

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: W Division of Corrections/Regional Jail Authority TITLE NUMBER: 90

RULE TYPE: Legislative CITE AUTHORITY: W Code 25-1-1 and 25-1A-2

AMENDMENT TO AN EXISTING RULE: YES NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Immune Grievance Procedures

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Immune Grievance Procedures

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2000 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

W Division of Corrections

Attention: Loita Butcher

112 California Avenue

Building 4, Room 300

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Paul Kerby
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: (JOINT RULE) Inmate Grievance Procedures

Type of Rule: XX Legislative Interpretive Procedural

Agency: W Division of Corrections and the Regional Jail Authority

Address: Corrections -- 112 California Avenue, Building 4, Room 300, Charleston, WV 25305

Regional Jail -- 307 Jefferson Street, Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

It is difficult to quantify the estimated cost. However, in our best judgment, based on an average of 125 state court cases per year for the Division of Corrections, the cost to the Division was \$280,625.00.

3. Objectives of These Rules:

We estimate that this legislation will reduce the MIRA cases by one-half for each agency.



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 22, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) (304) 558-2036
WV Division of Corrections, 112 California Avenue,

Building 4, Room 300, Charleston, WV 25305 and Regional Jail Authority,

307 Jefferson Street, Charleston, WV 25305 (304) 558-2110

LEGISLATIVE RULE TITLE: (Joint Rule)

Inmate Grievance Procedures

1. Authorizing statute(s) citation WV Code 25-1-1 and 25-1A-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

Filed June 22, 2000; Comment period ends July 31, 2000 at 4:00 p.m.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

July 31, 2000 at 4:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

Rule Title: Inmate Grievance Procedures

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

It is difficult to quantify the estimated cost. However, in our best judgment, based on an average of 125 state court cases per year, the cost to the Division of Corrections was \$280,625.00.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

C. Economic Impact on Citizens/Public at Large.

Date: June 22, 2000

Signature of Agency Head or Authorized Representative:

Paul Kirby

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 22, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Loita Butcher, Executive Assistant, WV Division of Corrections

112 California Avenue, Building 4, Room 300, Charleston, WV 25305

(304) 558-2036 ext. 36; fax (304) 558-5367

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

Comment period ends July 31, 2000 at 4:00 p.m.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

90CSR9

TITLE 90
JOINT LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
DIVISION OF CORRECTIONS AND
REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY

SERIES 9

INMATE GRIEVANCE PROCEDURES

SUMMARY

It is the policy of the West Virginia Division of Corrections and the West Virginia Regional Jail and Correctional Facility Authority to establish and maintain a joint mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement (except for disciplinary or classification issues which have separate review processes) for all inmates confined in any State Correctional Facility or Regional Jail.

90CSR9

TITLE 90
JOINT LEGISLATIVE RULE
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
DIVISION OF CORRECTIONS AND
REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY

SERIES 9

INMATE GRIEVANCE PROCEDURES

§90-9-1 General

1.1 Scope -- It is the policy of the West Virginia Division of Corrections and the West Virginia Regional Jail and Correctional Facility Authority to establish and maintain a mechanism that ensures the promulgation of uniform procedures concerning the formal review of issues relating to any aspect of confinement (except for disciplinary or classification issues which have separate review processes) for all inmates confined in any State Correctional Facility or Regional Jail.

1.2 Authority -- WV Code § 25-1-1 and 25-1A-2

1.3 Filing date—

1.4 Effective date—

§90-9-2 Definitions

2.1 "Grievance" means a circumstance or action considered to be unjust or unfair and constitute grounds for complaint or resentment, and may also be a basis for which an inmate intends to file any litigation. Grounds for a grievance shall include, but not be limited to, those enumerated in West Virginia Code 25-1A-2(b), being food quality, health care, non-violent or non-sexual conduct of employees or contractors of the Division of Corrections or Regional Jail and Correctional Facility Authority, loss of privileges and other conditions, actions or incidents which personally affect the inmate.

2.2 "Correctional facility" to the fullest extent practicable shall have the same definition as that set forth in West Virginia Code 25-1A-1(b).

2.3 "Inmate" to the fullest extent practicable shall have the

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same definition as that set forth in West Virginia Code 25-1A-1(c).

2.4 "Reprisal" shall mean any action or threat of action against anyone for the good faith use of or participation in the grievance procedure.

3.1 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Availability.

3.1.1 Inmates regardless of classification will have access to the grievance procedure. Newly committed inmates shall receive an inmate handbook, which will provide an explanation of the grievance procedure.

3.1.2 Each regional jail shall ensure the written inmate grievance procedure is available in any language spoken by a significant portion of the inmate population. Appropriate provisions shall be made for those not speaking these languages. Assistance, as requested, will be provided by facility staff to those inmates who are illiterate, handicapped, or have a disability that would prevent them from utilizing this procedure.

3.2 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Applicability:

3.2.1 Any inmate may file a grievance if they believe they have a serious complaint or a significant problem relating, but, not limited to the following:

- a. Institutional policy
- b. Conditions of confinement
- c. Actions of employees or inmates
- d. Incidents which personally affect the inmate
- e. Concerning food quality
- f. Health care
- g. Non-violent or non-sexual conduct of employees or contractors of the division of corrections or regional jail authority
- h. Loss of privileges
- i. General complaints about daily living conditions, which do not directly and seriously concern an inmate's physical health or security.

3.2.2 An inmate may not use the grievance procedure in incidents wherein the authority to act does not rest with the Regional Jail Authority, for example:

- a. Court rulings against/for the inmate
- b. Scheduling of court appearances
- c. Setting of bond
- d. Other similar matters

3.2.3 An inmate may not use the grievance procedure if he/she has not utilized those administrative procedures in existence, for example:

- a. Appeal of classification decisions
- b. Appeal of disciplinary

- hearing decisions,
or
c. If the inmate has
first not tried the
Request
Procedure.

3.3 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Routine Grievance.

3.3.1 If an inmate
wishes to use the grievance
procedure, facility staff will provide
the inmate a grievance form.

3.3.2 The inmate shall
complete the form, addressed to the
facility administrator. The inmate
shall be provided with an envelope
and address it to the facility
administrator. The completed
grievance shall be placed in the
envelope and sealed by the inmate.
Facility staff shall deliver the
envelope to the facility
administrator's office within a
reasonable time period, normally no
later than the end of the shift.

3.3.3 The administrator,
upon receipt of the grievance, may
reject the grievance if it appears on
its face to have been filed in bad
faith, or if other administrative
procedures exist that have not been
utilized. In either situation, the
administrator will respond in writing
to the grievant advising him/her of
the rejection.

3.3.4 If the grievance
is not rejected, pursuant to 3.3.3 the

administrator or his designee may
provide the inmate an opportunity to
be heard before a decision is made
on the grievance.

3.3.5 The administrator
may assign a staff member to
investigate the complaint and report
written findings within forty-eight
(48) hours and shall inform the
inmate of such action.

3.3.6 The administrator
shall provide a written decision with
regard to the grievance to the
grieving inmate within two (2) days
of the receipt of the investigation
report. Such written decisions shall
include a statement of actions taken,
the reasons for such actions, and
procedures for appeal of the decision.

3.4 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Appeal Procedure.

3.4.1 An inmate,
dissatisfied with the administrator's
decision, may appeal such decision to
the Chief of Operations, Regional Jail
Authority. Such appeal must be filed
in writing, within five (5) days of the
receipt of the administrator's decision
and must include a copy of the initial
complaint and the administrator's
decision.

3.4.2 Inmate appeals
shall be mailed in accordance with
procedures applying to legal
correspondence. Reasonable
amounts of postage will be provided
to indigent inmates. Whenever

possible, such appeals may be included in daily mail sent to the Central Office by the Jail.

3.4.3 Upon receipt of an appeal, the Chief of Operations or designee, shall immediately direct the administrator to forward copies of all information relating to the grievance to his office within two (2) days.

3.4.4 The Chief of Operations or designee, may cause an investigation of the complaint to be conducted and a written report of the findings to be submitted to the Chief of Operations within fifteen (15) days.

3.4.5 The Chief of Operations or designee shall provide a written decision to the inmate within ten (10) days of receipt of all information relating to the grievance. Such written decision shall include a statement of the actions taken, and the reason for such actions.

3.5 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Review of Second Level Chief of Operations Decisions.

3.5.1 An inmate may request a review of a second level decision by requesting it through the office of the Executive Director, Regional Jail Authority.

3.5.2 Within five (5) days of receipt of a level two response, the grieving inmate must mail copies of the original complaint

and copies of all responses to the Executive Director, Regional Jail Authority.

3.5.3 Office of the Executive Director has to respond within ten (10) days of receipt of all information.

3.6 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Time Limits.

3.6.1 Responses shall be made within the fixed time limits. Unless the inmates have been notified of an extension of time for a response, the expiration of a time limit at any stage of the process shall entitle the inmate to move to the next stage.

3.6.2 In all instances, grievances must be processed from initiation to final disposition within sixty (60) days, inclusive of any extensions.

3.7 Regional Jail and Correctional Facility Authority Inmate Grievance Emergency Procedures.

3.7.1 Grievances of an emergency nature including matters in which delay would subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm to the inmate will be forwarded immediately to the level with authority to take action.

3.7.2 All emergency grievances shall be responded to in an expeditious matter to include a

written statement identifying actions taken, the reasons for the actions, and an explanation of the appeal process.

3.8 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Reprisals.

3.8.1 No Regional Jail employee shall threaten to act or take actions against an inmate for his or her participation in the grievance process.

3.8.2 Regional Jail staff who are subjects of allegations of reprisal may be assigned duties, which do not require contact with inmates until an investigation is complete.

3.8.3 Allegations of reprisal shall be forwarded immediately for review and action directly to the Chief of Operations or designee, who, will cause an investigation into the allegations should they appear to have been filed in good faith.

3.8.4 Allegations found to be true will subject those staff members involved to disciplinary actions in accordance with applicable policies and procedures.

3.8.5 In all circumstances, the Chief of Operations or designee will respond to inmates making allegations of reprisal within five (5) days of receipt of the allegations. This response will contain actions taken, the basis for

the actions taken, and an explanation of the appeal process for a second level decision.

3.9 Regional Jail and Correctional Facility Authority Inmate Grievance Procedure Records.

3.9.1 Records regarding the filing and disposition of inmate grievances shall be maintained and preserved for three years following the final disposition of the grievance.

3.9.2 Each level of the grievance process will maintain records which shall include aggregate information regarding the numbers, types and dispositions of grievances.

3.9.3 Each level of the grievance process will also maintain copies of individual grievances and responses.

§90-9-4 Procedures for Division of Corrections Inmates

4.1 Applicability: All units within the Division of Corrections.

4.2 Initial Grievance

4.2.1 Any inmate who wishes to seek a formal review of an issue that relates to any aspect of his/her confinement, except for an appeal of disciplinary matters as delineated in Policy Directive 325.00 – Discipline of Inmates or classification status as delineated in Policy Directive 401.01 – Correctional Classification Guidelines, shall obtain

and complete a G-1 Grievance Form. The inmate must file the initial G-1 Grievance Form within fifteen (15) days of any occurrence that would cause him/her to file a grievance. These forms are non-carbon reproducing (NCR) forms and shall be made available to members of the inmate population at all institutions/-facilities/centers. At a minimum, grievance forms shall be available in the following locations:

- a. Inmate housing units
- b. Law Library

4.2.2 An inmate may grieve only one (1) issue or complaint per form.

4.2.3 The G-1 Grievance Form shall indicate the name and number of the inmate filing the grievance. The Inmate Grievance Procedure is intended to address only those matters that affect the inmate filing the grievance. Failure to properly complete the form will result in its return to the inmate for proper completion.

4.2.4 Upon completion of the G-1 Grievance Form, the inmate must submit the original copy (white sheet) to his/her assigned Unit Manager or appropriate Staff Supervisor (i.e., Post Office Supervisor for a postal grievance issue, Laundry Supervisor for a laundry grievance issue, etc.).

4.2.5 Page 2 of the G-1 Grievance form (yellow sheet) must be submitted with the white sheet for a response and must be submitted

with a G-2 Grievance Form in the event the inmate appeals the decision relating to the G-1 Grievance.

4.2.6 The inmate shall maintain Page 3 of the G-1 Grievance Form (pink sheet).

4.2.7 Should no NCR forms be available to the inmate, copies of the G-1 Grievance Form may be utilized. In order to ensure that the inmate retains a copy of his/her grievance for his/her records, when no NCR forms are available, the Unit Manager or Staff Supervisor, upon receipt of the grievance, shall ensure that two (2) copies of the grievance are made for the inmate at no cost. Both the inmate and the appropriate staff member shall take reasonable steps to allow the inmate to retain a copy of the G-1 Grievance Form and subsequent responses as set forth in this policy.

4.2.8 The Unit Manager or appropriate Staff Supervisor shall attempt to resolve the issue in question.

4.2.9 The G-1 Grievance shall be answered by the Unit Manager or Staff Supervisor within five (5) working days, excluding weekend and holidays. The answer should be clear, concise and complete.

4.2.10 If the Unit Manager or Staff Supervisor fails to answer the G-1 grievance within the time frame noted in 4.2.9 (barring a written agreement between the

inmate and the Unit Manager/Staff Supervisor allowing an extension of the G-1 Grievance time frame—no longer than five (5) calendar days), the inmate may file immediately a G-2 Grievance Form utilizing his/her G-1 Grievance Form copy (pink sheet) in order to continue the grievance process.

4.3 Appeals to the Warden/Administrator

4.3.1 Should the initial G-1 Grievance response not resolve the issue, the inmate, within seven (7) working days, excluding weekends and holidays, of receiving the response (G-1 yellow sheet) to his/her G-1 Grievance, may complete a G-2 (NRC) Grievance Form, attach a copy of the completed and signed G-1 Grievance Form (yellow sheet) containing the response received from the Unit Manager or Staff Supervisor, and distribute as follows:

- a. G-2 Grievance Form white copy to the Warden or Administrator
- b. G-2 Grievance Form yellow copy to the Warden or Administrator for response
- c. G-2 Grievance Form pink copy maintained by the inmate

4.3.2 Should no NCR Forms be available to the inmate, copies of the G-2 Grievance Form may be utilized. In order to ensure that the inmate retains copies of his/her grievance for his/her records, when no NCR forms are available, the

Warden/Administrator/designee, upon receipt of the grievance, shall ensure that two (2) copies of the grievance are made for the inmate at no cost.

4.3.3 The Warden/Administrator shall respond to the G-2 Grievance, in writing, within five (5) working days, excluding weekends and holidays.

4.3.4 At the discretion of the Warden/Administrator, an investigation may be ordered into the grievance issue.

a. The inmate shall be advised by memorandum whenever the Warden/Administrator determines that an investigation is warranted.

b. A final response to the inmate shall be made within thirty (30) working days, excluding weekends and holidays, from the date of receipt of the G-2 Grievance Form from the inmate.

4.4 Appeals to the Commissioner

4.4.1 Should the inmate believe the Warden's/Administrator's response does not resolve his/her grievance, the inmate may submit an appeal to the Commissioner/designee of the Division of Corrections within seven (7) working days, excluding weekends and holidays, after he/she receives the Warden's/Administrator's response.

4.4.2 The inmate may file such an appeal via written correspondence to the Commissioner advising of his/her desire to appeal the decision of the G-2 Form.

4.4.3 A copy of the G-2 Grievance Form (yellow sheet) containing the answer received from the Warden/Administrator and a copy of the G-1 Grievance Form (yellow sheet) containing the answer of the Unit Manager or staff supervisor must accompany the appeal.

4.4.4 The Commissioner/designee may deny any appeal received from an inmate that does not include the appropriate G-1 and G-2 Forms. Failure to include such forms may be considered as a premature action on the part of the inmate and improper utilization of the Grievance Procedure.

4.4.5 After receipt of the inmate's letter of appeal, the Commissioner/designee shall provide a response within ten (10) working days, excluding weekends and holidays.

4.4.6 The Commissioner/designee may order an investigation into the grievance and the inmate shall be notified in writing within the above noted time. A final response shall be rendered to the inmate within a reasonable period of time.

4.5 General Provisions

4.5.1 None of the contents of this rule shall be construed in such a manner to entitle an inmate to receive, review, or inspect any portion of an investigation that may be ordered as a result of a grievance.

4.5.2 The decision to order an investigation is within the sole discretion of the Commissioner or the Warden/Administrator of each institution/facility/center.

4.5.3 All G-2 Grievances shall be answered by the Warden/Administrator/designee.

4.5.4 Copies of all inmate grievances, appeals, and responses shall be maintained in the inmate's file, but no grievances shall be made available to the Parole Board except at the request of the inmate.

4.6 Grievance Procedure should be fully concluded within sixty (60) days of filing of the G-1 Grievance Form.

4.6.1 An inmate may not use the Inmate Grievance Procedure to submit a grievance or appeal on behalf of another inmate.

4.6.2 This rule does not preclude an inmate from obtaining assistance in the preparation of a grievance or appeal.

4.7 Compliance with Inmate Grievance Procedures.

4.7.1 This rule supercedes any existing operational procedure now in effect at the institution/facility/center level (providing any grievance filed prior to the effective date of this rule shall be accepted and dealt with in accordance with the institution/facility/center operational procedure in effect at that time).

4.7.2 Any inmate who fails to fully comply with the provisions set forth in this rule shall not be considered to have taken full advantage of administrative remedies afforded him/her.

4.7.3 The attached G-1 and G-2 Grievance Forms shall be utilized for all inmate grievances.

**DIVISION OF CORRECTIONS
NCR
G-1 GRIEVANCE FORM**

TO: _____
NAME OF UNIT MANAGER/STAFF SUPERVISOR

FROM: _____
INMATE'S NAME

DOC # HOUSING UNIT(BED # OR CELL #)

DATE: _____

STATE NATURE OF THE PROBLEM:

RESPONSE TO THE PROBLEM BY UNIT MANAGER/STAFF
SUPERVISOR:

INMATE'S SIGNATURE

UNIT MANAGER'S/STAFF
SUPERVISOR'S SIGNATURE

PROBLEM RESOLVED:
YES _____ NO _____

DATE

**DIVISION OF CORRECTIONS
NCR
G-2 GRIEVANCE FORM**

Any inmate who has a grievance that he/she wishes to bring to the attention of the Warden/Administrator shall use this form. No grievance will be considered by the Warden/Administrator unless this form is used. All grievances brought by inmates will be considered in accordance with the standard Inmate Grievance Procedure.

TO THE INMATE: Please supply the following information.

NAME: _____ NUMBER: _____

ASSIGNED HOUSING UNIT (BED # or CELL # as appropriate) _____

CURRENT CLASSIFICATION: _____

In the space below, set forth the facts of your grievance and describe the change or relief you are seeking. Attach additional pages as needed.

DATE

INMATE'S SIGNATURE

TO THE INMATE: Do not fill in any of the following. This is for the Warden's/Administrator's use.

Date the grievance was received by the Warden/Administrator: _____

Decision of the Warden/Administrator:

_____ To accept the grievance and grant the relief requested by the inmate.

_____ To reject the grievance and deny the relief requested by the inmate.

_____ To accept the grievance and grant relief other than that requested by the inmate.

_____ Below is a statement of reasons for the Warden's/Administrator's decision.

DATE

WARDEN'S/ADMINISTRATOR'S
SIGNATURE