

**Recognizing Human Dignity in a Functional Grievance Policy**

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## **I. Introduction**

This report argues that human dignity would be better served if the Delaware Department of Corrections (DDOC) implemented a clear and meaningful grievance process that can be readily accessed by the incarcerated individuals to empower them to advocate for their own dignity.

### **A. Vaughn Prison Uprising showed that ignoring prisoner grievances and not providing access to a functional grievance policy can have fatal consequences.**

James T. Vaughn Correctional Facility houses 2,500 minimum, medium, and maximum security prisoners, plus death row inmates.<sup>1</sup> It is the largest men's prison in the state of Delaware.<sup>2</sup> On Wednesday February 1, 2017 a corrections officer radioed for assistance from Vaughn's C Building, which housed 120 prisoners.<sup>3</sup> The C building is where prisoners are held while in the process of transferring from minimum to medium security, and maximum to medium security.<sup>4</sup> The prison was placed on lockdown, surrounded by police and three corrections officers and a female counselor were taken hostage by the prisoners.<sup>5</sup> Two of the corrections officers were beaten and released after several hours.<sup>6</sup> Forty-six prisoners also exited the building over the course of the hostage situation.<sup>7</sup> The prison's water supply was turned off, but prisoners demanded it be turned back on, using a radio captured from one of the corrections officers.<sup>8</sup> Authorities granted that demand, believing it was made for hydration and hygiene purposes but instead, prisoners used the water supply to fill metal foot lockers and created a barricade at each of the building's entrances.<sup>9</sup> Unable to breach through the doors, the police used a backhoe to breach through the wall and secured the prisoners and hostages nineteen hours after the uprising began.<sup>10</sup> It was discovered that multiple prisoners shielded the female counselor from harm while she was held hostage.<sup>11</sup> It was also discovered that the third correctional officer, Steven Floyd, was murdered by some of the prisoners.<sup>12</sup>

While using a captured radio prisoners were able to communicate with police negotiators what their demands were including education, better prison conditions, "rehabilitation

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<sup>1</sup> Mark Berman & Katie Mettler, Hostage Standoff in Delaware Prison Ends with One Correction Officer Dead, The Washington Post (Feb. 2 2017) <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/02/inmates-demanding-education-protesting-trump-take-hostages-at-delaware-prison/>

<sup>2</sup> id.

<sup>3</sup> Elliot C. McLaughlin & Madison Park, Delaware Prison Standoff Over; Corrections Officer Dead, CNN (Feb. 2, 2017), <https://www.cnn.com/2017/02/02/us/delaware-prison-standoff/index.html>

<sup>4</sup> id.

<sup>5</sup> Berman, supra.

<sup>6</sup> Vaughn Prison Riot Timeline, from the Siege to Charges being Dropped, The News Journal (June 14, 2019) <https://www.delawareonline.com/story/news/crime/2019/06/14/vaughn-prison-riot-timeline-siege-charges-being-dropped/1437144001/>

<sup>7</sup> McLaughlin, supra.

<sup>8</sup> id.

<sup>9</sup> id.

<sup>10</sup> id.

<sup>11</sup> Amy Cherry, Inmate Who Protected Prison Counselor in Vaughn Riot says Delaware DOC Didn't Give Him Tools Not to Re-Offend, WDEL (Apr. 13, 2020) [https://www.wdel.com/news/inmate-who-protected-prison-counselor-in-vaughn-riot-says-delaware-doc-didnt-give-him-tools/article\\_5ba2b09c-7b6b-11ea-989c-235b3e5d8fa7.html](https://www.wdel.com/news/inmate-who-protected-prison-counselor-in-vaughn-riot-says-delaware-doc-didnt-give-him-tools/article_5ba2b09c-7b6b-11ea-989c-235b3e5d8fa7.html)

<sup>12</sup> Berman, supra.

program[s] that work[] for everybody, and better training for the correctional officers.”<sup>13</sup> They also called for a “comprehensive look at the prison’s budget and spending.”<sup>14</sup> The News Journal newspaper in Wilmington also received two phone calls from the prisoners during the hostage situation and told the paper the same list of demands.<sup>15</sup> A former prisoner of Vaughn prison, though not present during the uprising, told the News Journal that the riot was caused by “unresolved tension finally bubbling over.”<sup>16</sup> He further explained that the conditions inside Vaughn are poor and they have limited access to educational programs and overcrowding creates additional issues.<sup>17</sup> Lastly, he warned that if the DOC does not address the inmates demands and nothing improves, there will be future incidents like this.<sup>18</sup>

Prisoner Legal Advocacy Network (PLAN) has been working alongside the ACLU of Delaware and Delaware-New Jersey Chapter of the National Lawyers Guild (NLG) compiling and analyzing complaint letters sent by DE inmates to determine various prison trends.<sup>19</sup> As of the date of this article there have been 2,207 letters received by the ACLU dating from 2015-Jan. 2017 and the majority of letters were from Vaughn prison, even when taking into account its larger prison population.<sup>20</sup> The Vaughn prison letters included complaints about medical care and mental health treatment, living conditions, and legal matters such as access to courts, lawyers, legal materials, legal libraries and legal mail.<sup>21</sup> The volume of all of these categories of complaints spiked in the months prior to the Vaughn prison riot.<sup>22</sup> Disproportionate increases in prisoner complaints, and there going unnoticed or unaddressed can be seen as an indicator that a problematic prison condition exists.<sup>23</sup> It can also be inferred that a proper policy to track prison concerns and address the issue can be a proactive measure to prevent future incidents within prisons.<sup>24</sup>

**B. Human Dignity is deeply related to a grievance policy because it allows prisoners a way of correcting conditions or injustices by bringing it to the attention of the correctional facilities officials.**

The meaning of dignity has evolved throughout history and is most often used to describe what is important about being human.<sup>25</sup> The essential elements of dignity are: 1) it is universal and applies to all humans, 2) it is inherent in every person, 3) it is human worth in that no life is dispensable, disposable, or demeanable, and 4) it is equal to all people.<sup>26</sup> Article 1 of the German

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<sup>13</sup> McLaughlin, *supra*.

<sup>14</sup> Berman, *supra*.

<sup>15</sup> McLaughlin, *supra*.

<sup>16</sup> Berman, *supra*.

<sup>17</sup> *id.*

<sup>18</sup> *id.*

<sup>19</sup> Prisoner Legal Advocacy Network, DDOC Reforms Needed to Avert Another Vaughn Incident Initial Findings of Joint Research and Data Analysis Exercise, at 1 (2017) <https://www.nlg.org/wp-content/uploads/2017/06/DDOC-Reforms-Needed-to-Avert-Another-Vaughn-Incident.pdf>.

<sup>20</sup> *id.* at 2-3.

<sup>21</sup> *id.* at 3.

<sup>22</sup> *id.*

<sup>23</sup> *id.*

<sup>24</sup> *id.* at 9.

<sup>25</sup> Erin Daly & James R. May, Dignity Law: Global Recognition, Cases and Perspectives, 3 (2020).

<sup>26</sup> *id.* at 7-8.

Basic law states that “human dignity shall be inviolable[,] to respect and protect it shall be the duty of all state authority.”<sup>27</sup>

A grievance system is a mechanism by which a prisoner can file a complaint or make a request in writing, and then receive a written response from the correction facilities officials.<sup>28</sup> Most grievance policies have multiple levels of appeals and most grievance policies also have filing deadlines.<sup>29</sup> Grievance systems began to appear nationally in the United States in the 1970’s because they were an efficient way of keeping correctional facility officials informed of trends or concerns within their facility by showing various patterns of prisoners issues.<sup>30</sup>

A functional grievance process is essential to the dignity of the incarcerated individuals because it is a requirement in both State and Federal law that an incarcerated individual exhaust all the requirements of the prisons grievance process before that individual will be able to file a lawsuit. Before a prisoner can file a lawsuit in court, he first needs to take his complaint through all levels of the prison’s grievance system, complying with all the procedural rules and deadlines of that prison.<sup>31</sup>

A prisoner may not bring or file a complaint relating to a condition of confinement, whether proceeding in forma pauperis or otherwise, unless the prisoner has fully exhausted all administrative remedies available through the institutional grievance procedure.

10 Del. C. § 8804 (g)

Applicability of administrative remedies. No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 USCS § 1997e (a)

Prisoners allege that Delaware officials ignored complaints of unlivable conditions and abuse by referring the complaints to DOC, which then allowed these grievances to go unaddressed.<sup>32</sup> Prisoner letters received by PLAN from 2014-2015 showed a 533% increase in prisoner complaints regarding “grievances” which included both a lack of access to forms and remedies.<sup>33</sup> This shows that prisoners felt as though they had no meaningful recourse in DDOC

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<sup>27</sup> Grundgesetz [GG] {Basic Law} Art. 1 Sec. 1 [Ger.] Translation at [http://www.gesetze-im-internet.de/englisch\\_stvollzg/englisch\\_stvollzg.html#p0013](http://www.gesetze-im-internet.de/englisch_stvollzg/englisch_stvollzg.html#p0013).

<sup>28</sup> No Equal Justice: The Prison Litigation Reform Act in the United States (June 9, 2009) <https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>.

<sup>29</sup> *id.*

<sup>30</sup> *id.*

<sup>31</sup> *id.*

<sup>32</sup> *Adger v. Carney*, No. 18-2048-LPS, 2020 U.S. Dist. LEXIS 52533\* at 3 (D. Del. Mar. 26, 2020)

<sup>33</sup> DDOC Reforms Needed to Avert Another Vaughn Incident, *supra* at 4.

to address their concerns, “this heightened feeling of helplessness to address legitimate concerns through existing DDOC procedures could reasonably be construed as signs of an emergent security situation.”<sup>34</sup> ACLU of Delaware Executive Director Kathleen MacRae is quoted in Delaware Public Media saying “if the Department of Correction had a grievance process that was comprehensive, transparent, and legitimate then they can track that data and they can know if there are situations within their systems that are reaching a crisis point.”<sup>35</sup>

## **II. Delaware has not always provided prisoners with humane treatment and reasonable standards of care even though they are required by law to do so.**

According to the Sentencingproject.org the DE prison population in 2019 was 4,141 the State, also in 2019, spent 331 million dollars on corrections expenditures.<sup>36</sup> Delaware Department of Corrections is obligated to provide reasonable standards of care to all individuals incarcerated in the State. 11 Del. C. § 6531 (a) states “persons committed to the institutional care of the Department shall be dealt with humanely, with effort directed to their rehabilitation. Additionally, under 11 Del. C. § 6536 the Department [of Corrections] shall promulgate reasonable standards, and shall establish reasonable health, medical and dental services for each institution.

### **A. Individuals incarcerated in DE were provided less than adequate medical care which in certain instances resulted with the unnecessary death of the prisoner.**

Luis Cabrera was a prisoner at Howard R. Young Correctional Institution (HRYCI) until his death on November 8, 2018.<sup>37</sup> He was under the medical care of Connections Community Support Programs, Inc. (CCSP).<sup>38</sup> Luis Cabrera came in contact with multiple CCSP health care providers and for purposes of this paper they are referred to as medical staff instead of by name. Prior to his death on November 8, Luis Cabrera began making complaints of severe abdominal pain on November 5.<sup>39</sup> The first medical notes detailed his condition as “having extreme pain with his stomach . . . on the floor in the fetal position . . . and he was unable to stand.”<sup>40</sup> On November 6 medical staff attempted to assess Luis Cabrera and he stated “I can’t talk the pain is too bad,” they then requested he walk to his cell door but he said “[he] couldn’t stand” and staff then walked away.<sup>41</sup> Medical Staff later noted that he did not appear to be having any kind of acute distress.<sup>42</sup> On November 7 he was physically examined and complained of “10/10” pain, required assistance to move from a wheelchair to the exam table, and bloodwork was ordered.<sup>43</sup>

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<sup>34</sup> id.

<sup>35</sup> Megan Pauly, Analysis of Prisoner Grievance Letters Finds Pre-Uprising Spike, Delaware Public Media, (June 7, 2017) <https://www.delawarepublic.org/post/analysis-prisoner-grievance-letters-finds-pre-uprising-spike>

<sup>36</sup> State-by-State Data, <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=0>

<sup>37</sup> Complaint at 1, Stephanie Cabrera et al. v. Connections Cmty Support Programs, No. 19C-07-064 VLM, Del. Super. Ct. Transaction ID 63520814 (July 9, 2019)

<sup>38</sup> id.

<sup>39</sup> id. at 16.

<sup>40</sup> id.

<sup>41</sup> id. at 5.

<sup>42</sup> id.

<sup>43</sup> id. at 7-8.

On November 8 at 0415 when medical staff went to check his vitals in his cell he was seen kneeling and hunched over on the floor.<sup>44</sup> When he was unable to stand up and move to the door to have his vitals checked, instead of helping him up medical staff and correctional officers left him on the floor and never checked his vitals.<sup>45</sup> A Dover Post article on this lawsuit is quoted that at 0425 medical staff asked a correctional officer to open Luis Cabrera's cell and "ask if he was still alive?"<sup>46</sup> He was found unresponsive with no radial pulse and CPR began, paramedics arrived shortly after and he was pronounced dead at 0454.<sup>47</sup> An Autopsy listed his cause of death as a perforated duodenal ulcer.<sup>48</sup> Luis Cabrera's wife and daughter filed suit against CCSP for criminally negligent homicide in July of 2019.<sup>49</sup> CCSP motioned dismiss and it was granted and the case was dismissed with prejudice.<sup>50</sup>

Raequan Stevens (Stevens) was arrested on September 4, 2015 and held at HRYCI as a pretrial detainee.<sup>51</sup> On or about November 26, 2015 Stevens reported to "emergency sick call" complaining of severe, throbbing pain in his abdomen and chest, which he also reported radiated to his stomach and thighs, he was examined by medical staff and returned to the general population, after only being given a Motrin pill and antacid tablet.<sup>52</sup> Two days later on the morning of November 28 Stevens was found deceased in his prison cell bed and an autopsy revealed that Stevens died of "peritonitis due to [a] ruptured appendix."<sup>53</sup> Plaintiff alleges that appendicitis is "easily detachable" and "readily treatable" by those possessing "basic medical knowledge."<sup>54</sup> Plaintiff further alleged that the "lack of medical monitoring or assessment" resulted from a failure of the State Defendants Coupe (then Commissioner of the Delaware Department of Corrections) and Wesley (then Warden HRYCI) to "establish appropriate policies, practices, and procedure for the monitoring and assessment of inmates who develop severe and acute medical conditions."<sup>55</sup> The complaint requests relief for violations to Stevens Eighth and Fourteenth Amendment rights.<sup>56</sup> The Eighth Amendment prohibition against cruel and unusual punishment requires that prison officials provide [prisoners] with adequate medical care.<sup>57</sup> In order for a prisoner to bring a claim, he must allege a serious medical need, and an act or omission by prison officials that indicate deliberate indifference to that need but an allegation of medical malpractice is not sufficient to establish an Eighth Amendment Constitutional violation.<sup>58</sup> The court granted the State Defendants motion to dismiss.<sup>59</sup> The court reasoned that

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<sup>44</sup> id. at 8.

<sup>45</sup> id.

<sup>46</sup> Shannon Marvel McNaught, Prisoner Died 'Agonizingly' of Treatable Condition, Dover Post, (July 18, 2019) <https://www.doverpost.com/news/20190718/prisoner-died-agonizingly-of-treatable-condition>

<sup>47</sup> Complaint of Cabrera, at 8.

<sup>48</sup> id. at 9.

<sup>49</sup> id. at 1.

<sup>50</sup> Stephanie Cabrera et al. v. Connections Cmty Support Programs, No. N19C-07-064 VLM, 2019 Del. Super. LEXIS 2950\* at (Super. Ct. Oct. 23, 2019)

<sup>51</sup> Brown v. Coupe, No. 16-271-LPS, 2017 U.S. Dist. LEXIS 44110\* at 1-2 (D. Del. Mar. 27, 2017)

<sup>52</sup> id. at 2.

<sup>53</sup> id. at 2-3.

<sup>54</sup> id. at 3.

<sup>55</sup> id.

<sup>56</sup> id. at 4.

<sup>57</sup> id. at 7.

<sup>58</sup> id.

the complaint failed to state a constitutional claim against the State Defendants because even assuming the medical treatment Stevens received was medical malpractice, it would not constitute an actionable constitutional violation.<sup>60</sup>

James Daniels (Daniels) died of a heart attack in 2016 after collapsing at 6:05 AM and medical staff did not attempt to resuscitate him or call an ambulance, and it was not until 6:24 AM when a correctional officer called an ambulance when he noticed he had no pulse.<sup>61</sup> Prison Legal News reported that the CCSP medical employee on the scene did not check Daniels blood pressure, blood oxygen levels, pain reaction or pupil dilation and left him unattended twice.<sup>62</sup> The medical staff employees defense of her actions was that it was CCSP policy not to call an ambulance unless there was approval from the chief medical officer or a prisoner was in cardiac arrest or had hung himself.<sup>63</sup> The purpose of that policy was maintain security, reduce costs, and prevent false alarms; that policy has sense been changed.<sup>64</sup>

DOC's loss in confidence with their health care provider caused them to void their contract with CCSP in March 2020.<sup>65</sup> As of April 1, 2020 Centurion of Delaware LLC will be responsible for the medical and behavioral health care needs of Delaware prisoners.<sup>66</sup>

### **B. Prisoners who were incarcerated during the Vaughn Prison Uprising faced degrading and abusive retaliation from Correctional Officers.**

Plaintiffs in Adger allege that the injuries they suffered were the result of retaliatory actions taken by correctional officers after the Vaughn uprising.<sup>67</sup> The majority of prisoners were in fact victims of the uprising and were hostages themselves and “terrified of the revolting inmates.”<sup>68</sup> Once police and correctional officers retook control of building C, the prisoners allege that the Correctional Emergency Response Team (CERT) “jumped on the inmates backs, put extremely tight zip-ties on their wrists, and kicked, stomped, stood on, and spit on them.”<sup>69</sup> Prisoners were allowed to be medically examined afterwards but only for twenty-thirty seconds.<sup>70</sup> One of the plaintiffs in Adger detailed the retaliatory abuse they faced by explaining how they were forced to “spread their buttocks with their hands, and then put those soiled fingers into their own

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<sup>59</sup> id. at 12.

<sup>60</sup> id. at 7.

<sup>61</sup> Complaint of Cabrera at 13.

<sup>62</sup> Kevin Bliss, Delaware: Inadequate Medical Care Results in Prisoner's Death, Prison Legal News (Apr. 2, 2019) <https://www.prisonlegalnews.org/news/2019/apr/2/delaware-inadequate-medical-care-results-prisoners-death/>

<sup>63</sup> id.

<sup>64</sup> id.

<sup>65</sup> Zoe Read, Lawsuit: Delaware Inmate Died in Agony After Receiving Inadequate Medical Care, WHYY, (July 16, 2019) <https://whyy.org/articles/lawsuit-delaware-inmate-died-in-agony-after-receiving-inadequate-medical-care/#:~:text=Lawsuit%3A%20Delaware%20inmate%20died%20in%20agony%20after%20receiving%20inadequate%20medical%20care&text=The%20family%20of%20a%20Delaware,of%20Bear%2C%20died%20on%20Nov>

<sup>66</sup> Jayson Hawkins, Delaware Changes Prison Health Care Provider Due to Lawsuits Against Prior Contract Holder, Prison Legal News (July 2020) <https://www.prisonlegalnews.org/news/2020/jul/1/delaware-changes-prison-health-care-provider-due-lawsuits-against-prior-contract-holder/>

<sup>67</sup> Adger, 2020 U.S. Dist. LEXIS 52533\* at 3-4

<sup>68</sup> id. at 4

<sup>69</sup> id.

<sup>70</sup> id.

mouths and pull their mouths open further[,] [s]ome officers touched multiple inmates genitals, buttocks, and mouths while wearing the same gloves.”<sup>71</sup>

An article from TheAppeal.org details similar complaints found in the Adger case. One instance of retaliation states that inmates were forced to sit outside facing a wall while correctional officers used paint ball guns to shoot pepper balls at them.<sup>72</sup> A prisoner stated that “they took my glasses of my face stomped on them, then sprayed pepper spray in my eyes, nose, and mouth.”<sup>73</sup> Another prisoners explained that while he was restrained on the floor correctional officers kicked and stomped on him asking if he was the one that killed Officer Floyd.<sup>74</sup> Prisoners alleged that in the months following the uprising CERT officers performed aggressive shakedowns while wearing riot gear and would beat prisoners, take medical property, destroy personnel property and conduct strip searches.<sup>75</sup>

In the Cabrera Complaint it is alleged that inmates were scheduled for x-rays to rule out that they had not ingested any foreign objects, even though there was no credible reason to suspect they had.<sup>76</sup> The x-rays served no legitimate medical purpose, maliciously exposed the prisoners to radiation, and were merely used to abuse and humiliate them.<sup>77</sup>

### **III. Denying or ignoring a prisoners ability to advocate for themselves is denying that prisoners inherent dignity.**

Dignity should be afforded to a functional grievance process as an avenue for prisoners to be “on the record” and have their voices documented that they have faced what they perceive to be an injustice committed against themselves while being incarcerated. To [PLAN’s] knowledge, this is the current Delaware Grievance Policy in its entirety, or at least is the only policy publicly available.<sup>78</sup> The State of Delaware only accepts public records requests from DE residents which means non-resident family of prisoners and out-of-state organizations cannot readily access information to provide meaningful and timely assistance to prisoners.<sup>79</sup>

(II.) Purpose. To establish an offender grievance process.

(V.) Policy: it is the policy of the DOC to afford all offenders the right to file a grievance without fear of reprisal or adverse action.

Procedures should be developed by the Bureau Chiefs of Correctional Healthcare Services, Prisons and Community Corrections to establish a grievance process for their respective offender populations. The procedures shall require reasonable time frames for the grievance to be transmitted without alteration,

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<sup>71</sup> id. at 4-5

<sup>72</sup> Raven Rakia, Lawsuit Claims Delaware Prisoners are Still Being Beaten, Stripped and Tortured Months After Uprising, The Appeal, (Nov. 30, 2018) <https://theappeal.org/lawsuit-alleges-prisoners-are-still-being-beaten-stripped-and-tortured-9-months-after-uprising-in-delaware/>

<sup>73</sup> id.

<sup>74</sup> id.

<sup>75</sup> id.

<sup>76</sup> Complaint of Cabrera at 4

<sup>77</sup> id.

<sup>78</sup> DDOC Reforms Needed to Avert Another Vaughn Incident, supra at 6.

<sup>79</sup> id. at 7.



interference or delay to an individual designated responsible for receiving, investigating, and resolving grievances. In addition, the procedures must require a reasonable time limit, a written report of the final disposition and an appeal mechanism that identifies the available levels of appeal.

Policy of State of Delaware Department of Corrections, Policy No. 4.4

The current DDOC Grievance Policy is not written with clear meaningful language because it is primarily written in “future tense.” The language in the policy that states “[p]rocedures should be developed . . .,” “[t]he procedures shall require . . .,” and “the procedures must require . . .” implies what the DDOC wants their policy to say and not what it is. This is a non-policy pretending to be a policy because it does not tell prisoners what the DDOC grievance policy actually is.<sup>80</sup>

**A. Functional grievance policies are provided to prisoners at both State and Federal levels and in other Countries.**

The Federal Bureau of Prisons (FBOP) is a sixteen page document that clearly and meaningfully states what the prisoner grievance procedure is, which they refer to as an Administrative Remedy Program.<sup>81</sup> The first paragraph in sec. (1)(a) plainly states that its purpose “is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement.”<sup>82</sup> It further articulates a prisoner may not submit a grievance on behalf of another prisoner, and that prisoners with a grievance related to sexual abuse need to use a different procedure and states where to find it.<sup>83</sup> Next it defines the scope in sec. (1)(b) of the program which “applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCC) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement.”<sup>84</sup> The responsibility of implementation and operation found in sec. (5)(a) of the FBOP grievance procedure is placed on the Community Corrections Manager, Warden, Regional Director and General Counsel.<sup>85</sup> After clearly stating the grievance procedures purpose, scope and who is responsible for it, it begins with the steps a prisoner needs to follow.<sup>86</sup> Prisoners are first required in sec. (7)(a) to try and resolve an issue or concern informally with correctional staff, and each Warden shall implement their own informal resolution policy.<sup>87</sup> Informal resolutions may be waived at the Wardens or institutions discretion such as with matters pertaining to sensitive issues.<sup>88</sup>

If informal resolution has been ineffective the FBOP describes in detail the initial filing policy beginning in sec. (8)(a) where it plainly states that prisoners have “twenty calendar days

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<sup>80</sup> id. at 6.

<sup>81</sup> 1330.18 BOP 542.10 (2014) [https://www.bop.gov/policy/progstat/1330\\_018.pdf](https://www.bop.gov/policy/progstat/1330_018.pdf)

<sup>82</sup> id. at 1.

<sup>83</sup> id.

<sup>84</sup> id.

<sup>85</sup> id. at 2.

<sup>86</sup> id. at 4.

<sup>87</sup> id.

<sup>88</sup> id.

following the date on which the basis for the request occurred.”<sup>89</sup> Extensions to the twenty calendar day requirement may be granted where the prisoner shows a “valid reason for delay,” which is generally when a prisoner was prevented from submitting his request such as: if the prisoner was in transit and separated from the required documents, the prisoner was physically incapable of preparing the form, or if informal resolution attempts were taking unusually long.<sup>90</sup>

The FBOP clearly identifies what form is necessary and who shall provide those forms to the prisoner.

The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).

The following forms are appropriate:

- Request for Administrative Remedy, Form BP-9 ((BP-229) is appropriate for filing at the institution.
- Regional Administrative Remedy Appeal, Form BP-10 (BP-230), is appropriate for submitting an appeal to the regional office.
- Central Office Administrative Remedy Appeal, Form BP-231), is appropriate for submitting an appeal to the Central Office

1330.18 BOP 542.14(c)(1)

After clearly stating which form to use, the FBOP policy states how the prisoner should fill out the form by explaining the form should only contain information regarding a single complaint or closely related complaints.<sup>91</sup> It also explains that any exhibits a prisoner submits to support his complaint will not be returned and that the prisoners should make copies of any additional exhibits because they are required if he needs to file an appeal.<sup>92</sup> Finally it states the prisoner should sign and date the form and submit it to the designated staff member to receive it, which is usually a correctional counselor.<sup>93</sup> Exceptions to the initial filing requirement may be granted for sensitive issues which is classified as ones in which the prisoner reasonably believes is sensitive and that his safety or well-being would be in danger if the facility was aware of his grievance.<sup>94</sup> The FBOP goes on to explain the steps and requirements necessary for a prisoner to fill out an appeal if they are not satisfied with the Wardens response.<sup>95</sup>

The FBOP provides additional helpful information in sec. (10)(a) that states a prisoner may receive assistance with the grievance form from other prisoners, correctional staff, and outside sources like family members or attorneys.<sup>96</sup> Once the prisoners grievance form is filed the prisoner should receive a written response within twenty to forty calendar days depending on

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<sup>89</sup> id.

<sup>90</sup> id. at 5.

<sup>91</sup> id. at 5-6.

<sup>92</sup> id. at 6.

<sup>93</sup> id.

<sup>94</sup> id.

<sup>95</sup> id. at 6-7.

<sup>96</sup> id. at 8.

where the form was filed.<sup>97</sup> For each prisoner grievance filed, an investigation and response needs to be prepared.<sup>98</sup>

The Pennsylvania Department of Corrections (PDOC) has a thirty four page highly detailed prisoner grievance system that is similar to the FBOP grievance system.<sup>99</sup> On the first page the PDOC states:

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.

DC-ADM 804, (III. Policy) Pa. Dept. of Corr. Inmate Grievance System

The PDOC, like the FBOP, encourages prisoners to attempt to informally resolve any grievances either by direct conversation or by a DC-135A, Inmate Request to a Staff Member.<sup>100</sup> Once a staff member receives either an oral or written informal concern that staff member is expected to quickly attempt to resolve that issue, and staff members who are not the appropriate person to resolve the informal grievance are required to refer the prisoner to the appropriate person and the Officer in Charge shall document the result of the informal resolution.<sup>101</sup> While it is encouraged to resolve a grievance informally, it will not be grounds for rejection of formal grievance if informal attempts were not made.<sup>102</sup> The PDOC requires that grievance forms be made readily available at each housing unit, and in the main and mini-law libraries.<sup>103</sup> It clearly states that the prisoner has “fifteen working days after the event upon which the claim is based,” and that the grievance must be filed at the facility where that grievance occurred.<sup>104</sup> The grievance procedure includes clear meaningful language regarding extensions for when to file and what needs to be including in the form.

Extensions may be granted on a “case by case basis,” and relevant factors are:

- Temporary transfer from the facility
- Permanent transfer to another facility
- Authorized Temporary Access
- Delay with mail delivery
- Any reason the Facility Grievance Coordinator deems responsible

DC-ADM 804, Sec. 1 (C)(2) Pa. Dept. of Corr. Inmate Grievance System

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<sup>97</sup> *id.* at 9.

<sup>98</sup> *id.* at 10.

<sup>99</sup> DC-ADM 804, Pa. Dept. of Corr. Inmate Grievance System (Apr. 27, 2015)

<https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/804%20Inmate%20Grievances.pdf>

<sup>100</sup> *id.* at 4.

<sup>101</sup> *id.*

<sup>102</sup> *id.*

<sup>103</sup> *id.*

<sup>104</sup> *id.* at 5.

In addition to the grievance being legible, and courteous it must include the following:

- Date, time and location of the event of the grievance
- Identity of individuals directly involved
- Prisoner “shall specifically state any claims he/she wishes to make concerning violations of Department directives, regulations, court orders, or other law
- If the prisoner is seeking compensation or other legal relief then the prisoner must request the specific relief sought in their initial grievance

DC-ADM 804, Sec. 1 (A)(11)(a-d)

The policy expressly states the “no [prisoner] shall be punished, retaliated against, or otherwise harmed for use of the grievance system.”<sup>105</sup>

It is the responsibility of each Facility Manager to ensure a fixed lock-box be designated and clearly labeled in each housing unit for prisoner grievance forms to be submitted.<sup>106</sup> Upon receipt of the prisoners grievance form the Facility Grievance Coordinator shall assign a tracking number to each grievance, even rejected ones, and enter it into the Automated Inmate Grievance Tracking System<sup>107</sup> Once the grievance has been properly received and accepted a Grievance Officer will be assigned, if the grievance is rejected it shall be returned and state why it was rejected<sup>108</sup> Section two of the PDOC grievance policy includes details about the appeal process should a prisoner need that information.<sup>109</sup>

Prisoner’s ability to be able to submit legitimate grievances before the prison and have their voice heard is also recognized abroad such as in Germany’s Prison Act.

#### Section 108: Right to Complain

1. The prisoner shall be given an opportunity to apply to the Head of the Institution with requests, suggestions and complaints on matters concerning himself. Regular consulting hours should be held.
2. When a representative of the supervisory authority inspects the institution, it shall be ensured that a prisoner can apply to him in matters concerning the prisoner himself.
3. The option of lodging a disciplinary complaint shall remain unaffected.

Prison Act of 16 Mar. 1976, Sec. 108, Translation at [http://www.gesetze-im-internet.de/englisch\\_stvollzg/englisch\\_stvollzg.html#p0013](http://www.gesetze-im-internet.de/englisch_stvollzg/englisch_stvollzg.html#p0013)

#### **B. A prisoner’s dignity has been recognized as equal to human dignity in courts in the United States and abroad.**

The plaintiff in Masangano is a prisoner in Malawi and filed suit against the Minister of Home Affairs and Internal Security and Commissioner of Prisons alleging that “ever since his

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<sup>105</sup> id. at 7.

<sup>106</sup> id. at 8.

<sup>107</sup> id. at 9.

<sup>108</sup> id. at 9-10.

<sup>109</sup> id. at 13.

imprisonment, he and his fellow prisoners have been subjected to torture and cruel, inhuman and degrading treatment or punishment” which he believes to be a non-derogable infringement on his rights.<sup>110</sup> Some of the conditions the plaintiff faced were lack of diet, lack of sufficient food, lack of clothing, lack of blankets and sleeping mats, overcrowded cells, denied right to talk with family, harassed and physically tortured by guards, denied medical attention.<sup>111</sup>

The Republic of Malawi Constitution Section 42 (1)(b) states that “every person who is detained, including every sentenced prisoner, shall have the right to be held under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the state.”<sup>112</sup> Plaintiff argued that the purpose of the standards in the constitution where to make prisons places of penal reform where prisoners do not lose their basic human dignity merely because they are incarcerated by the state.<sup>113</sup> The Court in Masangano recognized prisoners’ rights as “rights that prisoners have as human beings as they remain incarcerated in a prison . . . prisoners, even though they are lawfully deprived of liberty, are still entitled to basic or fundamental human rights.”<sup>114</sup> The Chief Commissioner of Prisons argued that they did not have sufficient funds to comply with the minimum standards but the Court held that “no one should be allowed to disobey the law merely on the grounds that he or she does not have sufficient resources to enable them [to] obey the law and fulfil their obligations under the law.”<sup>115</sup>

Brown v. Plata is a California case alleging violation of cruel and unusual punishment in violation of the Fourteenth Amendment, the case combined two separate violations, one being inadequate medical conditions (Plata v. Brown) and the other being inadequate mental health conditions (Coleman v. Brown).<sup>116</sup> At the time of this case in 2011, CA prison facilities held 156,000 prisoners, which nearly double what the facilities holding capacities were designed for.<sup>117</sup> This overcrowding has led to the “severe and unlawful mistreatment of prisoners through grossly inadequate provisions of medical and mental health care.”<sup>118</sup>

Coleman v. Brown involved a class of seriously mentally ill prisoners.<sup>119</sup> Prisoners did not receive minimal, adequate care due to overcrowding.<sup>120</sup> Conditions inside the prison included suicidal prisoners “be[ing] held for prolonged periods in telephone-booth sized cages without toilets” and some prisoners awaiting mental health treatment had to wait as long as twelve months.<sup>121</sup> The suicide rate in CA prisons in 2006 were almost 80% higher than the national prison population and 72.1% of suicides in CA prisons involved “some measure of inadequate

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<sup>110</sup> Masangano v. Attorney General & Others, No. 15 of 2007, High Court of Malawi (Nov. 8, 2009) <https://malawilii.org/mw/judgment/supreme-court-appeal/2009/31-0>

<sup>111</sup> id.

<sup>112</sup> id.

<sup>113</sup> id.

<sup>114</sup> id.

<sup>115</sup> id.

<sup>116</sup> Brown v. Plata, 563 U.S. 493, 499-500 (May 23, 2011).

<sup>117</sup> id. at 501.

<sup>118</sup> id. at 502.

<sup>119</sup> id. at 506.

<sup>120</sup> id. at 503.

<sup>121</sup> id. at 503-04.

assessment, treatment, or intervention, and were therefore most probably foreseeable and/or preventable.<sup>122</sup>

The second case was Plata v. Brown originally filed in 2001, involving a class of prisoners with serious medical conditions.<sup>123</sup> Prisoners received severely deficient medical care and a correctional officer testified that as many as fifty prisoners would be held in a twelve foot by twenty foot cage for as long as five hours waiting to be treated.<sup>124</sup> Fatal instances used in this case state that: “a prisoner with severe abdominal pain died after a five week delay in referral to a specialist; a prisoner with ‘constant and extreme’ chest pain died after an eight hour delay in evaluation by a doctor; and a prisoner died of testicular cancer after a ‘failure of MD’s to work up for cancer in a young man with seventeen months of testicular pain.’”<sup>125</sup>

Prisoners may be deprived of certain rights as a consequence of their actions but the law and the Constitution demand the retention of other rights.<sup>126</sup> “Prisoners retain the essence of human dignity inherent in all persons[,] [r]espect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.”<sup>127</sup> The state, by incarceration, takes away that incarcerated individuals means to provide for him/herself and that individual, while incarcerated, is dependent on the State for food, clothing and medical care.<sup>128</sup> “A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.”<sup>129</sup> The Court ultimately found that the medical and mental health care provided in CA prisons was a violation and the necessary remedy to correct the violation was a decrease in prison population.<sup>130</sup>

#### **IV. Delaware can recognize the dignity of their prisoner’s by providing them with a clear and functional grievance policy that recognizes their own autonomy.**

Human Dignity as an organizational principle of the correctional system recognizes each person’s intrinsic worth and capacity for self-control, autonomy and rationality.<sup>131</sup> A commitment to human dignity would strengthen, instead of undermine, correctional institutions priorities of safety and security.<sup>132</sup> DDOC Commissioner Claire DeMatteis, who was also the special independent investigator after the Vaughn Prison riot, talked about a need for mutual respect inside the prison, stating if “you show an offender respect, the offender will show you respect.”<sup>133</sup> The September 2017 investigative report stated “The culture of respect was not

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<sup>122</sup> id. at 504.

<sup>123</sup> id. at 507.

<sup>124</sup> id. at 504.

<sup>125</sup> id. at 504-05.

<sup>126</sup> id. at 510.

<sup>127</sup> id.

<sup>128</sup> id.

<sup>129</sup> id. at 511.

<sup>130</sup> id. at 545.

<sup>131</sup> Ruth Delaney, Ram Subramanian, Alison Shames & Nicholas Turner, Human Dignity as a Guiding Principle, Vera, (Sept. 2018) <https://www.vera.org/reimagining-prison-web-report/human-dignity-as-the-guiding-principle>

<sup>132</sup> id.

<sup>133</sup> Cherry, supra.

there[,] [w]e knew this was going to happen” it further stated “some groups of officers [felt] empowered to be vulgar, provocative, and harassing to inmates.”<sup>134</sup>

Recognition of human dignity for incarcerated individuals has been made internationally as well. Article 10(1) of the International Covenant on Civil and Political Rights states that: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>135</sup> Article 5 of the Universal Declaration of Human Rights states: “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>136</sup> An effective way to ensure that no person is subjected to “cruel, inhuman or degrading treatment or punishment” is to have a functional grievance procedure in place. This will allow prisoners to bring to the attention of prison staff when this treatment or punishment is occurring and the injustice can be corrected.

Prisoners can be empowered to advocate for themselves through a functional grievance process.<sup>137</sup> Grievance processes are vital for prisoners seeking redress with nonfrivolous complaints.<sup>138</sup> Regular training can provide clarity and empowerment for both prisoners and prison employees, reduce the number of improperly filed grievances, and reduce an overall lack of understanding in the DDOC prisoners grievance policy.<sup>139</sup> Outcomes based on the prisons grievance process may also determine the prisoners ability to file a lawsuit based on state and federal law which requires an exhaustion of all administrative remedies under the PLRA or the DE State equivalent.<sup>140</sup> It is essential that prison grievance processes be fair so as not to cut off a prisoners right to file a legal claim in court.<sup>141</sup>

## V. Conclusion

It is vitally important that incarcerated individuals have access to a meaningful and functional grievance process. As stated in *Plata*, the State takes away an individual’s ability to provide for themselves, but the State does not take away their ability to advocate for themselves. The Vaughn prison uprising brought to light the fatal consequences of what can happen when prisoners are abused or denied basic treatment such as adequate healthcare and not provided an avenue to make their abuse’s heard. Prisoners are still human and therefore retain the equal dignity that is inherent in any other person. Without a functional grievance process prisoners are effectively denied access to both State and Federal court. This instills a level of hopelessness among prisoners because there is not an avenue they can take, administratively or legally, for them to try improve their conditions.

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<sup>134</sup> *id.*

<sup>135</sup> International Covenant on Civil and Political Rights, Art. 10(1) (Mar. 23, 1976).

<sup>136</sup> Universal Declaration of Human Rights, Art. 5 (Dec. 10, 1948).

<sup>137</sup> DE Center for Justice, Inc., The Delaware Center for Justice puts forth the following recommendation to increase safety both with Delaware correctional facilities and our communities, at 4.

<sup>138</sup> Priyah Kaul et al. Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey, Michigan Law Prison Information Project, at 2 (Oct. 18, 2015)

<https://www.law.umich.edu/special/policyclearinghouse/site%20documents/foiareport10.18.15.2.pdf>

<sup>139</sup> DE Center for Justice, *supra* at 4.

<sup>140</sup> Kaul, *supra* at 2.

<sup>141</sup> *id.* at 3.

Appendix: Proposed Procedure

**The Delaware Department of Corrections Grievance Policy is unclear and inadequate, and an updated policy should incorporate the following guidelines.**

The DE Grievance policy should incorporate the following, or similar, language to convey clear and meaningful guidance to ensure the prisoner knows with certainty what the requirements are for filing his/her grievance.

1. A prisoner is encouraged, but not required, to attempt to informally resolve the issue, and staff members are required to try and address informal resolutions brought to their attention.
  - a. Failure to attempt to resolve informal resolution will not be a reason for a rejection of a formal grievance
  - b. Exceptions to informal resolution are permitted if the issue is one that would jeopardize the prisoners health or safety.
    - i. Examples are physical or sexual abuse
2. Formal grievance forms can be found at designated locations that are easily accessible by the prisoners.
  - a. Such as housing units, libraries, cafeterias
  - b. Must be clearly marked as grievance form
3. Deadline for filing a formal grievance is 20 calendar days following the date of the basis for the grievance
  - a. Exceptions to the filing deadline can be made when appropriate, such as:
    - i. Attempting informal resolution
    - ii. Permanent or temporary transfer to another facility
    - iii. Delay with mail delivery
    - iv. Prisoner did not have access to necessary grievance form
4. What the prisoner needs to include in the grievance form
  - a. Date of the basis for the grievance
  - b. Statement of the facts and individuals involved
  - c. A single grievance or closely related grievance
  - d. Grievance shall not be more than 2 pages in length
  - e. Prisoners signature
5. Prisoner may use the assistance of other prisoners, family members, staff, and attorneys or other legal aid providers
  - a. The prisoner does have to submit the form him/herself and no person can submit a grievance on a prisoners behalf
6. Prisoners must submit a completed grievance form at designated lockboxes
  - a. These need to be easily accessible such as in housing units or libraries
  - b. Must be clearly marked for grievance submission
  - c. Need to be checked daily by prison staff
7. If a submission is rejected the prisoner needs to be given a written reason for the rejection.
  - a. If the rejection was because of a good faith error on the part of the prisoner, he/she shall be given 5 calendar days to correct the error.
    - i. Examples of good faith errors are:
      1. Missing signature or multiple grievances on one form



8. Designated prison staff shall assign a tracking number to every grievance received, even rejected ones
  - a. Once assigned a tracking number, the prisoner shall receive a written response within 20 calendar days
  - b. All prisoners shall have an opportunity to file an appeal if they are dissatisfied with their grievance response or rejection
9. A Prisoner retains their dignity and no prisoner shall face punishment or retaliation for submission of a grievance