alleging employee misconduct will be logged with all other grievances and all documents submitted with the complaint shall be forwarded to the Bureau Chief by close of business on the date the complaint was received.
- B. The Bureau Chief in consultation with the Regional Director shall promptly determine whether the grievance, if substantiated, represents a bona fide case of employee misconduct. If not, it will returned to the SPO for normal processing.
- C. If it is determined that the grievance appears to be a bona fide case of employee misconduct, the Bureau Chief in consultation with the Regional Director shall:
 - 1. Assign supervisory staff to further investigate the matter; or
 - 2. Refer the allegation to the Office of Special Investigations (OSI).

Note: Grievances that are investigated by OSI shall be held in abeyance by the Regional Director until the conclusion of the investigation at which time a written final determination will be provided to the grievant. Grievances not forwarded to OSI will be investigated by supervisory staff and responded to by the Bureau Chief.

X. EVALUATION

- A. The Deputy Commissioner for Community Supervision or designee shall conduct an evaluation of the PGP at least annually to determine its efficiency and effectiveness.