

APPENDIX 1
PENNSYLVANIA DEPARTMENT OF CORRECTIONS POLICIES

A. DC-ADM 804

DC-ADM 804 contains the following policy statement.

It is the Policy of the Department that every individual committed to its custody shall have access to a formal procedure through which to seek resolution of problems or other issues of concern arising during the course of confinement. For every such issue, there shall be a forum for review and two avenues of appeal. The formal procedure shall be known as the Grievance Inmate System.

(Doc. 60-2 at 2.) An inmate is encouraged to resolve concerns informally by use of a DC-135A Inmate Request to Staff Member or direct conversation with the Unit Manager or Officer in charge before submitting an Official Inmate Grievance Form. (Doc. 60-2 at 9.) An Official Inmate Grievance Form must be submitted to the Facility Grievance Coordinator using the DC-ADM 804, Part 1. (*Id.*) The grievance must be filed within fifteen working days after the event upon which the claim is based. (Doc. 60-2 at 10.) "If the inmate desires compensation or other legal relief normally available from a court, the inmate shall request the specific relief sought." (*Id.*) The policy indicates that an inmate could withdraw a grievance at any point in the grievance process. (Doc. 60-2 at 10.) "To withdraw a grievance, an inmate must use and sign the Inmate Grievance Withdrawal Form (Attachment 1-B), identify the grievance to be withdrawn by number, the reason why the grievance was withdrawn and forward

the form to the Grievance Coordinator. Once a grievance is withdrawn, the inmate cannot then proceed to appeal to either the Facility Coordinator or Final Review.” (Doc. 60-2 at 10-11.)

The Facility Grievance Coordinator/designee is to assign the grievance a tracking number, enter the grievance into the Automated Grievance Inmate Tracking System, entering a summary or description of the grievance subject matter, the category, and the facility’s disposition of the grievance at initial review. (Doc. 60-2 at 11.) On initial review of the grievance, if the grievance coordinator concludes that the issue being grieved is not in accordance with DC-ADM 804 it is returned to the inmate unprocessed with a Grievance Rejection Form. (Doc. 60-2 at 12.) If the Facility Grievance Officer determines that the grievance is properly submitted, he will assign the grievance to a staff member who is designated as the Grievance Officer for that grievance. (Doc. 60-2 at 11.) The Grievance Officer is to submit his proposed response to the Facility Grievance Coordinator for review prior to distribution to the inmate. (Doc. 60-2 at 12.) “The response shall include a brief rationale, summarizing the conclusion and any action taken or recommended to resolve every issue as well as any relief raised in the grievance. One of the following dispositions must be in the initial response: Uphold Inmate, Grievance Denied, or Uphold in Part/Denied in part.” (*Id.*) If the Facility Grievance

Coordinator approves the proposed response, the Coordinator returns it to the Grievance Officer who must provide a written response to the inmate within fifteen working days from the date the grievance was entered into the Grievance Tracking System.

(*Id.*)

The policy states that allegations of abuse "shall be" handled according to DC-ADM 001 and adds that

[t]his may extend the time for responding to the grievance, but will not alter the inmate's ability to appeal upon his/her receipt of the Initial Review Response. When a grievance is related to an allegation of abuse and the grievance is the first notice made by the inmate to the Security Office, the Security Office is afforded 30 working days to respond to the initial grievance as opposed to the normal 15 working days due to the need for investigation.

(Doc. 60-2 at 12.)¹

Appeal of the Initial Review Response to the Facility Manager had to be made within fifteen working days. (Doc. 60-2 at 15, 16.) The policy specified that Initial Review Response/Rejection must be received by the inmate before any appeal to the Facility Manager can be sought. (Doc. 60-2 at 15.) Final review was to be made to the Secretary's Office and had to be filed within fifteen working days from the date of the

¹ The earlier version of DC-ADM 804 simply stated that "[a] grievance dealing with allegations of abuse shall be handled in accordance with Department policy DC-ADM 001, "Inmate Abuse Allegations Monitoring Process." (Doc. 60-1 at 8.) It did not address appeal or timing issues.

decision of the Facility Manager. (Doc. 60-2 at 17.) The appeal of the Facility Manager's decision was to be responded to within thirty working days of receipt of the appeal. (Doc. 60-1 at 11; Doc. 60-2 at 19.) A section titled "Rights Under This Policy" states that the

policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

(Doc. 60-1 at 15; Doc. 60-2 at 2.)

B. DC-ADM 001

For reasons explained in the Memorandum, the Court uses the current version of DC-ADM 001 to analyze relevant allegations in this case and does so in part because the parties do not assert that *procedures* have substantively changed since the relevant time. (See www.cor.pa.gov/.../Documents/DOC%20Policies/001%20Inmate%20Abuse.pdf. Hereafter, the current policy will be cited as "DC-ADM 001" with reference to the identified PDF page numbers. The DC-ADM 001 "Procedures" section includes the following:

- B. Allegations of inmate abuse may be reported by:
 - 1. an inmate
 - 2. an employee, contractor, visitor, volunteer, or any individual who

has business with or uses the resources of the Department; and

3. all persons and entities attempting, establishing, or maintaining contact with persons committed to the custody of the Department.
- C. Any employees who receives written or verbal notification from an inmate or a third party alleging an incident of abuse, or who is a witness to abuse, is required to complete a DC-121, Part 3, Employee Report of Incident for distribution to his/her supervisor and the facility's Security Office. All reports shall be completed prior to completion of the employee's duty shift.
 - D. Any inmate who is the victim of abuse should report the abuse in the following manner:
 1. report it verbally or in writing to any staff member;
 2. file a grievance in accordance with Department policy DC-ADM 804, "Inmate Grievance System;" or
 3. report it in writing to the Department's Office of Special Investigations and Intelligence (OSII).
 - E. Any person who has knowledge concerning an alleged abuse should notify a staff member at the facility or the Department's Central Office.
 - F. An allegation of abuse that is received by any Central Office employee shall be referred to the OSII.

(DC-ADM 001 at 1-2.) The section titled "Rights Under This Policy" contains the same language as that contained in DC-ADM

804. (DC-ADM 001 at 2.) The manner of reporting in the policy quoted above is basically the same as that referenced by Plaintiff in the policy in effect during the relevant time period. (Doc. 95 at 10.) Plaintiff notes the relevant policy defined "Abuse" as "a. the use of excessive force upon an inmate; b. an occurrence of an unwarranted life-threatening act against an inmate; c. sexual contact with an inmate." (*Id.*) This is consistent with Mr. Kertes' testimony (Doc. 83 at 7), and the procedures outlined here are considered applicable to such conduct.

The DC-ADM 001 Procedures Manual effective the same date as the Policy Statement (November 24, 2014) does not specify a time requirement for the reporting of abuse.² However, it contains a provision which applies to a complaint of abuse made by filing a grievance under DC-ADM 804:

A grievance dealing with allegations of abuse shall be handled in accordance with this procedures manual. This may extend the time for responding to the grievance, but will not alter the inmate's ability to appeal upon his/her receipt of the Initial Review

² As noted in the Memorandum, in the later-adopted DC-ADM 008 which addressed sexual abuse and sexual harassment of an inmate, the "Methods of Reporting for Inmates" section of the Procedures Manual states that an inmate who is an alleged victim of sexual abuse, sexual harassment, and/or retaliation for reporting sexual abuse and harassment is to report it "to a staff member as soon as possible."

www.cor.pa.gov/.../Documents/DOC%20Policies/008%20Prison%20Rape20%Elimination20%Act.pdf Aug. 22, 2016 at 3-2. Other methods of reporting do not specify a time component. (*Id.*)

Response. When a grievance is related to an allegation of abuse, the Grievance Coordinator will issue an Extension Notice to the inmate by checking the box "Notice of Investigation." The initial review response will be completed by the assigned Grievance Officer when the results from the OSII are received. If the Grievance is not in compliance with Department Policy DC-ADM 804, "Inmate Grievance System," the rejected grievance will be forwarded to the facility Security Office so an investigation can be initiated.

. . . .

Inmate grievances alleging abuse that are sent directly to the Central Office shall be forwarded to the OSII.

(*Id.* at 1-1.)

Regarding investigation of allegations of abuse, DC-ADM 001 provides that when an allegation of abuse is received by the facility Security Office, the Security Office is to report the allegation to OSII and OSII responds with a tracking number within five business days.³ (*Id.* at 1-2.) Based on the injuries received, OSII determines whether the allegations of abuse will be investigated by OSII or the facility Security Office. (*Id.*) If the Security Office conducts the investigation, it is to include an interview of the inmate and a written statement from the inmate following the interview, interviews of all subject

³ Though defense counsel argued at the evidentiary hearing on April 6, 2016, that failure to investigate was a separate issue (Doc. 81 at 36), insofar as the completion of an investigation may trigger further action toward exhaustion, the issue is relevant in the context considered here.

staff members and written statements from them, and review of available video footage. (*Id.*) A copy of the investigative report is to be forwarded to OSII within thirty business days of receipt of the OSII tracking number. (*Id.* at 1-3.) However,

[i]f the investigation cannot be completed within thirty business days, the Facility Manager/designee, shall notify the OSII, in writing or via e-mail, of the need for additional time. This notification shall contain the rationale for the delay and the anticipated date of completion. The Director of the OSII/designee shall approve/disapprove additional time for completion of investigations.

(*Id.*) OSII is to complete a review of the investigation within fifteen business days of receipt of the report. (*Id.* at 1-4.) If OSII determines that the investigation was satisfactory, OSII is to send a letter acknowledging so to the Facility Manager and the facility Intelligence Gathering Captain. (*Id.* at 1-4.) Upon notification from the OSII of a satisfactory investigation, the suspect(s) and complainant are to be advised of the findings by the Facility Manager/designee. (*Id.*)

The procedure is much the same when a complaint is referred to the facility Security Office for investigation by the OSII. (*Id.* at 1-4, 1-5.) However, when a complaint is investigated by OSII, OSII is to complete the investigation within thirty business days of receipt of the investigation order. (*Id.* at 1-5.) A letter is then prepared by OSII to the complainant advising him of the results of the investigation and to the Facility Manager. (*Id.*)