

# **Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey**

*Michigan Law Prison Information Project*

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## **EXECUTIVE SUMMARY & RECOMMENDATIONS**

This report summarizes information gathered by analysis of prisoner grievance policies from 53 Departments of Correction (for the Federal Bureau of Prisons, each state, the District of Columbia, and Puerto Rico), and the nation's 12 largest metropolitan jails. Each policy itself—obtained via the web or by Freedom of Information Act requests—is available at <http://clearinghouse.net/policy>. They exhibit significant variation. It is this variation that allows us to present the recommendations below. Where we observed particular grievance rules that seemed troubling—unfair, especially onerous for prisoners, etc.—and those rules are unusual, we recommend the more common practice. Other recommendations work the converse way: where some jurisdictions have unusual but very appealing rules, we highlight those as promising practices for others to follow. In total, we make 20 recommendations:

### **General policy features:**

- 1. Grievance policies should clearly define what is and is not grievable.**
- 2. Given the sensitivity and urgency of complaints related to sexual abuse, health care, and emergencies, policies should specifically address these types of grievances.**
- 3. Policies should expressly address remedies, and should allow, at a minimum, remedies of institutional change and restitution and/or restoration.**

### **Access:**

- 4. Jurisdictions that require informal attempts at resolution should not require face-to-face communication between grievants and staff about whom they are complaining.**
- 5. For formal grievances, jurisdictions should avoid the burdens of face-to-face submission by using secure submission boxes or submission via mail.**
- 6. Jurisdictions should streamline their paperwork processes, allowing use of grievance forms; jurisdictions should avoid having too many different forms whose use is mandatory.**
- 7. Prisoners should be able to readily access forms in common areas of the prison, as well as through case workers or counselors.**
- 8. Policies should protect access to the grievance system for prisoners who make good-faith procedural errors.**
- 9. Jurisdictions should provide ways segregated prisoners can access the grievance process.**
- 10. Jurisdictions that impose single-subject rules should provide reasonable safeguards, such as permitting prisoners to refile grievances rejected as covering too many topics, providing time extensions in order for prisoners to refile, and not counting the denied grievance towards a maximum number of grievances per prisoner.**
- 11. Jurisdictions should permit third-party assistance in all cases.**

**Appeals and notice**

- 12. Appeals should be decided by a committee and/or an individual not associated with the Department of Corrections.**
- 13. Policies should require officials to provide notification to prisoners at each stage of the grievance process.**
- 14. Policies should require officials to provide written reasons for denials or rejections of grievances at each stage of the grievance process.**

**Time limits:**

- 15. Prisoners should be afforded at least 10 days to initiate the grievance process.**
- 16. Prisoners should receive exceptions to time-bars for good cause.**
- 17. Policies should explicitly provide that in the case of an ongoing grievance, the clock begins to run at the time of the most recent incident.**
- 18. Policies should start the clock for subsequent steps when the prisoner receives notification of the decision on the prior step.**
- 19. Policies should require officials to provide initial responses within 30 or fewer days.**
- 20. Policies should require officials to provide initial responses within 72 hours for emergency grievances.**

Our report aims to increase the transparency of prison and jail grievance processes. More importantly, we hope that highlighting the positive policies that are actually in place in various jurisdictions leads to reform. Grievance processes are critical for prisoners seeking redress for legitimate complaints. Outcomes may also determine a prisoner's ability to seek justice in the federal courts. We urge all correctional systems to evaluate their own grievance policies and work towards creating a more fair and effective system.

## INTRODUCTION

In January 2014, students from the University of Michigan Law School, advised by Professor Margo Schlanger, formed the Michigan Law Prison Information Project. The goal of the project was to gather and analyze prison grievance policies from prisons and jails across the country. By making these documents available to the public, we hoped to increase the transparency of prison practice, draw attention to both good and bad policies, and initiate a discussion of important issues. This report and the new online Michigan Law Policy Clearinghouse present the results of that effort.<sup>1</sup> The policies themselves, along with this report and a coding of the policies under 20 different variables, are posted at <http://clearinghouse.net/policy>.<sup>2</sup>

Prison grievance policies are critical to defining and implementing the rights and responsibilities of individuals within the prison system. In addition, prison grievance policies impact the ability of prisoners to access the federal courts. In *Woodford v. Ngo*, 548 U.S. 81 (2006), the U.S. Supreme Court determined that the Prison Litigation Reform Act (“PLRA”)<sup>3</sup> requires prisoners to properly exhaust all available administrative remedies before they may access federal courts. The Court identified three policy rationales for this exhaustion requirement: (1) agency autonomy, (2) attrition of frivolous lawsuits, and (3) development of an administrative record. According to the Court, the PLRA’s exhaustion requirement avoids unwarranted federal court interference with the administration of prisons.

Given the court gatekeeper function that the PLRA, as interpreted by the *Woodford* Court, assigns to internal grievance processes, it is essential these processes be fair and that they not needlessly cut off prisoners’ constitutional right of access to federal courts. The complexity of prison grievance policies play a large role in when, and whether, prisoners can file lawsuits. For example, if final administrative resolution of a prisoner’s grievance does not occur until years after the relevant incident, a prisoner may lose steam before he or she is even eligible to file suit. Furthermore, the Court in *Woodford* interpreted the PLRA’s exhaustion provision not merely to postpone, but to bar, lawsuits if prisoners fail to comply with any procedural elements of a grievance policy. Under this interpretation, even good faith errors with regard to minor procedural requirements can render a prisoner’s purported harm unredressable both administratively and judicially. For example, if a grievance policy requires a prisoner to file a grievance within three days of the relevant incident, a prisoner who misses the three-day deadline is barred from raising the complaint both in the prison grievance system *and* federal courts. In the wake of *Woodford*, some predicted that this exhaustion requirement might create perverse incentives for prisons to make grievance processes more burdensome, thereby

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<sup>1</sup> We would like to thank Michigan Law School’s empirical research fund for its support of the Michigan Law Prison Information Project.

<sup>2</sup> In addition to obtaining grievance policies from each institution, we requested prisoner handbooks and policies addressing prisoner mail. These materials are also posted at the Policy Clearinghouse site, but are not discussed in this report.

<sup>3</sup> Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 42 U.S.C. § 1997e).

frustrating prisoners' ability to vindicate their rights both in and out of court.<sup>4</sup> One goal of this report is to evaluate the complexity and onerousness of prison grievance policies after *Woodford*.

We sought grievance policies from 65 jurisdictions, including all 50 state departments of corrections, the District of Columbia, Puerto Rico, the Federal Bureau of Prisons, and the 12 largest metropolitan jail systems.<sup>5</sup> Puerto Rico did not respond to multiple requests for information; Alabama informed us that the state does not have a general grievance policy. All other jurisdictions provided us with their grievance policies or had policies that were available online. We analyzed these policies using 20 variables.<sup>6</sup> For each topic we examine, we identify preferred practices and opportunities for reform. It is the variation among jurisdictions that allows us to present those recommendations. Some of the recommendations relate to outliers. If some jurisdictions have particular grievance rules that seemed troubling to us—unfair, especially onerous for prisoners, etc.—and those rules are unusual, we recommend bringing the relevant rule in line with more common practice. Other recommendations work the converse way: if some jurisdictions have unusual but very appealing rules, we highlight those as promising practices.

This report divides the topic into four parts: In Part I, we examine the scope and remedies covered by grievance policies; Part II deals with access; Part III with internal appeals; and Part IV with some of the details of time limits.

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<sup>4</sup> See Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 149-50 (2009).

<sup>5</sup> These 12 jail systems are: Broward County (FL), Philadelphia (PA), New York City (NY), Cook County (IL), Miami-Dade County (FL), San Diego County (CA), Los Angeles County (CA), Maricopa County (AZ), Orange County (CA), San Bernardino (CA), Dallas County (TX), and Harris County (TX).

<sup>6</sup> These 20 variables were: date promulgated; references to administrative codes or statutes; type of policy; name of policy; citations to external standards; citations to separate procedures for specialized grievances; steps; URL, if available online; time limits for prisoner; time limits for prison; punishments for grievances found frivolous, excessive, or abusive; definition of "grievance"; definition of non-grievable issues; remedies provided; procedural requirements; third party filings; emergency grievance procedures; single-subject rules; guarantees of written responses from prison; and length of policy. The coding of the policies under these 20 variables is available at <http://clearinghouse.net/policy>.

## I. SCOPE AND REMEDIES

### A. GRIEVABLE MATTERS

“[C]omplaints and grievances include, but are not limited to, any and all claims seeking monetary, injunctive, declaratory, or any other form of relief authorized by law and by way of illustration, includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies, or statutes, including grievances such as offender requests for accommodations under the ADA and for complaints of sexual abused under the PREA.”

*Louisiana  
Department Regulation  
No. B-05-005*

“Grievance: A complaint filed by an inmate related to any aspect of institutional life or conditions of confinement which personally affects the inmate grievant.”

*Arizona  
Department Order 802*

Whether and how a policy defines grievable matters will significantly affect a prisoner’s ability to seek remedies for alleged problems. A clear definition contributes to a more effective and manageable policy. Lack of clarity creates a horizontal equity problem, because similarly situated grievants may not be treated the same by different staff members reviewing grievances. Moreover, lack of clarity may lead a prisoner plaintiff to believe that he can file directly in federal district court; if a matter is not grievable, no “administrative remedy [is] available,” under the PLRA. If the jurisdiction successfully persuades the court that this was an error, the prisoner will be out of luck—it will be too late to grieve, and the federal lawsuit will be procedurally barred. Thus fairness requires our first recommendation:

#### **Recommendation 1: Grievance policies should clearly define what is and is not grievable.**

Just ten jurisdictions currently omit to define either grievable or non-grievable matters. (Federal BOP, Maryland, Maine, Minnesota, New Jersey, Los Angeles County, Maricopa County, Miami-Dade County, San Bernardino County).

Note that where jurisdictions *do* offer definitions of grievable and non-grievable matters, those definitions vary greatly. Several policies list specific categories of grievances (e.g., Missouri: classification, activities/privileges, due process, harassment, medical, property, use of force, and other, all broken down into lists of three to fifteen subcategories each; Oklahoma: discrimination, classification, complaint against staff, conditions of confinement, disciplinary process, legal, medical, property, records/sentence administration, and religion). Idaho’s policy provides one of the most extensive and detailed lists of grievance categories, but with the caveat that the categories are used for “administrative tracking purposes and are not for determining inclusion or exclusion criteria.” Several policies are broad, but provide some restrictions on the scope of a grievance (e.g., Delaware: “substance of application of a policy or practice; any action toward an inmate by staff or other inmates; any condition or incident within the institution that affects the Grievant”; Georgia: “any condition, policy, procedure, or action or lack thereof that affects the offender personally”; Michigan: “alleged violations of policy or procedure or unsatisfactory conditions of confinement which directly affect the grievant, including alleged violations of this policy and related procedures”). Other policies use less specific language to define grievances (e.g., West Virginia: “any matter concerning prison life”; Illinois: “incidents, problems, or complaints”).

Definitions of *non-grievable* matters tend to be more specific than definitions of grievable matters. Most policies expressly exclude matters the prison or jail has no authority or control. In most cases, matters handled by external institutions are non-grievable, such as parole decisions and matters litigated or appealed in court (e.g., Michigan, Washington, Wyoming, Cook County). Several policies also exclude matters that have a separate internal or administrative review process, such as classification decisions, work and program eligibility and assignments, medical charge disputes, and housing assignments (e.g., Alaska, Tennessee, Utah, Washington DC).

Some of this variation is summarized is presented in Table 1.

**TABLE 1: EXAMPLES OF VARIATION IN GRIEVABILITY**

<p align="center"><b><u>Jurisdictions in which classification is non-grievable</u></b> (17)</p>	<p align="center"><b><u>Jurisdictions in which classification is grievable</u></b> (5)</p>
<p>Utah, Oregon, Rhode Island, Tennessee, Wyoming, Indiana, Iowa, Kentucky, North Dakota, Washington DC, Massachusetts, Montana, Nebraska, Alaska, Colorado, New Mexico, Broward County</p>	<p>Oklahoma, New York City, Philadelphia, South Carolina,* Orange County, San Diego County</p> <p>* Classification decisions directly affecting inmate’s custody level are grievable; classification matters related to institutional and security assignments made at reception and evaluation centers, institutional job assignments, cell or dormitory assignments, and waiver of classification challenges are non-grievable, subject to certain exceptions.</p>
<p align="center"><b><u>Jurisdictions in which mail-related issues are non-grievable</u></b> (3)</p>	<p align="center"><b><u>Jurisdictions in which mail-related issues are grievable</u></b> (2)</p>
<p>Kentucky, Oregon, Tennessee</p>	<p>Idaho, New Mexico,† San Diego County</p> <p>† Decisions regarding mail are grievable, but “[m]atters involving the loss or delay of mail by the U.S. Postal Service or other carriers” are non-grievable</p>

Thus it is clear that there are a number of reasonable approaches employed by different jurisdictions. Institutions seeking to exclude certain types of grievances should do so expressly (e.g. Alaska, Idaho, Nevada, Rhode Island, Washington, Miami-Dade).

## **B. SEXUAL ABUSE, HEALTH CARE AND EMERGENCIES**

Sexual abuse, health care, and emergencies each raise special issues for a well-functioning grievance system. **Recommendation 2: Given the sensitivity and urgency of complaints related to sexual abuse, health care, and emergencies, policies should specifically address these types of grievances.**

Institutions may effectively address these grievances either through specific provisions in a general policy or by directing grievants to separate policies focused solely on these issues. The provisions of the policies in question are often—appropriately—exceptions to standard grievance procedures. For example, policies may allow prisoners with sexual abuse, health care, or emergency grievances to skip informal procedures or receive an immediate response (e.g., Virginia, Florida, Washington). However, policies that create separate processes for sexual abuse, health care, or emergency grievances must take account of resulting risks. For example, where there are separate processes, it may be difficult for a prisoner to figure out which procedure to apply. Errors committed as a result of filing a grievance under the wrong process should not be penalized if made in good faith. A brief analysis of sexual abuse, healthcare, and emergency grievance policies follows:

- **Sexual Abuse:** At least eighteen policies refer directly to the Prison Rape Elimination Act of 2003 (PREA) (Federal BOP, California, North Carolina, Tennessee, Virginia, West Virginia, Wyoming, Florida, Georgia, Iowa, Idaho, Indiana, Maine, Minnesota, New Jersey, Arizona, Maricopa County, San Bernardino County). PREA was aimed at curbing prison sexual abuse through a “zero tolerance” policy. It called for information-gathering and the development of national standards to prevent sexual violence in prison. Among other mandates, standards passed pursuant to PREA require that correctional agencies not impose a time limit on prison grievances alleging sexual abuse, allow third parties to initiate sexual abuse grievances if a prisoner consents, not require prisoners to seek “informal” resolution of sexual abuse complaints before submitting a formal request for remedies, and ensure prisoners are not required to submit a grievance to the alleged abuser.<sup>7</sup> Even policies that do not expressly cite to PREA often incorporate its mandates. For example, Oregon’s separate grievance policy for sexual assault allegations does not set a time limit for filing sexual assault grievances and allows prisoners to submit grievances directly to an officer-in-charge when there is a substantial risk of imminent sexual abuse.
- **Health Care:** Like sexual abuse allegations, health care grievances are addressed in a variety of ways. A number of states have separate procedures for health care grievances, although this is less common than in the case of sexual assault/PREA grievances. Many policies also have a separate review or appeal process for health care grievances that involves outside health care services (e.g., Pennsylvania: appeals are made to the Bureau of Health Care Services; Idaho: review authority lies with a Healthcare Services Administrator; Texas: processing of grievances goes through the Health Authority).
- **Emergencies:** The definitions of “emergency grievance” vary widely (e.g., Massachusetts: “A grievance processed in an expedited manner to resolve an issue in which a delay may cause substantial risk of personal injury or other damages.”; Delaware: “An issue that concerns matter which under regular time limits would subject the inmate to a substantial risk of personal, physical, or psychological harm.”). Although the time limits placed on prisoners to file emergency grievances varies from no limit to

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<sup>7</sup> 28 CFR § 115 (2013).

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20 days after the incident, most prisons provide for an immediate physical examination of the prisoner or process the grievance in an expedited fashion.

**TABLE 2: SEXUAL ABUSE, HEALTH CARE, AND EMERGENCY GRIEVANCES**

Jurisdiction	Sexual Abuse	Health Care	Emergency
<b>PRISONS</b>			
Federal Bureau of Prisons	×		✓
Alabama	×		
Alaska	✓	✓	✓
Arizona	✓	✓	✓
Arkansas			✓
California	✓	×	✓
Colorado			✓
Connecticut			
Delaware			✓
District of Columbia			✓
Florida	✓	✓	✓
Georgia	✓	✓	✓
Hawaii		×	✓
Idaho	✓		
Illinois			✓
Indiana	✓		✓
Iowa	✓		✓
Kansas	×		✓
Kentucky		✓	✓
Louisiana	×		✓
Maine	✓	✓	
Maryland			
Massachusetts		✓	✓
Michigan	✓		
Minnesota			
Mississippi			✓
Missouri	✓		✓
Montana			✓
Nebraska			✓
Nevada			✓
New Hampshire			✓
New Jersey	×		✓
New Mexico			✓
New York			✓
North Carolina	✓	✓	✓
North Dakota			
Ohio			
Oklahoma			✓
Oregon	×		✓
Pennsylvania	✓	✓	
Puerto Rico			
Rhode Island			✓
South Carolina			✓
South Dakota			✓
Tennessee	✓		✓
Texas	×	×	✓
Utah			✓
Vermont			✓
Virginia			✓

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Jurisdiction	Sexual Abuse	Health Care	Emergency
Washington	✓		✓
West Virginia	✓		✓
Wisconsin			✓
Wyoming		✓	✓
<b>JAILS</b>			
Broward County, FL			
Cook County, IL	✓	✓	✓
Dallas County, TX			✓
Harris County, TX			✓
Los Angeles County, CA	✓	×	✓
Maricopa County, AZ	✓	✓	✓
Miami-Dade County, FL			✓
New York City, NY	✓		
Orange County, CA	✓	✓	✓
Philadelphia, PA			✓
San Bernardino, CA	✓		✓
San Diego, CA			

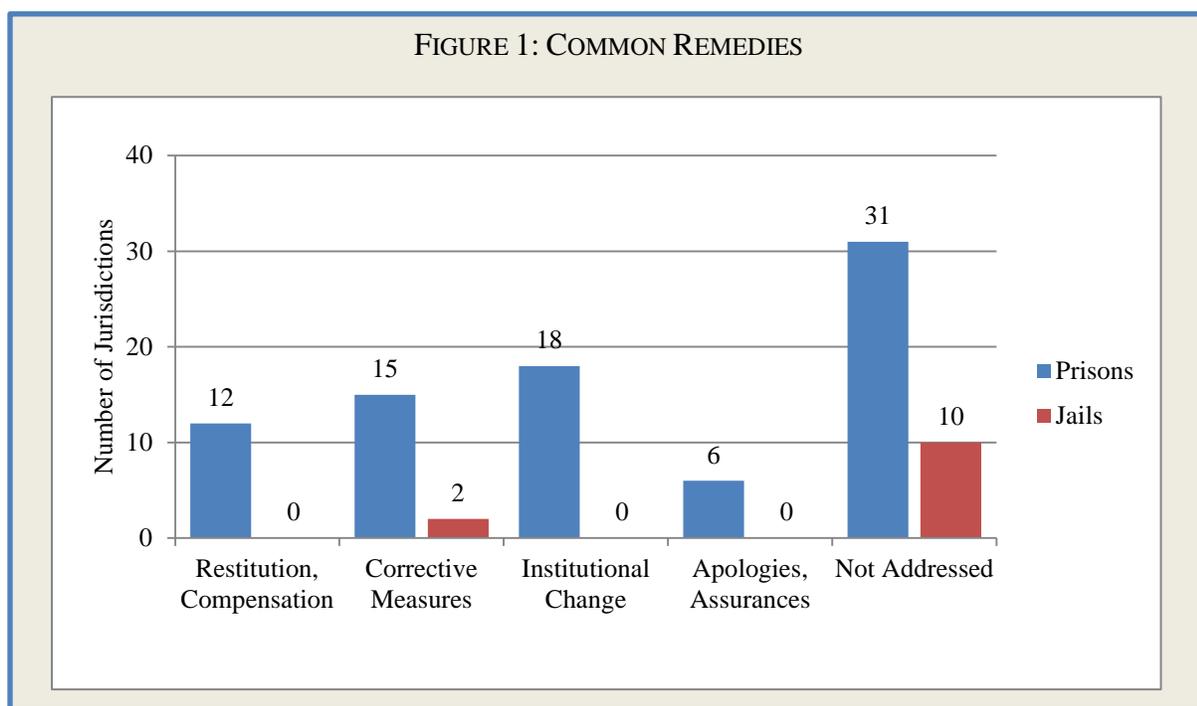
✓: Addressed expressly within general grievance policy

×: Separate policy

## C. REMEDIES

The remedies available via prison and jail grievance systems vary widely. Some policies do not address possible remedies for successful grievances at all, while others spell out possible remedies in significant detail. In general, state DOCs have more developed remedial policies than jail systems.

Many states address remedies for successful claims in general terms (e.g., Cook County’s policy referenced “assigning a remedy”) or in terms of a process rather than a result (e.g., California merely defines of remedy as “a process or means to address an issue or correct a wrong.”). The treatment of monetary compensation, restitution, and replacement of property—and how administrative grievance/remedy procedures interact with separate tort claims procedures for these—varies significantly. Some systems specifically provide for restoration or restitution for personal property (e.g., Colorado: “restoration of or restitution for property”; Montana: “Replacement, restoration of, or restitution for personal property”; North Carolina: “restoration or restitution for personal property”). Among policies that do mention restoration or restitution, several specifically require a showing of negligence by staff. This includes South Carolina (“fair value” in money “for items lost or destroyed when willful negligence is proven”) and New Mexico (“[i]n no event will replacement or monetary compensation be awarded without a showing of negligence or willful misconduct on the part of Department employees.”). Other systems’ policies state that monetary or tort damages are not available (Hawaii, Georgia).



Change to institutional policy and practice is a remedy also addressed by a number of policies. Remedial options included in the policies in Montana (“modification of institutional operational procedure or practice”), South Dakota (“[m]odification of institution operational memorandums or DOC policy”); Connecticut (“changes in written policies and procedures or in their interpretation or application”); New Mexico (“change of policies, procedures or practices”); and Washington (“change in a local or department policy or practice”) are illustrative.

Most systems that address remedies include a residuary clause, using phrases such as “may include” or stating that “other remedies as appropriate” may be provided, suggesting that the remedies listed are nonexclusive. Virginia, Indiana, North Carolina, New Mexico, Connecticut, Colorado, Kansas, and Texas are among the states using such language. Others simply create a list without stating explicitly whether it is intended to be an exclusive.

Surprisingly few policies discuss apologies or assurances that a wrong will not reoccur as an available remedy. Among the few to reference this inexpensive remedy are South Dakota (“[a]ssurance deprivation will not reoccur”); Colorado (“assurance that abuse will not recur”); Arizona (“apologies”); Montana (“assurance that deprivation of necessary care or other abuse should not recur”); and Nebraska (“[v]erbal or written apologies by staff members.”).

However, two-thirds of the policies do not address remedies at all (e.g., Federal BOP, Alaska, Idaho, Illinois, Kentucky, Oregon, North Dakota, Mississippi, New Jersey, Vermont, West Virginia, New York City, Philadelphia, San Bernardino, San Diego). At least two jurisdictions address remedies only in the negative, listing what remedies will *not* be provided (Hawaii: tort remedies and money damages; Utah: “disciplinary or other personnel action against department employees, reassignment of department employees,” and “monetary damages beyond reimbursement for actual out-of-pocket losses”).

**Recommendation 3: Policies should expressly address remedies, and should allow, at a minimum, remedies of institutional change and restitution and/or restoration.**

Including at least some non-exhaustive examples of available remedies seems to be a necessary component of a reasonable grievance policy. A list of remedies provides guidance to both prisoners and staff and is an indication that the grievance process can provide some meaningful outcome. Among policies that address remedies, the most common remedy is institutional change (Colorado, Connecticut, Georgia, Indiana, Kansas, Maryland, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, South Dakota, Texas, Virginia, Washington, Wyoming). Twelve jurisdictions also expressly provide the remedy of restitution and/or restoration (Arizona, Colorado, Connecticut, Missouri, Montana, Nebraska, New Mexico, North Carolina, South Dakota, Texas, Washington, Wyoming); this accordingly appears to be a fair and administrable remedy.

## II. ACCESS

### A. INITIATING A GRIEVANCE

Most jurisdictions' grievance procedures begin with a requirement that the prisoner seek "informal resolution." Informal resolution provisions typically either encourage or require prisoners to attempt resolution by requesting a conversation with staff (e.g., Federal BOP, Missouri, Pennsylvania, Rhode Island, South Dakota). Other policies require the prisoner and relevant staff member to agree to an "identifiable solution or plan to resolve the complaint" (Vermont) or require the prisoner to "demonstrate that he/she has made a good faith effort to resolve the issue informally" (Virginia). If a prisoner is dissatisfied with the informal resolution, many policies require staff members to sign a form stating that the issue was discussed without resolution (e.g., Maine, South Carolina, New York City).

Informal resolution of grievances may be efficient from the institutional perspective, but the requirement raises serious concerns about retaliation. If staff members become aware of allegations against them, they may apply implicit or explicit coercive or retaliatory pressure on the prisoner filing the grievance. Some policies attempt to mitigate this effect by exempting prisoners from informal resolution in cases of abuse (e.g. Pennsylvania), but fear of retaliation may be nearly as serious in non-abuse contexts. Even if policies include anti-retaliation provisions, fear of retaliation may deter prisoners from filing legitimate grievances.

**Recommendation 4: Jurisdictions that require informal attempts at resolution should not require face-to-face communication between grievants and staff about whom they are complaining.**

Informal resolution should not be required at all for accusations of abuse. Even when informal resolution *is* appropriate, prisoners could be allowed to informally discuss grievances with counselors or caseworkers. These individuals should be qualified professionals committed to confidentiality and tasked with helping prisoners identify opportunities to address their grievances. Five jurisdictions use this approach (Colorado, Illinois, Nevada, North Dakota, Cook County), and others should consider it.

**Recommendation 5: For formal grievances, jurisdictions should avoid the burdens of face-to-face submission by using secure submission boxes or submission via mail.**

When a prisoner moves to the "formal grievance" stage, policies typically specify submission procedures. For instance, many policies require grievance forms to be submitted in a general submission box located on prison grounds (e.g., Alaska, Idaho, New Mexico, Harris

County). Some policies, however, require that the prisoner submit the form in person to a specified staff member (e.g., Colorado: “Offenders shall file Step 1, Step 2, and Step 3 grievances with their case manager/CPO, or other DOC employees designated by the administrative head”; Oklahoma: “the offender may... submit the grievance form... to the reviewing authority”; Pennsylvania: “An inmate must submit his/her grievance to the Facility Grievance Coordinator”).

Under other policies, however (e.g., South Carolina), prisoners must themselves determine which staff member has authority to address their grievances and must then submit the appropriate paperwork to that person directly. This requirement may prove extremely burdensome for prisoners. For example, a prisoner may have to discuss a private grievance with several members of the staff in order to find the relevant staff member. Given restrictions on prisoners’ freedom of movement, it may take a prisoner a good deal of time to find the relevant official, risking expiration of the time allowed to file the grievance. Institutions can easily avoid the burdens of face-to-face submission by using secure grievance boxes (Alaska, Connecticut, DC, Idaho, Illinois, Massachusetts, Montana, New Jersey, New Mexico, Washington, Harris County, New York City, Orange County, Philadelphia, San Diego). Several institutions use mail for submission (Federal BOP, California, Hawaii, Illinois, Maryland, New Mexico, North Carolina, Wyoming, Harris County), which is a reasonable alternative as long as mail is not cost-prohibitive for prisoners.

## **B. PROCEDURE: FORMS AND ERRORS**

Procedural requirements are necessary to a well-functioning grievance process; however, many policies impose complicated and burdensome procedural requirements that may, in effect, bar prisoners from seeking redress for legitimate grievances.

The vast majority of states require prisoners to fill out specified forms in order to successfully claim their grievances. Often, each step in the grievance process involves a different form. Some jurisdictions also have different forms for different kinds of grievances (e.g., healthcare grievances may have their own form). Given that the overwhelming majority of institutions require completion of forms, forms likely improve administrability. Forms may also be a helpful tool to guide prisoners through the filing process, particularly if the forms are standardized and prompt grievants to provide necessary information. However, the use of many different forms may multiply obstacles for prisoners seeking redress. Most states reference three or fewer forms in their grievance policies (Federal BOP, California, Colorado, DC, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Texas, Utah, Wyoming, Broward County, LA County, Maricopa County, Miami-Dade, New York City, Orange County, Philadelphia, San Bernardino County, San Diego County). Outliers, like Arizona, reference up to seven different forms; this seems like too many.

**Recommendation 6: Jurisdictions should streamline their paperwork processes, allowing use of grievance forms; jurisdictions should avoid having too many different forms whose use is mandatory.**

Certain prisons have all forms readily available for prisoners in areas like the library or cafeteria, while other prisons require that the prisoner request each form they might need from various staff members. In the case of Nebraska, the initial form and the appeal form must be

obtained from different prison staff members. Generally speaking, jurisdictions that require prisoners to request the forms disincentivize the filing of grievances by creating a gatekeeper.

**Recommendation 7: Prisoners should be able to readily access forms in common areas of the prison, as well as through case workers or counselors.**

Nevada employs a model approach, making forms available in housing units and through unit staff, case workers, or the Institutional Law Library.

Some prisons do not require the completion of specific forms; instead, they impose other requirements for the submission of grievance paperwork. Grievance policies may require prisoners to use a particular type of paper or include specific information in the complaint. The standards can be exacting. For example, West Virginia requires that the “inmate may only attach one 8.5 x 11 inch page with writing on a single side. Only one staple may be used to affix the pages together. The inmate may not tear, fold, or affix tape to the forms, except that the forms may be folded and placed into a number 10 envelope.” Some jurisdictions, like Harris County, are less strict, requiring the grievance to be made “in writing; on a sheet(s) of plain paper; on any reasonable, tangible medium.”

Not requiring the completion of specific forms could be less demanding and remove gatekeeper issues. However, without a form prompting prisoners to provide specific information, they may be more likely to make inadvertent procedural errors in filing grievances.

Policies generally require the paperwork to include a clear and concise description of the facts giving rise to the grievance, including relevant dates. Policies also typically require prisoners to identify themselves according to name, unit, and bed number, as well as to identify other involved parties, such as perpetrators or witnesses (e.g. Illinois: “The grievance shall contain factual details regarding each aspect of the offender’s complaint, including what happened, when, where, and the name of each person who is the subject of or who is otherwise involved in the complaint”; Pennsylvania: “The statement of facts shall include: the date, approximate time and location of the event(s) that gave rise to the grievance; identification of the individuals directly involved in the event(s); any claims that the inmate wishes to make concerning violations of Department directives, regulations, court orders, or other law; any relief being sought by inmate.”). Significantly, several states allow prisoners to file grievances even when the names of perpetrators are not known (e.g., Illinois “This provision does not preclude an offender from filing a grievance when the names of individuals are not known, but the offender must include as much descriptive information about the individual as possible”; Ohio: “In the event an inmate does not know the identity of the personnel involved, a “John/Jane Doe” complaint may be filed”). A few policies include unique specifications about the content of the grievance (e.g. Indiana: “It must explain how the situation or incident affects the offender.”).

**Examples of Procedural Requirements**

- “Only one staple may be used to affix the pages together. The inmate may not tear, fold, or affix tape to the forms...” (*West Virginia*)
- The grievance “must avoid the use of legal terminology.” (*Indiana*)
- “Inmate must sign at each stage to accept the decision.” (*Delaware*)
- “The prisoner shall... state the specific remedy requested.” (*Maine*)
- “[T]he inmate shall ensure that the form is legible.” (*Florida*)

Furthermore, nearly all grievance policies specify that the paperwork must be completed legibly and signed by the prisoner. Indiana also requires that the complaint “avoid the use of legal terminology.” Some policies expressly require that the grievance be written in English, which raises obvious difficulties for illiterate or non-English-speaking prisoners (e.g., Indiana).<sup>8</sup> Several policies state that they will return grievance requests that are difficult to read or understand (e.g. Idaho: “A Grievance/Appeal Form that is difficult to read or understand may be returned to the offender with instruction to make it legible or clearly explain the issue”).

Paperwork-related requirements increase the risk of good-faith errors. Several jurisdictions are unforgiving of such errors, dismissing without appeal any complaints that fail to meet procedural requirements (e.g., Maine, Mississippi). In these jurisdictions, a reasonable and minor error may end a grievance process before it really begins. A number of institutions protect prisoners who make good-faith errors in filing the wrong form. Such provisions may grant prisoners a 48-hour extension (Montana) or assume the original submission date once a corrected form is resubmitted (New York City).

Whatever the error, it’s important that good-faith and errors not undermine the availability of redress for real problems:

**Recommendation 8: Policies should protect access to the grievance system for prisoners who make good-faith procedural errors.**

An important concern with regards to completion and submission of grievances is how to ensure access to paperwork and submission boxes for prisoners segregated from the general population. Ensuring that segregated prisoners have access to the grievance system is vital; these prisoners are in a particularly vulnerable position often subject to conditions that may prompt the filing of grievances. Policies that do directly address this issue generally require staff members to distribute and collect grievance forms at particular times (e.g., Indiana, Kansas). This is a reasonable approach, as long as the distribution and collection occurs with sufficient frequency. Other jurisdictions should further investigate best practices for allowing segregated prisoners to access grievance processes. Whatever the method chosen, **Recommendation 9: Jurisdictions should provide ways segregated prisoners can access the grievance process.**

## C. SINGLE-SUBJECT RULE

Over 60% of jurisdictions have some type of single-subject rule. Single-subject rules generally preclude prisoners from raising multiple complaints in a single grievance filing (e.g., Florida: if “the grievance addresses more than one issue or complaint” it will be returned to the inmate “without a response on the merits”; Montana: “If the inmate includes multiple unrelated issues on a single form, the [grievance coordinator] will reject it and return it to the

“Inmates shall place a single complaint or reasonable number of closely related issues on one grievance form. Grievances containing multiple unrelated issues shall be accepted, however, supervisors may reject multiple grievances that are difficult to investigate together.”

*San Bernardino County  
Detention Bureau Standard Operating  
Procedure Section 12.200*

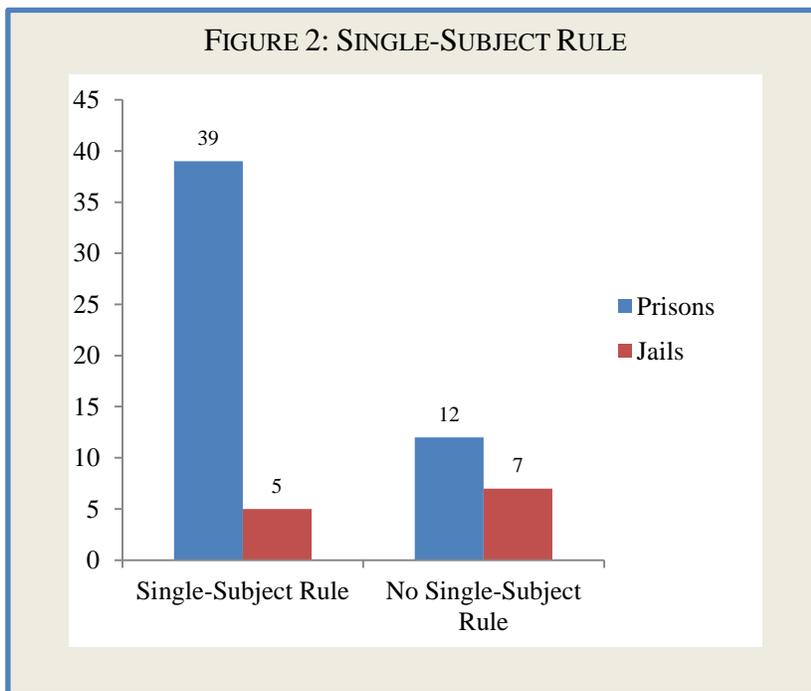
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<sup>8</sup> See generally Megan Grandinetti, Comment, *Ensuring Access to Justice for Non-English-Speaking Criminal Defendants: Denial of Access to Other-Language Legal Materials or Assistance as an Extraordinary Circumstance for Equitable Tolling*, 38 SETON HALL L. REV. 1479 (2008).

inmate without a response.”). Most policies with a single-subject rule permit staff to dismiss complaints for failure to comply (e.g., Maine, Mississippi). These decisions often cannot be appealed, because they are not decisions on the merits of the grievance. Most policies also do not expressly state whether or not a prisoner can amend and re-file the grievance if it is rejected on these grounds. In addition, several policies categorize procedural violations, including violations of the single-subject rule, as misuse of the system, subject to punishment (e.g., New Jersey, Missouri).

Although single-subject rules may appear harmless, they warrant special attention due to the potential challenges they present for prisoners. First, single-subject rules are vague, and therefore allow for arbitrary enforcement and fail to provide fair notice. The facts of *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc) illustrate the problems that might arise for prisoners under a single-subject rule. In *Lopez*, a prisoner at Corcoran State Prison filed a §1983 action against the prison administrators and staff, alleging that the defendants (1) knowingly placed him in a cell with a dangerous prisoner who subsequently injured him; (2) provided him inadequate medical care while he was recovering from his injury; (3) denied him outdoor

exercise during his recovery; and (4) deliberately mistreated him during a bus transfer between prisons, in addition to other claims not considered on appeal. Under California’s single-subject rule, prisoners “are limited to one issue or related set of issues per Inmate/Parolee Appeal form submitted... Filings of appeals combining unrelated issues shall be rejected and returned to the appellant by the appeals coordinator with an explanation that the issues are deemed unrelated and may only be submitted separately.” It is unclear how such a rule would apply to



these facts. California’s policy, like other policies with single-subject rules, offers no guidance. Moreover, prison or jail administrators are granted considerable discretion to determine whether to reject a grievance on these grounds.

Second, strict enforcement of single-subject rules causes grievances to go unredressed. Many single-subject rules are paired with limits on the number of grievances a prisoner can file in a time period (or have open at any one time). If prisoners must divide issues into separate grievances, they will reach the prescribed limit much more quickly than if they could include multiple issues on one grievance form. For example, if the prisoner in *Lopez* had been limited to having three grievances open at a time, he would have to choose which issues to pursue first. The excluded issues might be barred later, because of the passage of time.

Single-subject rules do not appear to be necessary to effective and administrable grievance policies. In fact, nearly one-third of jurisdictions do not have such a rule.

**Recommendation 10: Jurisdictions that impose single-subject rules should provide reasonable safeguards, such as permitting prisoners to refile grievances rejected as covering too many topics, providing time extensions in order for prisoners to refile, and not counting the denied grievance towards a maximum number of grievances per prisoner.**

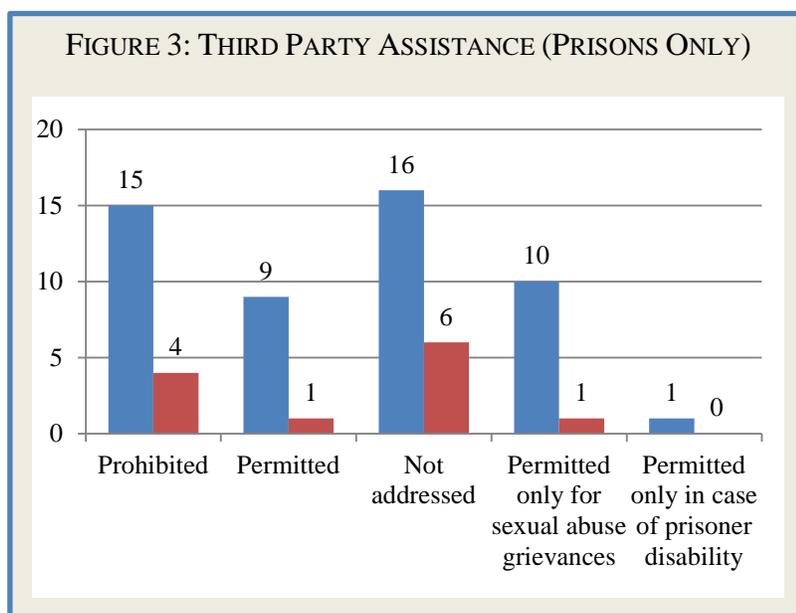
## D. THIRD-PARTY ASSISTANCE

Procedural requirements raise questions about who can complete grievance forms. Nearly one-third of all policies ban third-party assistance (Alaska, Arkansas, DC, Hawaii, Illinois, Indiana, Mississippi, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Texas, Utah, Wyoming, Harris County, Miami-Dade, New York City, Orange County). But several policies do permit

such assistance under certain conditions (e.g., Florida: “Third parties, including fellow inmates, staff members, family members, attorneys and outside advocates, shall be permitted to assist inmates in filing grievances alleging sexual abuse”; Washington D.C.: “The Warden shall ensure that non-English speaking inmates, inmates who cannot read or are otherwise impaired (physically or mentally), receive assistance in order to understand and access

the inmate grievance procedures.”). Furthermore, some policies dictate that only certain prison staff can assist the prisoner in completing the paperwork, precluding other prisoners from assisting (e.g., Illinois: “Staff assistance shall be available as requested by those offenders who cannot prepare their grievances unaided as determined by institutional staff”; New Jersey: “Under no circumstances will another inmate complete or deposit another inmates form(s) in the Inmate Remedy System Box. If assistance is required, the inmate must contact his/her unit Social Worker.”). The Federal BOP takes a relatively broad approach, permitting other inmates, staff, family members, and attorneys to assist grievants in preparing grievances. The policy also requires wardens to “ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English.”

Policies that prohibit third-party assistance create serious limitations for illiterate, non-English speaking, and special-needs prisoners. Grievance policies should account for these challenges in order to provide fair and non-discriminatory processes. Ten jurisdictions have general policies allowing third-party assistance (Federal BOP, California, Florida, Georgia,



Kansas, Kentucky, Minnesota, Montana, New York, Los Angeles County). Permitting third-party assistance in all cases seems attractive and is likely feasible due to its use in these ten jurisdictions. Institutions may be concerned about falsification or the emergence of “jailhouse lawyers” who could pose a threat to institutional authority, but procedural safeguards can reduce the likelihood of such occurrences. For example, institutions could require prisoners to actually file their own grievances, even when they receive assistance in completing paperwork (Federal BOP, Georgia, Minnesota, Montana, New York). **Recommendation 11: Jurisdictions should permit third-party assistance in all cases.**

### III. APPEALS AND NOTICE

The steps of grievance policies range from simple to highly complex. In general, prison policies are more elaborate than jail policies, although the New York City Jail policy is a notable exception to this observation. Most procedures can be broken down into three general steps: informal resolution, filing of a formal grievance, and appeal.

**Grievance Procedure Steps:  
Highlights from Three Jurisdictions**

**Alaska**

- (1) Informal resolution: Verbal communication with staff member
- (2) Formal grievance: Request and complete two forms
- (3) Appeal: Complete form to appeal facility Manager’s/Director’s grievance decision

**District of Columbia**

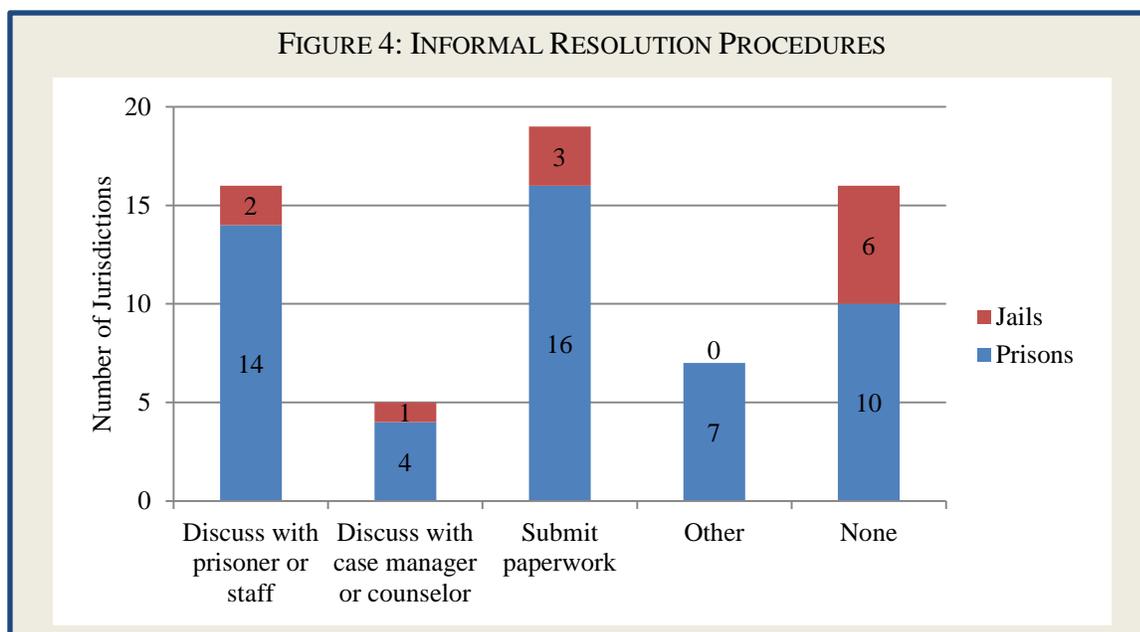
- (1) Informal resolution: Submit complaint via grievance box
- (2) Formal grievance: Submit form via grievance box
- (3) Appeal to Deputy Director
- (4) Final appeal to Dept. of Corrections

**Maricopa County**

- (1) Formal grievance: Submit form to shift supervisor
- (2) Appeal using External Grievance Form

#### **Informal Resolution:**

As already described, despite its name, informal resolution can be quite formal, requiring prisoners to complete forms and document their attempts to resolve the dispute. Most informal resolution provisions either encourage or require prisoners to attempt resolution by requesting a conversation with staff or fellow prisoners (e.g., Federal BOP, Missouri, Pennsylvania, Rhode Island, South Dakota). Other policies require the prisoner and relevant staff member to agree to an “identifiable solution or plan to resolve the complaint” (Vermont) or require the prisoner to “demonstrate that he/she has made a good faith effort to resolve the issue informally” (Virginia). If a prisoner is dissatisfied with the informal resolution, many policies require staff members to sign a form stating that the issue was discussed without resolution (e.g., South Carolina, Maine, New York City).



**Formal Grievances:**

If the informal process breaks down or the prisoner finds the response unsatisfactory, the prisoner is able to file a formal grievance. Depending on the jurisdiction, the formal grievance process includes a number of steps with specific time limits and procedural requirements. Prisoners must usually file paperwork with the institution through a prescribed method. A designated official or panel will generally review the grievance and respond

**Appeals:**

Every policy includes some mechanism for appealing the outcome of the formal grievance process. The appeal stage typically involves review by a higher level of administration (e.g., Louisiana: appeals to the Secretary of the Department of Public Safety and Corrections; Oregon: appeals to Assistant Director or designee; South Dakota: appeals to the Secretary of Corrections; Harris County: appeals to the Division Commander of the Administrative Services Division). There may also be multiple levels of appeal. Furthermore, some, though not all, policies require institutions to notify grievants in writing of final agency decisions.

When appeals are decided by someone inside the relevant Department of Corrections, that obviously risks bias. Quite a few jurisdictions have confronted that problem and are now requiring either a committee or an individual outside the corrections department to conduct the review. (The former is the situation in Delaware, Illinois, New York, Harris County, New York City; the latter in Delaware, Ohio, Maricopa County.)

**Recommendation 12: Appeals should be decided by a committee and/or an individual not associated with the Department of Corrections.**

Written notification of agency decisions is critical in order for prisoners to determine whether they can or must take further actions. The vast majority of grievance policies expressly state that institutions must provide grievants with written notification of institutional decisions.

Jurisdictions that do not provide notification at each step of the grievance process (Florida, Idaho, Kentucky, Vermont) or do not address notification at all (Maryland, Mississippi, North Dakota, Oregon, Dallas County) are outliers and should reform this aspect of their procedures:

**Recommendation 13: Policies should require officials to provide notification to prisoners at each stage of the grievance process.**

Approximately half of all policies go one step further, requiring institutions to explain their reasons for denying or rejecting grievances, at least at certain stages of the grievance process (Federal BOP, Connecticut, DC, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, Broward County, Miami-Dade, New York City, Orange County, Philadelphia, San Diego). All jurisdictions should adopt this common and common-sense approach.

**Recommendation 14: Policies should require officials to provide written reasons for denials or rejections of grievances at each stage of the grievance process.**

## **IV. TIME LIMITS**

### **A. TIME LIMITS FOR THE PRISONER**

Most grievance policies establish time limits for filing initial informal or formal grievances. These time limits are critically important for prisoners. If the time frame is too short, a prisoner may lack adequate time to decide to file the grievance, obtain and complete the required grievance forms, and submit the grievance forms in compliance with all procedural requirements. Moreover, a prisoner may not have adequate time to discover that he or she has a redressable grievance in the first place. The prisoner's interests must be balanced with the prison's valid interest in addressing grievances before evidence becomes stale or irrelevant.

The shortest time frame requires prisoners to attempt informal resolution within two business days of becoming aware of an issue, "unless prevented by circumstances beyond his/her control or if the issue falls within the jurisdiction of the Internal Affairs Division..." (Michigan).<sup>9</sup> At least two states require prisoners to take the initial grievance step within three days (Nebraska: "the Informal Grievance Resolution Form must be filed within three calendar days of the incident"; Oklahoma: "the offender must try to resolve the complaint by talking with the affected staff, supervising employee or other appropriate staff within three days of the incident"). The longest time frame for filing an initial grievance was 90 days (Louisiana: "a request to the Warden shall be made in writing within a 90 day period after an incident has occurred"). Five policies do not specify a time frame (Delaware, Washington DC, Dallas County, Harris County, San Diego). For a comprehensive list of time limits for filing an initial grievance, see Table 3.

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<sup>9</sup> Many policies include exceptions to the time limits, as Michigan's policy does. Under Nevada's policy, for example, prisoners with issues regarding the prison's authority and control have only ten days to file, while complaints about personal property or alleged torts may be filed within six months.

Imposing a short time limit for prisoners to initiate the first step of the grievance process is the easiest way for a prison to limit the accessibility of the process. Prisoners need adequate time, especially in the first stage of the grievance process, to decide whether to file a grievance; understand the grievance process, which may require reading a lengthy policy; obtain, complete, and submit relevant forms; and contact necessary third parties, particularly if informal resolution is required. Time limits of less than one week pose too high a hurdle for prisoners, particularly when the first step of the grievance process is onerous and time-consuming. Although prisons have an important interest in addressing grievances before evidence becomes stale or irrelevant, this interest must be balanced with the interests of the grievant.

**Recommendation 15: Prisoners should be afforded at least 10 days to initiate the grievance process.**

Of the 57 institutions that specify time limits for initial filings, 45 of them allow prisoners to have 10 or more days (Federal BOP, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Cook County, LA County, New York City, Orange County, Philadelphia, San Bernardino). The most common time limit is 30 days—and this seems like a best practice.

The point at which the clock starts is as important as the number of days given to file. Twenty-nine policies begin the clock at the time the relevant incident occurs (Federal BOP, Arizona, Arkansas, Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Washington, West Virginia, Wyoming, LA County, Maricopa, Miami-Dade, Orange County, Philadelphia, San Bernardino). Policies that start the clock at the time of the incident fail to address the many situations in which prisoners could not or do not become aware of grievances until after the time period expires. For example, a prisoner who receives poor medical treatment may not experience the resulting physical pain until a significant amount of time has passed. Similarly, a prisoner accusing a staff member of stealing personal property may not realize the property is missing for some time. Several jurisdictions implement more reasonable provisions. Five jurisdictions begin the clock when the incident occurs *or* when the grievant becomes aware of the incident (Alaska, Connecticut, Massachusetts, Rhode Island, Vermont), and two start the clock when the grievant becomes aware of the incident (Michigan, Broward County).

The U.S. Supreme Court recently addressed the issue of equitable tolling in *U.S. v. Wong*, 575 U.S. \_\_\_ (2015). In *Wong*, the Supreme Court held that equitable tolling is available in suits against the government, meaning courts may pause the running of the statute of limitations when a party has diligently pursued a claim but has missed a deadline due to extraordinary circumstances. Grievance policies should reflect the *Wong* Court's approach to equitable tolling. Fourteen jurisdictions begin tolling the clock at the time the incident occurs but provide certain exceptions (Colorado, Florida, Hawaii, Illinois, Kentucky, Louisiana, Mississippi, Missouri, New Jersey, Tennessee, Virginia, Wisconsin, Cook County, NYC). Illinois and Wisconsin, for example, provide exceptions for good cause. Although these exceptions may not address all circumstances in which a time-bar would be unfair, institutions should investigate implementation of these alternatives.

**Recommendation 16: Prisoners should receive exceptions to time-bars for good cause.**

At least four policies separately address tolling of the time limit for ongoing grievances (Maine, Missouri, Tennessee, New York City). Maine's exception is unusually harsh for prisoners, requiring them to file within 15 days from the *first* occurrence of an ongoing violation. Under this last approach, a prisoner who does not file a grievance within a certain amount of time of the first instance of victimization is permanently prohibited from seeking redress. This time-bar puts the perpetrator beyond the reach of the grievance system even when the wrong is ongoing. Such a result should be untenable, and several jurisdictions (Missouri, Tennessee, New York City) have express provisions that avoid this result, by providing that the clock starts at the time of the latest incident.

**Recommendation 17: Policies should explicitly provide that in the case of an ongoing grievance, the clock begins to run at the time of the most recent incident.**

There is great variation in the time limits for prisoners in subsequent steps (ranging from one to 30 days). In North Carolina, for example, prisoners must request all appeals within 24 hours of receiving written rejection. The Federal Bureau of Prisons, in contrast, requires appealing prisoners to submit the appropriate form within 30 days of the date the Regional Director signs the response. The clock generally starts to run for these subsequent steps when a decision is rendered in the previous step. However, policies differ in defining when a decision is "rendered." Several policies start the clock at the time when the prison enters the judgment (e.g., Harris County, Illinois) or before the prison responds to the complaint (e.g., Indiana, Michigan, Montana, Nebraska). These troubling provisions allow prisons to delay notification of the prisoner, thereby cutting into the prisoner's time for completing the next step of the process. Most policies start the clock for subsequent steps when the prisoner actually receives notification of the judgment (e.g., Utah, Rhode Island, South Dakota, Georgia, Louisiana, Broward County). This majority approach seems appropriate.

**Recommendation 18: Policies should start the clock for subsequent steps when the prisoner receives notification of the decision on the prior step.**

**TABLE 3: TIME LIMITS FOR INITIAL FILING OF PRISONER GRIEVANCES<sup>10</sup>**

2-4 days	5-7 days	8-14 days	15-30 days	> 30 days
<b>PRISONS</b>				
<p><b>2 days</b> Michigan*†</p> <p><b>3 days</b> Nebraska Oklahoma Rhode Island</p>	<p><b>5 days</b> Kentucky* Montana* New Mexico South Carolina</p> <p><b>7 days</b> Tennessee Utah</p>	<p><b>10 days</b> Arizona* Georgia Massachusetts* Nevada<sup>11</sup> New Jersey Vermont* Wyoming</p> <p><b>14 days</b> Ohio Hawaii Wisconsin</p>	<p><b>15 days</b> Arkansas† Kansas Maine Missouri North Dakota Pennsylvania* Texas West Virginia</p> <p><b>20 days</b> Federal BOP Florida Indiana* Washington</p> <p><b>21 days</b> New York</p> <p><b>30 days</b> Alaska California Colorado Connecticut Idaho Iowa Maryland Mississippi New Hampshire Oregon* South Dakota Virginia</p>	<p><b>45 days</b> Minnesota</p> <p><b>60 days</b> Illinois</p> <p><b>90 days</b> Louisiana</p> <p><b>180 days</b> Nevada</p> <p><b>1 year</b> North Carolina</p>
<b>JAILS</b>				
<p><b>2 days</b> Maricopa County</p>	<p><b>5 days</b> Broward County* Miami-Dade*</p>	<p><b>10 days</b> New York City Philadelphia San Bernardino</p> <p><b>14 days</b> Orange County</p>	<p><b>15 days</b> Cook County LA County</p>	

\* Business or working days

† Informal resolution, if required

<sup>10</sup> Not listed are Delaware, Washington DC, Dallas County, Harris County, and San Diego County, which do not state a time limit for initial filing.

<sup>11</sup> In Nevada, prisoners have six months to file personal property damage or loss, personal injury, medical claims, or any other tort claims, including civil rights claims. They have 10 days to file for other issues within the authority and control of the Department of Corrections, including, but not limited to, classification, disciplinary, mail and correspondence, religious items, and food.

## **B. TIME LIMITS FOR CORRECTIONAL OFFICIALS**

In addition to setting time limits for prisoners, policies typically establish time limits for prisons to respond at each stage. Fifty policies require prisons to provide initial responses within 30 or fewer days (Federal BOP, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, DC, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Broward County, Cook County, Dallas County, LA County, Maricopa County, Miami-Dade, New York City, Orange County, Philadelphia, San Bernardino County, San Diego County). As grievances progress through different levels of appeal, prisons often have longer time limits to issue decisions, presumably because later stage appeals are often reviewed by higher level administrators or committees (e.g., Federal BOP, Delaware, Kentucky). The longest time frames for a single stage of the grievance process were observed in Georgia and Missouri, which each give the prisons 100 days to respond to appeals.

At least half of all policies expressly allow the institution to obtain an extension in responding to grievances. Several of these policies do not specify the length of the available extensions (e.g., Kentucky, Ohio). Policies that do specify a length of time for the extension generally provide for extensions lasting from 10 to 30 days (e.g. Indiana: 15 working days for the Executive Assistant and 20 working days for the Department Offender Grievance Manager; Maryland: 15 days; Minnesota: 20 working days). Examples of the longest extensions available are Colorado and Florida, which each allow extensions of 70 days. Moreover, many states specify a maximum length of time for the grievance process (e.g., Arizona: 120 days; Colorado: 90 days; Iowa: 103 days; North Carolina: 120 days).

**Recommendation 19: Policies should require officials to provide initial responses within 30 or fewer days.** Fifteen days is the most common time limit (Arizona, DC, Indiana, Michigan, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Virginia, Cook County, Dallas County, Los Angeles) and provides a reasonable target. Extensions should not exceed 30 days. These time limits must appropriately reflect the challenges of administering the grievance process. For example, institutions may have few resources or may use external administrative bodies to resolve appeals; both circumstances may justify a longer time limit for prison responses. Yet grievance policies must place reasonable limits on the broad discretion of prisons in administering this process. Not only do prisoners justifiably want redress within a reasonable amount of time, but prisoners may need the grievance system to put an end to ongoing victimization or other serious problems.

Furthermore, many policies require prisons to respond to emergency grievances in a much shorter time frame. The shortest time frames observed require the prison to respond to emergency grievances within eight hours (Vermont, Washington). Other outliers allow prisons to take five (New Jersey), seven (South Carolina), or even 15 (Florida) days to respond to an emergency grievance. Most policies that specify time frames for emergency grievances require responses within 24 to 72 hours (Federal BOP, Arizona, Hawaii, Massachusetts, Dallas County, Harris County. (The consequences of these time frames will also vary depending on the definition of “emergency grievance.”) **Recommendation 20: Policies should require officials to provide initial responses within 72 hours for emergency grievances.**

**TABLE 4: TIME LIMITS FOR INITIAL RESPONSE FROM PRISON<sup>12</sup>**

2-4 days	5-7 days	8-14 days	15-30 days	> 30 days
<b>PRISONS</b>				
<b>3 days</b> Arkansas*	<b>5 days</b> New Mexico* Washington* West Virginia Wisconsin* Wyoming*  <b>7 days</b> Delaware Ohio Tennessee	<b>10 days</b> Alaska* Florida Kansas Kentucky* Massachusetts* Nebraska* South Dakota	<b>15 days</b> Arizona* D.C. Indiana Michigan* New Hampshire New Jersey Oklahoma* Pennsylvania* Virginia  <b>16 days</b> New York  <b>20 days</b> Federal BOP Hawaii Minnesota* Montana* Rhode Island* Vermont*  <b>21 days</b> Iowa Utah*  <b>25 days</b> Colorado  <b>30 days</b> California Connecticut* Idaho Maine	<b>40 days</b> Georgia Louisiana Mississippi Missouri Texas  <b>45 days</b> Nevada Oregon  <b>55 days</b> South Carolina  <b>60 days</b> Illinois  <b>90 days</b> North Carolina
<b>JAILS</b>				
<b>2 days</b> San Bernardino	<b>5 days</b> New York City Orange County  <b>7 days</b> Maricopa County San Diego	<b>10 days</b> Broward County* Miami-Dade*	<b>15 days</b> Cook County* Dallas County LA County  <b>30 days</b> Philadelphia	<b>60 days</b> Harris County

\* Business or working days

<sup>12</sup> Not listed are Maryland and North Dakota, which do not state a time limit for prison response.

## CONCLUSION

The goal of producing this report and posting each jurisdiction's grievance policy on the web is to increase transparency and accountability in the correctional system. We also hope that identifying both problematic and best practices will lead to meaningful reform. Jurisdictions whose grievance procedures fail to efficiently and effectively address legitimate grievances may use other less onerous policies or adopt the majority approach as models for improvement.

We hope, too, that many others—academics, corrections professionals, advocates, and interested members of the public—will use the documents we collected, and the Policy Clearinghouse on which they are posted, in order to do research, advocacy, and policy analysis. For example, those who work with prisoners can find the grievance rules there, saving time (sometimes crucial time) and energy that would be needed to obtain them. There are also many remaining research questions to be explored. For instance, as already described, some observers speculated that the Supreme Court's decision in *Woodford* might encourage prison and jails to increase the complexity and difficulty of their grievance procedures; prisoners tripped up when they attempted to exhaust those procedures would then be barred from federal lawsuits. It is clear that prison officials have plenty of incentive to reduce prisoner lawsuits against themselves, and the exhaustion requirement gives them a tool with which to do so. We have not examined whether this dynamic in fact occurred. But the document collection we did for this project, coupled with past policies gathered earlier and also posted at <http://clearinghouse.net/policy>, now makes it possible to answer this question.

For America's prisons and jails to meet the basic needs of individuals under their correctional control, they must develop and implement effective grievance policies. This report suggests that many jurisdictions could make simple but meaningful changes to advance towards this important goal.

## **APPENDIX A. METHODOLOGY**

### **1. DATA COLLECTION**

Our data collection strategy targeted all 50 state departments of corrections, the District of Columbia, Puerto Rico, the Federal Bureau of Prisons, and the agencies operating the 12 largest metropolitan jail systems. We obtained at least partial information for all of these jurisdictions, except Puerto Rico. In total, we obtained the policy information that is analyzed in this paper for over 99% of U.S. prisoners,<sup>13</sup> and approximately 13% of the nation's jail inmates.

Our public records requests or other research methods covered four different types of documents from each institution: prison grievance policies (including general and specific), prisoner handbooks, compiled statistics on grievances collected by the prison in the past ten years, and policies related to prisoner mail. With regard to grievance policies, we were aware that these could appear in administrative regulations, policy directives, or correctional manuals, depending on the jurisdiction. Although these materials are issued by different government authorities and vary in structure and detail, we sought multiple sources in order to gather a comprehensive collection.

Our first step was to search for each state's grievance policies online. These frequently appeared in two places: (1) central collections of a state's administrative code and (2) state departments of correction ("DOC") websites. For jails, the Sheriff's Department website for the county was typically the most useful source of information. Forty-four out of 53 prison systems (83%) had complete and updated policies available on their websites. Jails were far less likely to have complete and updated grievance policies online than state prisons. Only four out of 12 jails (33%) had complete and updated policies online.

We next sent public-records requests ("FOIA Requests"<sup>14</sup>) to each jurisdiction, under various state public-records or freedom-of-information statutes.<sup>15</sup> We specifically chose to contact, in order of preference, (1) public-records coordinators or FOIA officers (about one-third of the prison and jail systems list specific individuals who respond to FOIA requests); (2) public information officers, spokespersons, or designated media contacts; and (3) general administrative officers or general counsels' offices. We searched online for contact information, on both agency websites and general state employee directories. In most cases, we were able to contact each institution by email. For 12 of the 64 jurisdictions contacted, we were unable to find email addresses and sent our requests by snail mail.

In each request, we asked for "all current prisoner grievance regulations, policies, guidelines, manuals, directives, rules, etc., including general grievance policies/guidelines/etc. and specific grievance policies/guidelines/etc. relating to, for example, health care or sexual assault." We defined "grievance" to mean any "grievance or complaint, whether formal or

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<sup>13</sup> The report excludes the populations of territorial prisons, which held approximately 14,000 prisoners in 2013. This represents a tiny fraction of American prisoners. See Lauren E. Glaze & Danielle Kaebler, Bureau of Justice Statistics, NCJ 248479, *Correctional Populations in the United States, 2013*, at 12-13 (2014), available at <http://www.bjs.gov/content/pub/pdf/cpus13.pdf>.

<sup>14</sup> Although states have different names for their public records statutes, we refer to name of the federal law for ease.

<sup>15</sup> We did not contact the Federal Bureau of Prisons. The information in this report on the Federal BOP is based on the grievance policy posted on the BOP website.

informal, whatever the subject matter.” We also requested prisoner mail policies,<sup>16</sup> prisoner handbooks,<sup>17</sup> and compiled statistics kept on the grievance system.<sup>18</sup> When state law provided for waivers of fees for non-profit, public-interest, academic, or media organizations, we requested such a waiver, though our request was often denied.

Jurisdiction responsiveness varied greatly. Two prison systems (Louisiana, Ohio) and one jail system (San Bernardino County) responded completely within about one week. Twelve states initially requested fees ranging from a few dollars to a few hundred dollars. The largest fees initially requested were from Hawaii (\$720), Michigan (\$592), and Massachusetts (\$220), though we were able to negotiate on each of these, by clarifying/refining our request. Over the course of about three months following our initial request, we communicated regularly with a number of the jurisdictions. These communications typically involved inquiring about the status of our request, working to narrow or explain our request, and negotiating reductions in fees. In the end, we received the grievance policies of 63 jurisdictions. Alabama stated that it did not have a general grievance policy, although it did provide a healthcare grievance policy. We were unable to obtain a policy (or, indeed, any response at all) from Puerto Rico. Factors contributing to the ease of collecting the requested documents include whether the documents were already in digital form, whether the state had a single document (e.g., prisoner handbook or grievance policy) for the whole prison system or a different one for individual prisons, and whether the prison requested fees.

Table App-1 presents the results of our data collection process.

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<sup>16</sup> “Any current policy for prisoner mail or correspondence, including regular and legal mail, prisoner receipt of newspapers, magazines, newsletters, and books.”

<sup>17</sup> “Any current prisoner handbook or manual (including any inmate orientation handbook or manual), system-wide or institution-specific.”

<sup>18</sup> “Any record, created or updated from 2003 to the present, tallying or reporting: The number of grievances filed and resolved each year; the categories or subject matter of grievances filed and resolved, and number of grievances in each subject matter category used (for instance, grievances related to food, health care, use of force, etc., and including both ordinary and “sensitive” complaints such as those involving allegations of staff misconduct); grievance outcomes or resolutions each year, by subject matter category and year; statistics or data on length of time to resolve grievances, by subject matter category and year. We are not requesting individual grievance records. We are only requesting records that summarize, aggregate, or compile grievance data.”

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**TABLE APP-1: DATA COLLECTION BY JURISDICTION**

Jurisdiction	Grievance Policy	Prisoner Handbooks	Grievance Statistics	Mail Policy	Days to Completion	Fee Charged
<b>PRISONS</b>						
Federal Bureau of Prisons	✓				(NA)	
Alabama		✓	✓	✓	(NA)	
Alaska	✓	✓	✓	✓	42	
Arizona	✓	✓	✓	✓	180	
Arkansas	✓	✓	✓	✓	11	
California	✓	✓		✓	122	
Colorado	✓	✓		✓	168	
Connecticut	✓	✓	✓	✓	109	\$43.00
Delaware	✓	✓	✓	✓	130	
District of Columbia	✓	✓	✓	✓	32	
Florida	✓	✓	✓	✓	22	
Georgia	✓	✓	✓	✓	103	
Hawaii	✓	✓		✓	195	
Idaho	✓	✓	✓	✓	13	
Illinois	✓	✓	✓	✓	17	
Indiana	✓	✓	✓	✓	34	
Iowa	✓	✓	✓	✓	164	
Kansas	✓	✓	✓	✓	18	
Kentucky	✓	✓	✓	✓	33	\$20.60
Louisiana	✓	✓	✓	✓	7	
Maine	✓	✓	✓	✓	62	
Maryland	✓	✓	✓	✓	25	
Massachusetts	✓	✓	✓	✓	109	\$97.33
Michigan	✓	✓	✓	✓	35	
Minnesota	✓	✓	✓	✓	11	
Mississippi	✓	✓	✓	✓	60	\$62.50
Missouri	✓	✓	✓	✓	125	\$80.00
Montana	✓	✓	✓	✓	18	
Nebraska	✓	✓	✓	✓	26	
Nevada	✓	✓		✓	192	\$24.51
New Hampshire	✓	✓		✓	7	
New Jersey	✓	✓	✓	✓	10	
New Mexico	✓	✓		✓	11	
New York	✓	✓	✓	✓	180	\$192.50
North Carolina	✓			✓	33	
North Dakota	✓	✓	✓	✓	104	
Ohio	✓	✓	✓	✓	7	
Oklahoma	✓	✓		✓	74	
Oregon	✓	✓		✓	47	
Pennsylvania	✓	✓		✓	216	
Puerto Rico				✓	(NA)	
Rhode Island	✓	✓	✓	✓	74	\$126.90
South Carolina	✓		✓	✓	30	
South Dakota	✓	✓		✓	21	
Tennessee	✓	✓		✓	54	
Texas	✓	✓	✓	✓	48	
Utah	✓	✓		✓	47	
Vermont	✓	✓	✓	✓	13	
Virginia	✓	✓	✓	✓	136	
Washington	✓	✓	✓	✓	111	\$1.77
West Virginia	✓	✓	✓	✓	11	
Wisconsin	✓	✓	✓	✓	120	
Wyoming	✓	✓	✓	✓	177	
	Total: 51	Total: 49	Total: 38	Total: 52	Avg: 71.88	Total: \$649.11

Jurisdiction	Grievance Policy	Prisoner Handbooks	Grievance Statistics	Mail Policy	Days to Completion	Fee Charged
<b>JAILS</b>						
Broward County, FL	✓	✓	✓	✓	103	\$51.41
Cook County, IL	✓	✓	✓		18	
Dallas County, TX	✓	✓			28	\$3.30
Harris County, TX	✓	✓			110	
Los Angeles County, CA	✓	✓	✓		45	
Maricopa County, AZ	✓	✓	✓		151	\$25.50
Miami-Dade County, FL	✓	✓	✓		103	\$44.40
New York City, NY	✓		✓	✓	158	
Orange County, CA	✓		✓	✓	66	
Philadelphia, PA	✓	✓		✓	49	
San Bernardino, CA	✓	✓			7	
San Diego, CA	✓	✓		✓	21	
	Total: 12	Total: 10	Total: 7	Total: 5	Avg: 71.58	Total: 124.61

## 2. METHODOLOGICAL LIMITATIONS

There are two key limitations to our data collection methodology. First, variations in the structure and detail of the grievance policies may have led to inconsistencies in analysis. For example, three states use flowcharts to explain their procedures (Texas, Missouri, and Montana); at least one county (Dallas County) lacks a formal policy, but outlines procedures in its handbook; one state’s grievance procedures are divided between its state regulations and operational manual, then further dispersed in various subsections titled “Inmate Property,” “Prison Rape Elimination Act,” and “Appeals” (Idaho); and one state only uses its administrative regulation (Kansas). Furthermore, the policies vary in length from a handful of pages (e.g., Vermont, Washington, Cook County, San Diego) to 154 pages (Texas). Because of this variation, we were limited in our ability to uniformly analyze the policies. We improved interrater reliability by discussing policies that posed particular difficulties and determining collectively how best to analyze them in a uniform manner. Finally, we had a single member of the team review the analysis of all the policies in order to correct for errors and standardize the coding.

Second, this report does not account for the considerable discretion afforded to public officials in administering the grievance process. Policies that lack detail or instruction on certain aspects of the grievance process invite officials to fill in the gaps with informal or unwritten practices. These decisions can alter the outcome and effectiveness of the grievance process. Therefore, our examination of grievance policies may not be fully illustrative of the realities of a process dominated by administrative discretion.

## **APPENDIX B: CODING**

All 63 grievance policies were coded using 20 fields:

- 1) date promulgated
- 2) references to administrative codes or statutes
- 3) type of policy
- 4) name of policy
- 5) citations to external standards
- 6) citations to separate procedures for specialized grievances
- 7) steps
- 8) URL, if available online
- 9) time limits for prisoner
- 10) time limits for prison
- 11) punishments for grievances found frivolous, excessive, or abusive
- 12) definition of “grievance”
- 13) definition of non-grievable issues
- 14) remedies provided
- 15) procedural requirements
- 16) third party assistance
- 17) emergency grievance procedures
- 18) single-subject rules
- 19) guarantees of written responses from prison
- 20) length of policy.

The complete coding is available at <http://clearinghouse.net/policy>.

## APPENDIX C: STATISTICAL DATA

We received partial or complete statistical data on grievances filed and their success from 40 jurisdictions. The chart below summarizes this data for the five-year period from 2009-2013. Complete data for the 10-year period from 2003-2013 can be found at <http://clearinghouse.net/policy>.

**TABLE APP-2: NUMBER OF GRIEVANCES BY JURISDICTION**

	2013		2012		2011		2010		2009	
Jurisdiction	N	Successful								
<b>PRISONS</b>										
Alaska					3682	409			3259	283
Arizona	4875		4869		4451		4356		4116	
Arkansas	27380	2248	29338	3142	23839	2720	23081	2234	18245	1666
Florida	78819	179	78101	161	74743	164	76766	199	75484	225
Indiana	5233	487	4998	703	5630	1097	7124	2137	7571	2199
Iowa	4243		4708		5151		5278			
Kentucky	6297		7102		5326		4586		5295	
Massachusetts			5217							
Montana	5884	279	5950	874	5268	666	5955	1167	5885	216
New York					34013		35600		37557	
North Dakota	128		45		102		40		77	
Ohio	6299	885	6255	949	6344	992	6108	997	6047	1132
Rhode Island	3132		3132		2763		3091		2858	
South Dakota	1668	18	1288	30	1349	14	1575	22	1522	20
Texas	162561		172524		174525		173559		168501	
West Virginia	1468		2227							
Wisconsin	42503		42338		42242		44621		46590	
Connecticut			556		1810					
D.C.	787		167		655	155	623		933	
Georgia	23408		33344		32689		36760		34133	
Idaho	113	22	117	22	68	12	73	12	72	12
Illinois	14700	536	12541	417	14772	327	15417	392	16190	413
Kansas	1870		1778		2107					
Louisiana	15168		15380		12806		14442		9698	
Maine	480		422		707		835		170	12
Maryland	2103		2391		2681		2523		2715	
Minnesota	206		191		156		189		240	
Mississippi	11103		9384		10014		10123		10062	
New Jersey									77745	
Oregon	7615	3837								
Pennsylvania	49549		46735		46439	466	46614	7782	46087	8424
South Carolina	20527		28123		26818		26068		25281	
Vermont					829		716			
Wyoming	2105		2346		3983		4388			
<b>JAILS</b>										
Broward County			5285	112	3059	105	2345	69	2652	33
Cook County			7576		4905		2500		2664	
Los Angeles	7966		9479		6082		6207		11110	
Maricopa County	14325				10574		10884		16070	
Miami-Dade			512		600		596			
New York City	4910		5051		4974		5607	4	5949	3