



Virginia Department of Corrections

Offender Management and Programs

Operating Procedure 866.2

Offender Complaints, Community Corrections

Authority:

Directive 866, *Offender Complaints and Legal Issues*

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Incarcerated Offender

ACA/PREA Standards:

4-ACRS-6B-03; 4-APPFS-2G-02; §115.251, §115.252

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

The content owner reviewed this operating procedure in September 2020 and determined that no changes are needed.

The content owner reviewed this operating procedure in August 2021 and determined that no changes are needed.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections. Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

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PURPOSE

This operating procedure provides for the handling of complaints and grievances arising from offenders under supervision of the Department of Corrections including Probation and Parole Offices and Community Corrections facilities. Community Corrections staff will investigate and provide a documented response in a timely manner to any offender who believes that their rights have been or may be violated by administrative actions or conditions of supervision.

PROCEDURE

- I. Offender Complaints
 - A. All offenders in each Community Corrections Unit must be advised that they have complaint/grievance procedures including at least one level of appeal available them. (4-ACRS-6B-03; 4-APPFS-2G-02)
 - B. Notification should be included in the initial interview when an offender enters supervision or during facility orientation. Information on complaint procedures should be included in any printed orientation materials.
 - C. If a form is provided for complaints/grievances, the offender will be advised where to obtain the form and how to submit it for investigation and response. Facilities may wish to provide one form to be used for both requests and complaints.
 - D. There shall be no reprisal against any offender for complaints submitted in good faith.
- II. Complaint Resolution
 - A. Complaints should be resolved at the lowest level possible.
 - B. If the complaint cannot be resolved directly between the staff member and the offender, the offender may submit the complaint to the staff member's immediate supervisor.
 - C. Offenders will not be required to resolve complaints concerning allegations of sexual abuse with the staff member towards whom the alleged incident of sexual abuse is directed. (§ 115.252[b(3)])
- III. Alleged Sexual Abuse or Violation of Rights
 - A. Any oral or written complaints by offenders alleging violation of rights or allegations of sexual abuse must be promptly referred to the immediate supervisor.
 - B. If the complaint is regarding the Unit Head, then the complaint will be referred in writing to the Regional Administrator. (§ 115.252[b(3)])
- IV. Complaints/Grievances Regarding Sexual Abuse and Sexual Harassment - Community Corrections Facilities
 - A. Offenders must have the opportunity to report sexual abuse and sexual harassment, reprisal by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents to any employee. An offender may report such incidents to an employee, by informing the employee in any manner available, e.g. verbally, through the offender telephone system Sexual Assault Hotline Number #55, or in writing using the established facility offender complaint/grievance procedure. (§115.251[a])
 - B. Any offender who alleges sexual abuse must be allowed to submit a complaint/grievance without submitting it to a staff member who is the subject of the complaint. The staff member may provide information during the investigation of the complaint but the complaint will not be referred to them for response. (§115.252[c])
 - C. Staff will accept any report of PREA related issues and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and



facility PREA Compliance Manager. If applicable, an internal incident report checked PREA will be submitted in accordance with Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*. (§115.251[c])

D. Facility staff will immediately forward all emergency complaints alleging that an offender is subject to a substantial risk of imminent sexual abuse to the Shift Commander who will determine if immediate corrective action is warranted. (§115.252[f])

1. An initial response to the complaint must be provided to the offender within 48 hours and a final decision must be provided within five calendar days.
2. The initial response and final decision must include a determination whether the offender is in substantial risk of imminent sexual abuse and any action taken in response to the complaint.

E. Third Party Assistance (§115.252[e])

1. Third parties, including fellow offenders, staff members, family members, community employers, attorneys, and outside advocates, will be permitted to assist offenders in filing requests for administrative remedies relating to allegations of sexual abuse and must also be permitted to file such requests on behalf of offenders.
2. 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 their behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
3. If the offender declines to have the request processed on their behalf, the facility will document the offender's decision.

F. The facility will not impose a time limit on when an offender can submit a complaint/grievance regarding an allegation of sexual abuse. (§115.252[b(1)])

1. Otherwise-applicable time limits will apply to any portion of the complaint that does not allege an incident of sexual abuse. (§115.252[b(2)])
2. Nothing in this section will restrict DOC ability to defend against an offender lawsuit on the grounds that the applicable statute of limitations has expired. (§115.252[b(4)]).

G. Disciplinary action may be brought against an offender for filing a complaint/grievance related to alleged sexual abuse only where the facility demonstrates that the offender filed the grievance in bad faith. (§115.252[g])

V. Responses and Appeals

A. All complaints must receive a documented response within 30 days unless otherwise agreed. Written responses are preferred, but oral responses to oral complaints will be documented in the VACORIS *Log Notes*. (§115.252[d(1)])

B. The offender may appeal to the Unit Head if not satisfied with the supervisor's response. All complaints must receive a documented response within 30 days unless otherwise agreed. Written responses are preferred, but oral responses to oral complaints will be documented in the VACORIS *Log Notes*. (§115.252[d(1)])

C. The Unit Head is the final level of appeal for all complaints except those complaints regarding the Unit Head and complaints alleging sexual abuse and sexual harassment.

D. The Regional Administrator will be the final level of appeal for complaints regarding the Unit Head and allegations of sexual abuse and sexual harassment. Written response should be provided within 30 days. (§115.252[d(1)])

E. A final decision on the merits of any portion of a complaint made in a Community Corrections facility



alleging sexual abuse must be issued within 90 days of the initial filing of the complaint. (§115.252[d])

1. The 90-day time limit will not include time used by the offender in preparing any administrative appeal.
2. If the normal time period for response is insufficient to make an appropriate decision, the facility may claim an extension of time to respond of up to 70 days.
3. The facility will notify the offender in writing of the extension and provide a date by which a decision will be made.
4. Expiration of the 30-day time limit at any level of response or failure to provide notice of an extension will be considered a denial at that level and will qualify the complaint for appeal to the next level of review. (§115.252[d(4)])

VI. Evaluation (4-ACRS-6B-03; 4-APPFS-2G-02)

- A. Unit Heads in Community Corrections facilities and P&P Offices will evaluate the complaint procedure at least annually to determine its efficiency and effectiveness.
- B. The quantity and nature of offender complaints are aggregated and analyzed annually.

DEFINITIONS OF TERMS USED IN THIS OPERATING PROCEDURE

Community Corrections Facility - A residential facility operated by the Department of Corrections to provide Community Corrections Alternative Programs.

Community Corrections Unit - Any Community Corrections unit operating under the Department of Corrections that has a direct responsibility to supervise offenders including Probation and Parole Offices, and Community Corrections facilities

Reprisal - Any action or threat of action against anyone for use of or participation in the complaint procedure

REFERENCES

Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*

ATTACHMENTS

None

FORM CITATIONS

None

