Inter-Office MEMORANDUM

DEPARTMENT OF PUBLIC SAFETY

No. _____

Suspense: _____

June 30, 2015

TO: ALL CONCERNED

FROM: Nolan P. Espinda, Director

SUBJECT: AMENDMENTS TO COR.12.03: INMATE GRIEVANCE PROGRAM

The following are the significant changes to COR.12.03, effective July 1, 2015:

1) Updated the Reference Section to include Prison Litigation Reform Act (PLRA).
2) Added definitions for PLRA, grievance, emergency grievance, and retaliation.
3) Added to Section 5.0 that retaliation is prohibited.
4) Changed the language in Section 7.0 that information grievance resolution is encouraged, but is not mandatory.
5) Added to Section 8.0 an explanation of "emergency grievance" to comply Legal Based Standards process.
6) Increased the timeframe for the adjustment process from thirty (30) days to a firmly set forty-five (45) days. An exception to this requirement was added for stayed or tolled periods.
7) Added language that criminal complaint should be filed if there is a corresponding HRS Criminal Offense.
8) New Section 12.0 to include PREA requirements as it related to the grievance process.
9) Other minor grammar changes.

If you required any clarification, please contact Shelley Nobriga at 808-587-1415 or shelley.d.nobriga@hawaii.gov.

1.0 PURPOSE

The purpose of the Inmate Grievance Program is to allow an inmate under the jurisdiction of the Department of Public Safety (PSD) to seek a formal and constructive process to address inmate complaints relating to any aspect of his/her conditions of confinement through a credible, confidential, and independent administrative remedy process.

2.0 REFERENCES

.1 Prison Litigation Reform Act (PLRA) of 1995, 42 U.S.C. §1997e.

.2 Department of Public Safety, Policy and Procedures, COR.12.02: Inmate Legal Activities.

.3 Department of Public Safety, Policy and Procedures, COR.12.04: Access to Ombudsman.

.4 Department of Public Safety, Policy and Procedures, ADM.08.08: Prison Rape Elimination Act (PREA).

3.0 DEFINITIONS

.1 **Emergency Grievance**: An expedited process for grievances of an exigent nature requiring more timely handling than would ordinarily occur with routine processing of grievances.

.2 **Facility Inmate Grievance Officer (FIGO)**: Facility Warden's special designee that is specifically trained by the IGS to execute, control, monitor, and report on the inmate grievance and appeals process at the facility.

.3 **Grievance**: A written complaint concerning an inmate's conditions of confinement, treatment, frustrations and claimed rights' violations.

.4 **Inmate Grievance Specialist (IGS)**: IIO staff specifically assigned to execute, control, monitor, and report on the Inmate Grievance and Appeals Process at the Branch/Program and facility level of management.

.5 **Prison Litigation Reform Act of 1995 (PLRA)**: A Federal law enacting requirement for Suits by Prisoners.

.6 **PSD Inmate Grievance and Appeals Officer (IGAO)**: An independent authority within PSD responsible for the development and maintenance of a credible and impartial administrative remedy process for inmates.

.7 **Retaliation**: Any unauthorized or improper action or threat of action against an inmate based upon the inmate's appropriate use of or participation in the grievance process.

4.0 POLICY

.1 The Inmate Grievance Program (IGP) applies only to inmates incarcerated at Correctional facilities operated by the PSD in the State of Hawaii and incidents that arose while an inmate at a PSD operated Correctional facility. The IGP process requires that the inmate is currently incarcerated.

.2 IGP shall be the means for receiving, processing, and resolving inmate complaints, including but not limited to policies, procedures, practices, regulations, conditions and staff conduct.

.3 Inmates who have such complaints are required to utilize the IGP to address any complaints or concerns.

.4 FIGOs shall document all levels of the grievance program and IGSs should monitor inmate grievances and responses. IGS shall be designed to process grievance at an assigned Correctional facility.

.5 An inmate shall not be subject to discipline or retaliation for invoking his/her right to file an Inmate Grievance.

.6 It should be noted that any Inmate Grievance that is based on a Prison Rape Elimination Act (PREA) definition of sexual abuse or sexual harassment must be assessed based on the PREA Standards reference in Section 12 of this policy.

.7 Inmates must exhaust their administrative remedies before filing litigation for claimed violations of **federally** protected prisoner rights (See PLRA of 1995, 110 Stat. 1321-73, as amended, 42 USC § 1997e (2002)).

5.0 ADMINISTRATION OF SYSTEM

.1 The Department Inspections and Investigations Officer (IIO) shall serve as the Director's designee responsible for the planning, coordination, monitoring, evaluation, and reporting on all aspects of this program.

.2 Under the direct supervision and general guidance of the IIO Officer, the Inmate Grievance Specialist (IGS) is responsible for the implementation, coordination and operations of the Inmate Grievance Program at all correctional facilities.

.3 The IGS is responsible for executing procedures and providing guidance for receiving, recording, reviewing, investigating, assigning and/or responding to Inmate Grievances and/or Appeals submitted by an inmate.

.4 Facilities with a designated Facility Inmate Grievance Officer (FIGO), the FIGO will officially acknowledge receipt of a grievance or an appeal by:

a. Returning a receipt (goldenrod copy of PSD 8215) to the inmate;
b. Creating a file for each grievant, which will ultimately include the investigation and all responses.
c. When an inmate is transferred to a Hawaii facility, the grievance record will be forwarded to the receiving facility.

.5 Inmates are responsible to use this program in good faith and in an honest, respectful and straightforward (to the point) manner. Any substantiated abuse of this program may result in disciplinary action and/or process restrictions.

.6 Inmate Grievances are considered confidential. Access to records and files of complaints/grievances shall be determined by the IIO Office in compliance with existing regulations, legal requirements, and HRS Chapter 92F.

.7 All copies of inmate grievances and appeals are to be maintained either in electronic or hard copy format. These document will be maintained for a minimum of three (3) years, after the final response is issued to the grievant.

.8 Grievances accepted for formal processing shall also be entered into the Corrections Information Management System (CIMS), currently referred to as Offendertrak.

.9 Retaliation or reprisals against an inmate for using the grievance program is strictly prohibited and may subject the person to disciplinary action

6.0 ASSISTANCE

An inmate may obtain assistance from institution staff or another inmate with proper authorization by the Warden in preparing a grievance or an appeal. However, no person may submit a grievance or appeal on another inmate's behalf, with the exception of a PREA allegation (See Section 12 of this policy). All non-PREA related grievances or appeals must be penned by the grievant or the authorized designee as approved by the Warden. The time spent in obtaining assistance will not be considered as a valid reason for exceeding the time limit for submission.

7.0 INFORMAL RESOLUTION

.1 An informal resolution attempt is encouraged and should be handled at the lowest operational level, but this is not mandatory. An informal resolution is not applicable to emergency grievances.

.2 The informal resolution process is available to inmates through in-person discussion/consultation or via a written inmate request form with the appropriate facility staff member.

.3 Staff and inmates involved in informal resolutions should attempt to make an effort to resolve grievances at this level.

.4 Informal resolutions should be handled without unnecessary delay, and within policy established time frames. The inmate should view the Inmate Grievance and Appeals Process as a last resort after all other informal means for resolution have been exhausted.

8.0 FILING PROCEDURES

.1 **Submission.**
The deadline for submittal of the Inmate Grievance is fourteen (14) calendar days from the date on which the basis of the complaint/grievance occurred.

.2 **Extension.**
If the inmate demonstrates a valid reason for a delay in writing, an extension in filing time may be allowed by the IGS/FIGO.

In general, a valid reason for delay is a situation which prevented the inmate from submitting the grievance within the established time frame. Valid reasons for delay include the following:

a. An extended period in-transit during which the inmate was separated from documents needed to prepare the grievance or appeal;
b. An extended period of time during which the inmate was physically incapable of preparing a grievance or appeal;
c. An unusually long period taken for informal resolution attempts; and unavailability of grievance forms.
d. The inmate is responsible for submitting verification for any claimed reason for delay.

.3 **Form.**
The inmate shall obtain the Form PSD 8215 (see attached) from staff. The form is to be completed legibly with all required identifying information filled in. The inmate shall clearly state the complaint in the space provided on the form. The inmate should submit one copy of supporting exhibits if the exhibits are to be considered in the investigation of the grievance.

If applicable, the inmate should attach a copy of the informal resolution attempt as part of the grievance form. All exhibits will not be returned with the response. The inmate is encouraged to retain a copy of all exhibits for his or her personal records. The inmate shall date and sign the grievance/appeal and deposit it in the mail receptacle in its entirety.

a. Relevant Grievable **Issues.** The inmate may only file "one issue" on each Inmate Grievance form. If there are a reasonable number of closely related issues, then it may be submitted on "one" grievance form.

   An Inmate Grievance that is submitted with multiple unrelated issues shall be rejected and returned without response, however the inmate will receive notice that the inmate shall be advised to use a separate form for each unrelated issue. The grievance must be individual in nature, regardless if others may be similarly affected.

b. **Exceptions to the Initial Filing.** If the inmate reasonably believes the issue is sensitive, the inmate's safety or well-being would be placed in danger if the grievance became known at the facility level, then inmate may submit the grievance directly to the appropriate branch or division administrator in a sealed envelope marked "Confidential".

c. **Emergency Grievances.** Grievances of an exigent nature requiring an immediate resolution or a more expedited process may be given emergency status, and put on a fast-track process.

No stage of the grievance program should be deleted as each step provides a level at which administrative action can be taken however; however, each step can be accelerated.

Emergency grievances might include, but would not be limited to grievances related to:

1) Emergency medical treatment;
2) Fire/life-safety issues;
3) Claims concerning missed release dates;
4) The risk of death or serious harm, and
5) Other matters for which delay would significantly prejudice or harm the inmate, if not immediately resolved.

d. **Appeals.** An inmate who is not satisfied with the response received may submit an Appeal to the next step within five (5) calendar days from the date of receipt. The inmate shall submit a written statement regarding the basis of the appeal by addressing the response rendered.

The first level of review for the Inmate Grievance is the Section Supervisor, the next level for appeal is the Warden/Branch/Core Program Administrator and the final review level is the Division Administrator (DA). The decision of the DA shall be final and the ultimate recourse in the Administrative Remedy Process.

e. **Receipt of Acknowledgment.** The inmate shall acknowledge receipt of responses at all steps. An inmate's failure to sign receipt of the response will end the grievance process for that particular issue.

When a Receipt of Acknowledgment (ROA) is sent through confidential mail, the inmate is required to sign, date, and return the ROA prior to any appeals being accepted. Failure to sign and date the ROA will be the same as "refusing to sign," thereby ending the grievance/appeal process for that particular issue.

9.0 RESUBMISSION

.1 **Rejections.** The IGS/FIGO, at any level, may reject and return to the inmate without response a grievance or an appeal that is written by the inmate in a manner that is obscene or abusive, or fails to meet any other requirements of this policy.

.2 **Notice.** When a grievance is rejected, the inmate shall be provided a written notice, signed by the IGS/FIGO explaining the reason for the rejection. If the defect on which the rejection is based on is correctable, then the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the grievance or appeal.

a. Submissions that are too sensitive to be made known at the facility level are not to be returned to the inmate. The inmate will only receive a rejection notice and any other rejected submissions ordinarily will be returned to the inmate with the rejection notice.

b. Defects such as a failure to sign a submission, failure to submit the required copies of a grievance, appeal or attachments, or failure to enclose the required single copy of lower level submissions are examples of correctable defects. Ordinarily, five (5) calendar days from the date of the notice to the inmate is deemed a reasonable period for resubmission.

.3 **Appeal of Rejections.** When a grievance or appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection to the IIO Officer. Rejections for non-compliance with this policy is not appealed.

10.0 RESPONSE TIME

.1 If accepted, a grievance is considered filed on the date it is logged into Offendertrak as received by FIGO or IGS. Once filed, a response shall be made within twenty (20) working days. The initial step assignment is determined by the subject matter of the complaint.

.2 If the grievance is determined to be of an emergency nature, which threatens the inmate's immediate health or welfare, the response shall be no later than the three (3) calendar days after filing. This equates to the inmate receiving a response in three (3) days.

.3 If the time period for response to a grievance is insufficient to make an appropriate decision, the time for response may be extended once by twenty (20) working days.

.4 Staff shall respond in writing to all filed and assigned grievances. If the inmate does not receive a response within the time allotted by this policy for a reply, including extensions, the inmate may consider the absence of a response as a denial at that level. The result is that the inmate is free to proceed to the next step and no response will be forthcoming to the unanswered step/appeal.

.5 Inmates have five (5) calendar days to file an appeal to the Warden/Branch/Core Program Administrator upon their receipt of a denial from the Section Supervisor. The Warden/Branch/Core Program Administrator has twenty (20) working days to respond to the appeal.

.6 Inmates have five (5) calendar days to file an appeal to the Division Administrator (DA) upon their receipt of a denial from the Warden/Branch/Core Program Administrator. The DA has twenty (20) working days to respond to the appeal.

.7 Appeals to the DA shall be the final and ultimate recourse in the Administrative Remedy Process. If the twenty (20) working days has lapsed without a response, including any extension period, the grievance/appeal process will be considered exhausted.

.8 The above lapse and lack of a response begins the time and clock for the inmate to seek review of the "final and ultimate recourse in the Administrative Remedy Process" through the legal system.

11.0 GRIEVABILITY

Inmates shall not be allowed to file grievances on State and Federal Court decisions; laws and regulations; Parole Board decisions, Hawaii Paroling Authority (HPA) staff, and/or HPA board members, final and ultimate recourse in the Administrative Remedy Process by Division Administrators, Deputy Directors, and/or the Director of PSD; Department Policy and Procedures and agencies outside the exclusive jurisdiction of PSD Corrections Division.

If an inmate raises an issue in a grievance or appeal that involves negligence and cannot be resolved through the Administrative Remedy Process, the respondent will

refer the inmate to the administrative tort claim procedure with the Department of Accounting and General Services. It should be noted that any form of monetary compensation is not an option or appropriate resolution for the Inmate Grievance Program or the Administrative Remedy Program.

12.0 PREA STANDARDS FOR SEXUAL ABUSE OR SEXUAL HARASSMENT

.1 PSD's policy COR.12.03: Inmate Grievance Program outlines the administrative procedures available to offenders for reporting incidents of sexual abuse, sexual harassment, or retaliation. (115.52 a)

.2 This section is an addendum to COR.12.03: Inmate Grievance Program as it relates to PREA incidents. PREA mandates that there shall be "no time limits or deadlines" for filing a grievance that is reporting an alleged incident of sexual abuse.

a. PSD shall not restrict the processing of an offender grievance regarding an allegation of sexual abuse.

b. The filing period set forth in COR.12.03: Inmate Grievance Program is still applicable to any portion of the grievance that does not allege an incident of sexual abuse. The offender must still comply with appeal filing requirements as set forth in COR.12.03.

c. PSD shall not require an offender to utilize the informal grievance process for grievances alleging incidents of sexual abuse.

d. The statutory or legal provisions germane to the statute of limitations are applicable to any civil action in a court proceeding. (115.52 b)

.3 An offender may submit an offender grievance alleging sexual abuse without submitting it to the staff member, who is the subject of the complaint. This grievance shall not be referred to the staff member, who is the subject of the grievance complaint. (115.52 c)

.4 PSD's grievance policy and timelines may differ from the PREA requirement that a decision on the merits of any grievance or portion of a grievance alleging sexual abuse be made within ninety (90) days of the filing of the grievance.

a. Computation of the PREA 90-day time period does not include time consumed by offenders in preparing any administrative appeal.

b. PSD may claim an extension of time to respond, of up to seventy (70) days, if the normal time period for response is insufficient to make an appropriate decision. PSD shall notify the offender in writing of any such extension and provide a date by which a decision will be made. (115.52 d)

c. At any level of the administrative process, including the final level, if the offender does not receive a response within the time allotted for reply, including any properly noticed extension, the offender may consider the absence of a response to be a denial at that level. (115.52 d)

.5 PSD permits third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, to assist offenders in filing requests for administrative remedies relating to allegations of sexual abuse and they may file such requests on behalf of offenders.

a. If a third party files such a request on behalf of an offender, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

b. If the offender declines to have the request processed on his or her behalf, PSD shall document the offender's decision on the PREA Mandated Reporting Form (PSD 8317), which shall be forwarded to the Department PREA Coordinator via email, fax, or mail within three (3) days. (115.52 e)

.6 PSD's current Grievance policy establishes procedures for filing an emergency grievance alleging that an offender is subject to a substantial risk of imminent sexual abuse. This section is intended to supplement the Grievance policy by requiring that:

a. An initial response is provided within forty-eight (48) hours.

b. After receiving an emergency grievance alleging an offender is subject to a substantial risk of imminent sexual abuse, the PSD staff member shall immediately forward the grievance or any portion thereof that alleges the substantial risk of imminent sexual abuse to a level of review where immediate corrective action may be initiated.

c. PSD shall issue a final agency decision within five (5) calendar days. The decision shall include a determination as to whether the offender is at substantial risk of imminent sexual abuse and it shall describe the action taken in response to the emergency grievance. (115.52 f)

.7 PSD may initiate a misconduct violation against an offender for filing a grievance or reporting related to alleged sexual abuse or sexual harassment, when PSD demonstrates that the offender filed the grievance or report in bad faith. (115.52 g)

13.0 SCOPE

This policy applies to all PSD Correctional Facilities.

APPROVAL RECOMMENDED:

Deputy Director for Corrections — Date: 7/1/15

APPROVED:

Director — Date: 7/1/15