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# **“Smoke Screen”: Experiences with the Incarcerated Grievance Program in New York State Prisons**

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## PARTIAL LIST OF ABBREVIATIONS

CANY	Correctional Association of New York
CORC	Central Office Review Committee
DOCCS	Department of Corrections and Community Supervision
IGP	Incarcerated Grievance Program
IGRC	Incarcerated Grievance Resolution Committee
ILC	Incarcerated Liaison Committee
OMH	Office of Mental Health
OSI	Office of Special Investigations
PLRA	Prison Litigation Reform Act
RRU	Residential Rehabilitation Unit
SCOC	State Committee on Correction
SHU	Special Housing Unit



## INTRODUCTION

The Incarcerated Grievance Program (IGP) in New York State was created to address “the substance or application of any written or unwritten policy, regulation, procedure or rule of the Department of Correctional Services or any of its program units, or the lack of a policy, regulation, procedure or rule.”<sup>1</sup> The program purports to provide “each incarcerated individual with an orderly, fair, simple and expeditious method for grievances” as detailed in Directive 4040<sup>2</sup> and in accordance with Correction Law 139<sup>3</sup> and New York Codes, Rules and Regulations Part 7695.<sup>4</sup>

The IGP represents the only internal mechanism that allows incarcerated people in New York State facilities with recourse to address issues with most aspects of prison life. As stipulated by the Prison Litigation Reform Act, which was enacted in 1996 and designed to decrease the rate of litigation by incarcerated people, it is also necessary for the IGP to be exhausted before incarcerated people can litigate bring litigation about prison conditions.<sup>5</sup> Consequently, it is essential for the IGP to be both fair and procedurally sound for the proper functioning of the grievance program, both for internal dispute resolution and as a prerequisite for litigation.

The Correctional Association of New York (CANY), a non-profit organization mandated by the state to conduct oversight of state correctional facilities, has repeatedly documented that the IGP in New York State is perceived by incarcerated people as fundamentally failing. During monitoring visits, and in correspondence with incarcerated people and their families, the program is frequently cited as restricted in scope, lacking transparency and fairness, failing to resolve grievances within specified time limits, and widely subject to physical and other forms of retaliation. Together these failures inflict significant damage on perceptions of legitimacy of the system and negatively impact relationships between incarcerated people and staff.

To explore the scope and depth of these issues, CANY administered a system wide survey to roughly 10% (2805) of the prison population of New York State which received 540 responses (approx. 20% response rate). This survey, together with desk research into comparable programs across the US and abroad, a series of key-informant interviews with Incarcerated Grievance Resolution Committees, Incarcerated Grievance Program Supervisors, researchers and legal practitioners, inform the key findings in this report. In comments, many incarcerated people also articulated practical, relevant and realistic recommendations to reimagine the IGP, which will form the basis for a forthcoming separate report.

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1 N.Y. COMP. CODES R. & REGS. tit. 7, § 701.2(a) (2012); State of New York, Department of Corrections and Community Supervision, Directive No. 4040, Inmate Grievance Program § 701.2(a) (2016)

2 N.Y. Correct.Law § 139; 9 NYCRR Part 7695; Prison Rape Elimination Act <https://www.nysenate.gov/legislation/laws/COR/139>

3 N.Y. Correct. Law § 139 (“N.Y. Correct. Law § 139”) (2021). <https://www.nysenate.gov/legislation/laws/COR/139>

4 <https://casetext.com/regulation/new-york-codes-rules-and-regulations/title-9-executive-department/subtitle-aa-state-commission-of-correction/chapter-vi-minimum-standards-and-regulations-for-management-of-state-correctional-facilities/part-7695-nondiscriminatory-treatment>

5 Congress.gov. “S.866 - 104th Congress (1995-1996): Prison Litigation Reform Act of 1995.” July 27, 1995. <https://www.congress.gov/bill/104th-congress/senate-bill/866>

The survey data confirms that the IGP is heavily used and seen as vital by the incarcerated population, even as it fails to provide recourse. Despite this, the process does not apply to numerous aspects of prison life. For some issues, such as medical grievances, the procedures outlined within the system do not allow for a comprehensive hearing into the details of service delivery by those with relevant knowledge. There are frequent administrative and practical obstacles to filing grievances. The system does not ensure transparent and consistent processes in running key components such as the election of the Incarcerated Grievance Resolution Committee, the role of the Inmate Grievance Program Supervisor, the decisions made on appeals and by the superintendent, and the decision-making process for appeals received by the Central Office Review Committee. Finally, there is widespread evidence, and fear, of retaliation for filing grievances. These factors result in perceptions that the IGP is fundamentally unfair.

The IGP in New York has issues in common with jurisdictions across the US, including lack of accessibility, lack of transparency, perceptions of bias, and fears of retaliation. The PLRA, and particularly the requirement that specified that remedies must be exhausted, is also relevant across the US. For those reason, the findings within this report may be applicable beyond New York State.

## BACKGROUND

# The historical origins of the grievance process in New York State.

The grievance program in New York and across the United States has a direct link to the legacy of the Attica uprising in 1971. During the uprising, incarcerated people engaged in negotiations on key complaints. In the aftermath of Attica, the McKay Commission recommended a series of reforms.<sup>6, 7, 8</sup> This included “Reform No. 18: Establish an inmate grievance commission comprised of one elected inmate from each company, which is authorized to speak to the administration.”<sup>9</sup> The grievance process came into existence in New York State in 1976.<sup>10</sup>

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6 Patterson v. Smith, 53 N.Y.2d 98, 101, 423 N.E.2d 23, 25 (1981). <https://casetext.com/case/matter-of-patterson-v-smith>

7 Memorandum of State Executive Department, McKinney’s Session Laws of NY, 1975, pp 1705-1706.

8 Thompson Heather Ann, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*. Pantheon Books: New York, 2016;

9 Winerip, Michael, Tom Robbins, and Michael Schwirtz. “Revisiting Attica Shows How New York State Failed to Fulfill Promises.” *The New York Times*. *The New York Times*, August 26, 2016. <https://www.nytimes.com/2016/08/26/nyregion/revisiting-attica-shows-how-new-york-state-failed-to-fulfill-promises.html>

10 Columbia Human Rights Law Review. “Inmates Grievance Procedures.” Essay. In *A Jailhouse Lawyer’s Manual*, 12th ed., 407-21, 2020. <https://jlm.law.columbia.edu/files/2017/05/27.-Ch.-15.pdf>

Many of the other recommendations made by the commission were not adopted at all including the establishment of a parliamentary ombudsman, and introduction of a minimum wage. Prisoners' Legal Services and law libraries continue to exist but are limited in the amount of support that they can provide to those seeking recourse for issues that occurred inside prisons.<sup>11</sup>

In New York, in survey data and in conversations, many incarcerated people cite the legacy of the Attica uprising and corresponding legal changes as having a particular relevance to increasing their frustration at the IGP. The grievance program, once deemed to be one of the only positive outcomes of the Attica uprising, is essentially perceived as a failure in practice.

## Relevant studies from jurisdictions across the US

There are several recent studies across multiple jurisdictions that have direct relevance to the IGP in New York. Common themes manifest themselves across multiple states because of the implications of federal legislation and because IGPs are set up to fail without effective safeguards and methods of recourse beyond those that are specific to grievances.

A 50-state survey in 2015 drew conclusions that closely align with CANY's findings from New York. In multiple states, IGPs suffer from a lack of clarity on issues subject to the IGP, multiple obstacles related to access, excessive reliance on paperwork, the need for independence of appeal mechanisms, and the need for clearly articulated reasons for denials.<sup>12</sup>

In Washington State in 2020, workshops within the correctional ombuds resulted in realistic recommendations,<sup>13</sup> including the need to build confidence in and knowledge of the system and reduce fears of retaliation by actively defining 'retaliation' to improve accountability, provide training with visual tools for its grievance system to improve understanding twice a year, and to ensure a meaningful response and increase documentation across all aspects of the process. The existence of such a workshop, and the identification of these specific needs, are relevant and applicable to New York.

In Vermont in 2022, long delays and allegations of unfairness in the grievance system triggered an audit report which found the process was marred by poor record keeping, a lack of oversight, and a lack of clear responses.<sup>14</sup> In response, the Vermont DOC identified plans for the use of tablets<sup>15</sup> and for the establishment of an independent corrections investigative unit.

In Texas, a 2017 report from The Prison Justice League found multiple issues including delays, lack of transparency,

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11 Ibid

12 Kaul, Priyah, Greer Donley, Benjamin Cavataro, Anelisa Benavides, Jessica Kincaid, and Joseph Chatham. "Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey." SSRN Electronic Journal, 2015. <https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIARepor10.18.15.2.pdf>

13 Report and Recommendations from the Grievance Procedure Workgroup. A Collaboration of the Washington Department of Corrections, the Office of the Corrections Ombuds, and Disability Rights Washington, January 7, 2020. <https://oco.wa.gov/sites/default/files/Grievance%20Procedure%20Workgroup%20Report%20Final.pdf>

14 Hoffer, Douglas. Rep. Department of Corrections: Significant Deficiencies Demonstrate Need for Overhaul of the Prisoner Grievance Process. Vermont State Auditor, December 16, 2022. <https://auditor.vermont.gov/sites/auditor/files/documents/Final%20DOC%20Grievance%20Report.pdf>

15 "Vermont DOC Announces Plans for Grievance Process Modernization." Vermont Official Website. December 19, 2022. Agency of Human Services. <https://doc.vermont.gov/press-release/vermont-doc-announces-plans-grievance-process-modernization>



and lack of oversight. The report recommended using the model of independent oversight to which the juvenile justice system in Texas is subject. The need for independence is highlighted as a basis for improvement by incarcerated people throughout this report<sup>16</sup>.

In North Carolina in 2023, an independent oversight agency's report recommends that a task force be established to address problems with the IGP in the context of a ruling by a federal appeals court that likens the IGP system to a Catch-22.<sup>17,18</sup> The report recommends that the North Carolina Department of Adult Correction introduce measures to prevent retaliation, allow grievants to participate in collecting evidence, increase transparency of the process to the public and introduce tablets to keep an accurate record of grievances filed.<sup>19</sup>

In New York City in 2018, the Board of Corrections published an updated version of recommendations for improving city jails the grievance process. These included measures to improve independence for things such as the use of a citywide 311 telephone system which is not controlled by NYCDOC. The report recommended that appeals be shared with the BOC. The BOC also suggested that an action-plan should be developed to address the most raised grievances.

The reports from the different entities differ in detail but show the same lack of transparency, failure to attend deadlines, and need for independence<sup>20</sup>.

## Evidence documenting importance of outcome vs procedure: procedural justice in the grievance program

In addition to the geographical contextualization provided by policy-oriented reports, the survey findings also shed light on the meaning incarcerated people ascribe to the process. Calavita and Jenness' expansive study of California from 2015 mirrors findings in New York documenting a labyrinthine process that delivers neither justice, nor efficiency, nor constitutional conditions of confinement.<sup>21</sup> A follow-up study identifies that there are differences in how procedural justice is viewed in prison in comparison to other contexts.

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16 A "Rigged System": How the Texas Grievance System Fails Prisoners and The Public, PJL, 20017

[https://www.prisonpolicy.org/scans/prison\\_justice\\_league/a\\_rigged\\_system.pdf](https://www.prisonpolicy.org/scans/prison_justice_league/a_rigged_system.pdf)

17 Griffin v. Bryant, United States court of appeals for the Fourth Circuit Court of Appeals (United States Court of Appeals for The Fourth Circuit 2022). <https://www.ca4.uscourts.gov/opinions/217362.P.pdf>

18 Lyons, Kelan. "Federal Appeals Court Ruling Likens North Carolina's Prison Grievance System to a 'Real World 'Catch 22'" NC Newslines, March 28, 2023. <https://ncnewslines.com/2023/01/06/federal-judge-likens-north-carolinas-prison-grievance-system-to-a-real-world-catch-22/>

19 Hardee, Sandra. Rep. NC-CURE Report on the NCDPS Administrative Remedy Procedure. Carolina Public Press, March 27, 2023. <https://www.documentcloud.org/documents/23732643-report-on-administrative-remedy-proc-32723?responsive=1&title=1>

20 Second Assessment of the New York City Department of Correction Inmate Grievance System, NYCBOC, June 2018 [https://www.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/GrievanceAuditReport\\_Final\\_2018.11.06.pdf](https://www.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/GrievanceAuditReport_Final_2018.11.06.pdf)

21 Calavita, Kitty, and Valerie Jenness. *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic*. 1st ed. University of California Press, 2015. <http://www.jstor.org/stable/10.1525/j.ctt9qh2fc>

*In contrast to findings from the procedural justice scholarship, these prisoners privilege the actual outcomes of disputes—rather than the process—as their barometer of justice. We argue that the dominance of substantive outcomes in these men’s perceptions of fairness and in their dispute satisfaction is grounded in, among other things, the high stakes of the prison context<sup>22</sup>*

*Not only are actual grievance outcomes more important to these prisoners’ satisfaction than their perceptions of a fair process are, but in many cases the former drives the latter.*

This is reinforced by a study in Ireland that argues that:

*Having confidence in staff is associated with satisfaction with the procedure, as is the perception that one’s rights are respected, showing important connections between perceptions of complaints and aspects of legal consciousness. We suggest a need for further situated analyses of procedural justice and legal consciousness, as well as practical requirements for complaints systems to elicit confidence among incarcerated people.<sup>23</sup>*

Survey data demonstrates that people identify procedural problems across the system. However, they are also doing so in the context in which the IGP provides very poor outcomes. A common theme throughout this report is that the stakes of the process matter, and that the very absence of fairness impacts the way in which each aspect of the process is perceived.

## The Incarcerated Grievance Process in New York State

The grievance process is codified in Correction Law 139,<sup>24</sup> which stipulates the need for an Incarcerated Grievance Resolution Committee. It lists procedures and the need for durations but not the durations themselves or the implications if they are not met. It identifies that need for an appeals process to the commissioner, but does nothing to stipulate how the mechanism will retain independence or objectivity. Given how much impact the requirements for exhaustion have on incarcerated people, it is striking how unspecific the requirements are.

Correction Law also outlines a role for the State Commission on Corrections.

*The commission shall annually evaluate and assess the grievance procedures in correctional facilities, and make any recommendations with respect to the proper operation or improvement of the grievance procedures and provide such report to the commissioner and the chairmen of the senate codes and crime and corrections and assembly codes and correction committees.*

This is the only possible avenue for independent assessment of the process. It does not stipulate

22 Calavita, Kitty, and Valerie Jenness. “Race, Grievance Systems, and Prisoners’ Perceptions of Justice in Three California Prisons.” *Du Bois Review: Social Science Research on Race* 15, no. 1 (2018): 153–65. doi:10.1017/S1742058X17000200

23 <https://onlinelibrary.wiley.com/doi/full/10.1111/lasr.12603>

24 <https://www.nysenate.gov/legislation/laws/COR/139>

the form this assessment takes or allow for the investigation of individual grievances. There is very little in the public domain on what the annual assessment by the State Commission on Correction looks like, except for what is included in the annual report which only cites information from county jails in Annex 7.<sup>25</sup> Even the limited information that is provided on jails does not assess the viability of the process in addressing grievances themselves.

Correction Law 139 also requires DOCCS to “semi-annually report to the chairmen of the senate codes and crime and correction committees and the assembly codes and correction committees on the nature and type of incarcerated individual grievances and unusual incidents, by facility.” The semi-annual report presents grievances by code. However, the broad definitions of codes prohibit meaningful analysis of trends through grievance. Additionally, as this report will document, incarcerated people observe that the codes ascribed often fail to represent the nature of the grievance. As of May 2023, the most recently published semi-annual report was published to cover the first six months of 2022.<sup>26</sup>

### **Elements of the grievance process in New York State prisons:**

The following section provides a brief description of the elements of the process.

#### Directive 4040

Directive 4040 is the departmental directive that stipulates most aspects of the grievance program. Directive 4041 is the version that applies to SHU.

#### The Incarcerated Grievance Resolution Committee

As specified in Directive 4040, the IGRC is a group of four people. This includes two representatives from the incarcerated population and two staff members, who should have received specialist training.

#### Grievance Clerk

The grievance clerk is an incarcerated person who works on the administrative components of the process but does not participate in the IGRC vote.

#### IGP Supervisor

The IGP Supervisor is a civilian staff member with responsibility for receiving and processing grievances, and for coordinating IGRC hearings.

#### IGP Sergeant

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25 Riley, Allen, Thomas Loughren, and Yolanda Canty. Rep. Annual Report. The State Commission of Correction, 2021. <https://scoc.ny.gov/pdfdocs/SCOC%202021%20ANNUAL%20REPORT.pdf>

26 Incarcerated Grievance Program Semi-Annual Report. Department of Corrections and Community Supervision, 2022. <https://doccs.ny.gov/system/files/documents/2022/09/incarcerated-grievance-program-semi-annual-report-2022.pdf>

The IGP Sergeant is a security staff member who is responsible for following up with security staff to have them informally resolve (i.e., sign off on) grievances.

Facility Superintendent

The Facility Superintendent reviews all grievances that have been heard by the IGRC and are referred to them, whether or not they are denied or upheld. The superintendent is responsible for assessing all Code 49 grievances.

Central Office Review Committee (CORG)

The Central Office Review Committee includes the Deputy Commissioner and Counsel, Deputy Commissioner for Correctional Facilities, Deputy Commissioner for Program Services, Deputy Commissioner for Administrative Services, and the Deputy Commissioner and Chief Medical Officer, or their designees expressly authorized to act for them. A representative of the Office of Diversity Management will attend CORC hearings and have input on grievances alleging discrimination but will not vote. The CORC is the final stage of appeal for all grievances.

Steps in the grievance process:

While the evidence will show that in practice there is an enormous variation in the way in which the process functions from facility to facility, the steps of the IGP, including durations stipulated within the law, are included in Figure 2 below:<sup>27, 28</sup>

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<sup>27</sup> This diagram is partly drawn on the from what is described by incarcerated people about the process and is partly based on the diagram in this report. "NY Inmate Grievance Program Training Manual." The University of Michigan Law School, December 4, 2014. <https://www.law.umich.edu/special/policyclearinghouse/Pages/default.aspx>

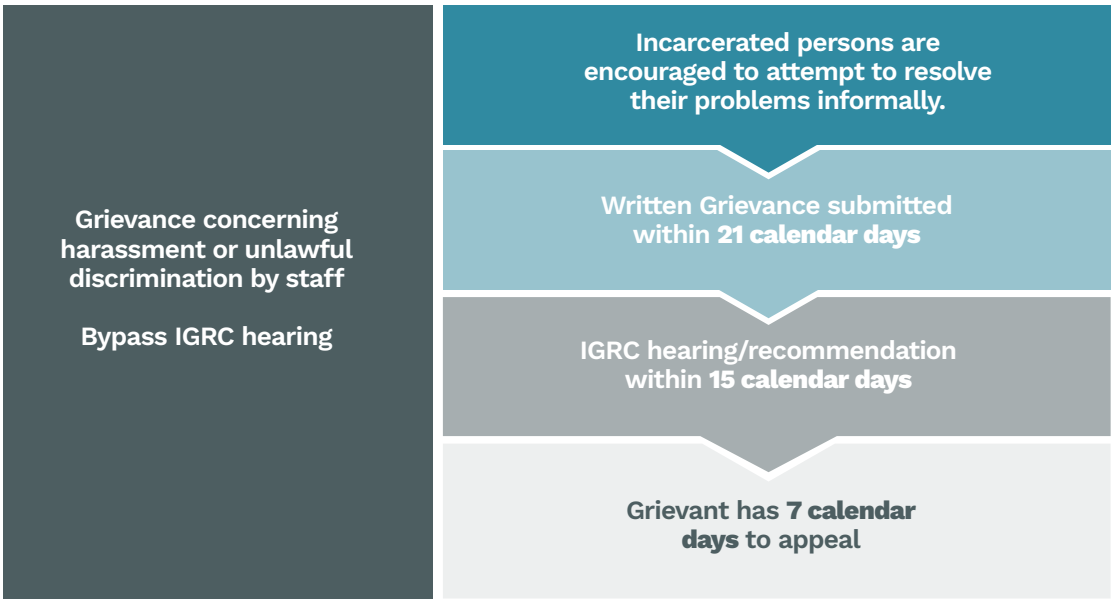
<sup>28</sup>

# Incarcerated Grievance Program

STEP

1

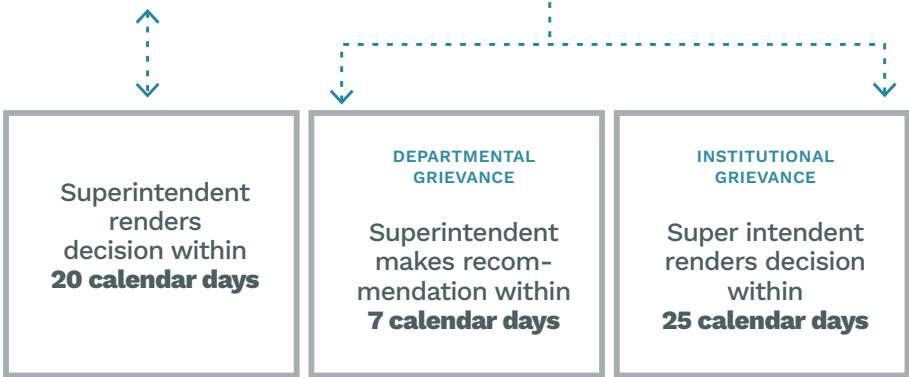
IGRC



STEP

2

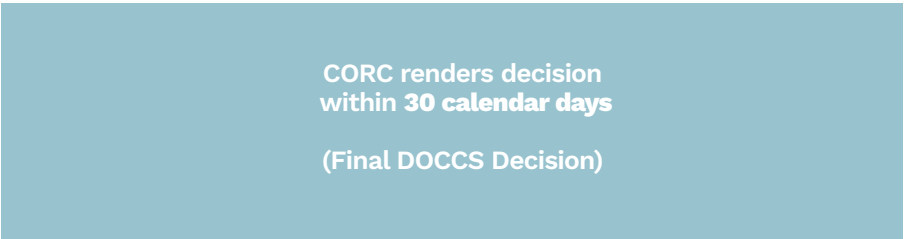
Superintendent



STEP

3

CORC



# The impact of the Prison Litigation Reform Act

Literature from across the country conveys how the Prison Litigation Reform Act (PLRA) has had a significant impact on the reasons why people file grievances, and the nature of the experiences that incarcerated people have with IGPs. Many of the core obstacles to recourse that are observed throughout this report derive from the PLRA.

The PLRA does not mandate what should be included in a grievance system, meaning that the federal requirement is linked to the IGP's procedural failings.<sup>29</sup> This is a fundamental problem when the system fails as “No action shall be brought with respect to prison conditions under section 1983 of this title, 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.”<sup>30</sup>

The PLRA, when signed in 1996, aimed to reduce ‘frivolous’ lawsuits. The ‘exhaustion of remedies’ stipulation has several impacts aimed at making it harder to litigate. These include making it more expensive than it would be on the outside, reducing the ability to claim for mental damage by restricting cases to physical injury, reducing fees for civil rights cases, and reducing the scope for settlement.<sup>31, 32</sup>

Together, these restrictions make suing the state for mistreatment incredibly difficult, even when the grievance process has been ‘exhausted.’ The combination of the difficulties in litigation and the need for the IGP to be “exhausted” before litigation makes the proper functioning of the IGP crucial.

In future reporting, CANY will provide additional analysis of the challenges posed by the PLRA and recommendations for reform at both the state and federal levels.

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29 The PLRA does not impose requirements for a state's grievance regime. See 42 U.S.C. § 1997e

30 42 U.S.C. § 1997e(a).

31 Initiative, Prison Policy. “Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act.” Prison Policy Initiative, April 26, 2021. [https://www.prisonpolicy.org/reports/PLRA 25.html](https://www.prisonpolicy.org/reports/PLRA%20.html)

32 Poser, Rachel. “Why It's Nearly Impossible for Prisoners to Sue Prisons.” The New Yorker, May 30, 2016. <https://www.newyorker.com/news/news-desk/why-its-nearly-impossible-for-prisoners-to-sue-prisons>

## KEY FINDINGS

# Key Findings

### SCOPE OF USE

1. The vast majority of incarcerated people in New York State Prisons use the IGP.

The overwhelming majority of respondents had filed a grievance (84%, n=456). Just over half appealed their most recent grievance to the superintendent (58%, n=224), around half had appealed a grievance to the CORC (52%, n=337), and around half filed a grievance on staff-misconduct (40%, n=351). In the first six months of 2022, DOCCS reports that 10,584 grievances were filed by incarcerated individuals.<sup>33</sup>

2. The most commonly filed grievances address staff-misconduct and medical issues.

Both survey results and DOCCS' semi-annual reports consistently show medical (Code 22) and staff misconduct (Code 49) to be the most subjects of grievances by far. There are specific procedural challenges in the way that both medical and staff-harassment issues are handled. It is not clear to what extent DOCCS uses this data to understand failures within the system as reporting tools do not document more information than the very broad interpretation allowed by the coding.

### AWARENESS OF THE IGP

3. Most incarcerated people are aware of the grievance process and its basic elements.

Most incarcerated people are aware of basic elements of the grievance process, such as Directive 4040<sup>34</sup> (68%, n=310), where to locate the drop-box in their facilities (66%, n=455), the existence of the IGRC (68%, n=462), and how they can appeal to CORC (65%, n=334).

4. Most people cite other incarcerated people as their main source of information on the IGP.

Almost half (48%, n=381) of respondents cited other incarcerated people as the main source of information about the IGP, although there was a significant number (30%) citing

<sup>33</sup> Incarcerated Grievance Program Semi-Annual Report, 2022, DOCCS, <https://doccs.ny.gov/system/files/documents/2022/09/incarcerated-grievance-program-semi-annual-report-2022.pdf>

<sup>34</sup> "Directive 4040: Incarcerated Grievance Program," DOCCS, 07/12/2006 <https://doccs.ny.gov/system/files/documents/2022/12/4040.pdf>

an orientation at the facility. Survey data indicates IGP is usually included in orientation sessions, but incarcerated people tend to prioritize information provided by other incarcerated people.

#### 5. Many grievances are immediately dismissed at the first hurdle for simple procedural reasons.

IGRC clerks and supervisors frequently describe how many grievances are immediately dismissed for simple reasons, for example, because the grievants have not attempted to solve the problem through other means first, or because they are not alleging that a directive has been violated as stipulated in 701.3 (a) or Directive 4040.<sup>35</sup> This demonstrates misconceptions of the program due to incorrect information and results in frustration.

### ROLES OF IGRC, IGP, SUPERINTENDENT AND CORC

#### 6. Most incarcerated people did not vote for their IGRC representatives.

Most people (60%, n= 335) say that they did not vote for their representatives as specified in Directive 4040.<sup>36</sup> IGRC members are often hand-picked by the administration. When elections do take place, people often say that they are unaware of the candidates and that it is common practice to vote for the candidate with the oldest Departmental Identification Number.

#### 7. Many people are unclear of the role of the IGP supervisor.

Many people (38%, n=235) say that the role of the IGP supervisor is unclear to them. 67% of respondents (n=234) did not believe that the IGP supervisor communicated the program clearly. This may partly be explained by the fact that over half of respondents said that the IGP supervisor did not meet with them on their grievance (52%, n=341).

#### 8. There are some advantages to informal resolution of grievances.

However, informal resolutions depend on individual approaches that do not allow for the clear documentation and use of trends.

The IGP supervisor encourages many people to resolve grievances informally (40%, n=331). While there are some advantages to informal resolution, in that it resolves issues more quickly, informal resolution is even more vulnerable to the personal bias of individual staff-members, resulting in a lack of standardization across the system which impacts trust. Informal resolutions are also not systematically registered, prohibiting analysis of data to understand trends in grievances.

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35        ibid

36        ibid, 701.4 (b)(2) (p4)



## PROCEDURAL INTEGRITY AND FAIRNESS

9. Existing procedural failures mean that the IGRC cannot accurately assess medical grievances leading to unacceptable delays while the process goes to the CORC.

The IGRC is not equipped or qualified to accurately assess the quality of clinical care supplied by healthcare professionals, and will therefore systematically deny medical grievances in which healthcare staff contest grievances related to the quality of care. While CORC does have medical expertise as part of its make-up, the delays in CORC appeals are so great that it is impossible to address time-sensitive medical issues effectively. It is also not clear to what extent the Chief Medical Officer, who is on the CORC, is able to effectively look into the details of clinical care of each individual case.

10. Most explanations for denial or dismissal of grievances do not address the points raised in the grievances.

While 45% (n=125) said that they were aware of the outcome of their most recent grievance, and 74% (n=54) of those that were aware said that they received an explanation for dismissals and denial, 76% (n=38) of those that received an explanation said that the explanation did not address the point made in the grievance, thereby leaving issues unaddressed and grievants without a sense of just process.

11. There are frequent failures to implement decisions in favor of incarcerated people.

Most people (68%, n=388) do not believe staff carry out decisions that are made in incarcerated people's favor. This is indicative of an absence of effective follow-up on decisions and has further implications for the value placed in the process.

12. Code 49 grievances are frequently deliberately misfiled as Code 23 grievances on 'internal block affairs', impacting the number of allegations of staff misconduct that are registered.

Some incarcerated people said that superintendents disingenuously apply Clause 701.2 (e) from Directive 4040, which is extremely vague, to falsely determine that grievances do not constitute staff harassment. Consequently, many grievances are not subject to the same relative confidentiality that comes with Code 49 grievances, and facilities do not supply DOCCS and the OSI with accurate data indicating the scale of harassment.

## ACCESS AND OBSTRUCTION

13. Most people cannot file grievances for all of the issues that are important to them.

Issues such as mental health provision, tablets, and others which are provided by external service providers, are not subject to the grievance process and are subject to their own complaints mechanisms. These complaints mechanisms are not subject to departmental directives and have little oversight. For example, malfunctioning tablets are dependent on a reportedly ineffective JPay-run helpdesk and DOCCS does not ensure accountability when complaints are not addressed.

14. Accessibility of forms and physical access are significant barriers to filing grievances.

54% (n=420) of incarcerated people said that they cannot get grievance forms when they need them. 45% (n=442) of people said that they had problems accessing the drop box. The issue was particularly acute at Upstate, where the entire population is held in the SHU or RRU. Multiple survey comments describe grievances being ripped up by staff or obstructed in other ways after submission. Others alleged that filing is frequently delayed so that response times are extended, and grievances can be claimed as invalid.

## RETALIATION AND FEAR

15. Most respondents said they did not file grievances when they had reason to do so. The majority cited fear of widespread retaliation from staff.

80% (n=447) of respondents said that they had decided not to file a grievance despite having a reason to do so, with the majority citing fear of retaliation as the reason not to file. 67% (n=493) said that they thought incarcerated people were either 'always afraid' or 'somewhat afraid' with just 6% saying that people were not afraid at all. 61% (n=443) said that they had experienced retaliation from filing a grievance. Multiple comments described multiple forms of retaliation, including violence as well as unfair ticketing.

16. Most people do not trust the IGRC, IGP supervisors, superintendents, or CORC to handle grievances fairly.

70% (n=345) of respondents said that they do not trust IGRC representatives to represent incarcerated people's interests fairly. 89% (n=414) of people said that they do not think that the Superintendent handles grievances fairly. 74% (n=371) believed that the CORC did not handle grievances fairly.

## DURATION AND THE PLRA

17. Almost all grievances are not resolved within the time limits specified within Directive 4040 at all stages in the process.

Survey data, administrative data, and comments by both incarcerated people and executive teams show conclusively that grievances are rarely resolved within the time limits specified in Directive 4040. 77% (n=322) said that their most recent grievance was not heard or resolved within 16 calendar days at the first stage. 82% (n=120) said that a judgement on their most recent Code 49 grievance was not made by the Superintendent within 25 calendar days. 78% (n=152) said that their most recent appeal to CORC was not reviewed within 30 days.

The failure of the process to work within timeframes often precludes the possibility of the IGP solving the problem raised in their grievance in ways that are meaningful for people. This failure also further reduces trust in the system. Protracted processes also prevent people from filing an Article 78, which is a lawsuit against a New York state agency, due to the state administrative law ‘exhaustion of remedies’ requirement.

18. Around half of respondents have filed a grievance purely to exhaust the process in order to litigate

The impact of the requirements for ‘exhaustion of remedies’ in the PLRA and in state law is such that nearly half of respondents (47%, n=300) said that they had engaged with the process purely to allow them to litigate. In comments, people describe the IGP as an obstacle to be negotiated prior to litigation.

19. There is widespread confusion on whether ‘exhaustion of remedies’ is achieved when CORC fails to reach a decision within 30 days.

The vast majority of cases sent to CORC are not reviewed within the 30-day timeframe. At state level, Article 78 complaints cannot be filed until an answer from CORC is received, however long the process takes. People are also often uncertain about when and how they can litigate on a federal level.

20. There are low rates of grievances being found in incarcerated people’s favor, and incredibly low rates of Code 49 grievances being found in incarcerated people’s favor.

18% of people (n=310) said that their most recent grievance was found in their favor. Only 9% (n=139) of respondents said their most recent appeal to CORC was decided in their favor. Just 6% of people (n=128) had ever had a Code 49 grievance found in their favor by a Superintendent, and 8% (n=139) were aware of any instances in which the Superintendent decided a Code 49 grievance in favor of incarcerated people. In referring to the poor chance of positive outcomes, large numbers of comments described the IGP as a “sham.”

21. Most respondents believe that the IGP is ineffective and makes relationships between staff and incarcerated people worse.

87% (n=360) of respondents considered the IGP ‘not effective’ or ‘seldom effective.’ Most people (66%, n=452) believed that the IGP makes relations worse between staff and incarcerated people. Together, these results show the impact of the documented failures and demonstrate that the IGP has precisely the opposite outcome of its purported intention.

## METHODOLOGY

### Information collected on monitoring visits

The Correctional Association of New York (CANY) is mandated by the state of New York to conduct independent oversight of state facilities. CANY conducts around 10 monitoring visits a year. Monitoring visits typically take place over one to three days and address most aspects of the facility operations and structure. The majority of these visits are taken up by interviews with individual incarcerated people on issues including the IGP, but they also include interviews with the executive team, program staff, staff unions, medical staff, Office of Mental Health (OMH) staff, and include a joint meeting with the Incarcerated Grievance Liaison Committee (IGRC) and Incarcerated Liaison Committee (ILC). During this meeting, the IGRC are consistently asked about the issues that are most heavily subject to grievances, the way in which the grievance process works at that facility, and the nature of their roles and the way it impacts their relationship with the rest of the incarcerated population.

CANY regularly meets with the IGP supervisor to understand the nature and challenges faced within the role, and how the process is used by facility management as a tool to understand issues. The process has also been discussed with the executive team at each facility when it has been prioritized by incarcerated people. Together, these sources provided CANY key information on the elements of the program, conveyed how fundamental the issue is felt to be by incarcerated people, and informed survey design.

### Survey Data

CANY’s survey (Appendix B) comprises seven areas: awareness of the program, accessibility, procedure and duration, perceptions of fairness, reflections on the program, and demographic information. The survey was designed by CANY and reviewed by independent legal experts and a former grievance clerk to ensure relevance and accuracy of questions.

The survey was sent to roughly 10% of the population of each facility, a total of 2805 people. Recipients were randomly selected through use of under-custody data supplied by DOCCS in September 2022. A copy of the survey along with a covering letter (Appendix A) was sent by

mail in December 2022, and responses were collected until March 2023. A total of 540 surveys were collected in this period allowing for a an acceptable margin of error for almost all questions. For more information on methodology, specifically on the margin of error and responsiveness, see Annex E.

The handwritten closed-ended responses were captured using scanning software, which automatically generated a csv file of responses from which the graphs included in this report were generated.

The themes identified through handwritten responses to open-ended questions were manually analyzed. Where relevant, these have been quantified by aggregating answers in which respondents independently made many of the same comments.

In addition to the survey itself, recipients were given the option to send an attachment and/or to write additional answers on subjects raised in the cover letter (Appendix A).

## Supplemental interviews and desk research

After receiving surveys, CANY visited Bedford Hills and Sing Sing Correctional Facilities on February 24, 2023 to conduct interviews with IGRC members, IGP supervisors, IGP sergeants, and the executive teams at both facilities. These interviews were intended to go into depth on the themes identified in survey responses, and to clarify questions that responses provoked.

CANY also conducted interviews with national subject matter experts on the grievance process and the PLRA.

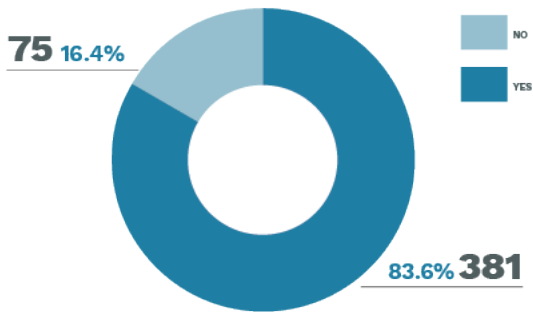
### IN DEPTH FINDINGS

The following section outlines the survey findings in depth on; the scope of use, level of awareness, the roles of key entities, perceptions of procedural integrity and fairness, levels access, fears of retaliation, duration, and the impact of the IGP on relationships between incarcerated people and staff. Where applicable survey data and quotes are triangulated with other data sources, the recommendations that are specific to each topic are repeated in full.

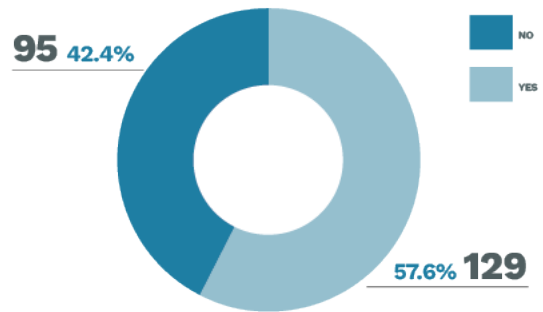
## Scope of Use

Questions on the scope of use of the IGP indicated that the vast majority of incarcerated people have engaged with the process on at least one level.

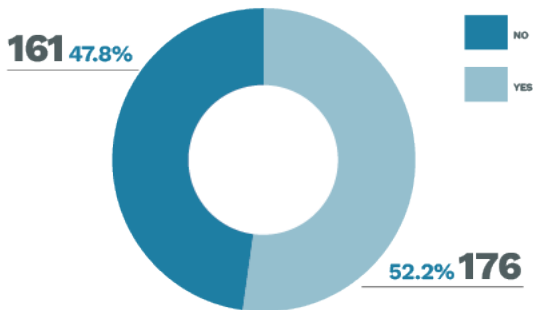
Have you ever filed a grievance?



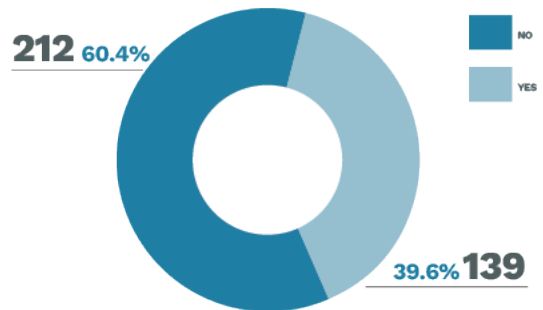
If a grievance was dismissed, did you file an appeal with the Superintendent?



Have you ever appealed a grievance outcome to CORC?



Have you ever file a Code 49 grievance (staff conduct)?



Incarcerated people also filed Code 49 grievances (staff harassment) in large numbers. On the one hand, this indicates that incarcerated people are engaged with the system. On the other, the fact that 40% of people believe that they had cause to file a Code 49 grievance may imply serious levels of violence that is inflicted on incarcerated people and the need for a robust mechanism to address it.

Another possible interpretation is that, because the PLRA requires a showing of physical injury to recover damages for mental or emotional injury,<sup>37</sup> it is also the case that people are more likely to be filing Code 49 grievances simply to fulfill this requirement for litigation.

Survey data corresponds with the semi-annual report released by DOCCS. Data published on grievances from 2014-2021 (Appendix C) shows that grievances have been filed in large numbers over time. For example, in 2021 there were 20,929 grievances filed in total, and in 2020 there were 21,559. In the first half of 2022, the most recent semi-annual report

<sup>37</sup> "Appendix B: Text of the Prison Litigation Reform Act of 1995." The Office of Juvenile Justice and Delinquency Prevention, 1996. <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/walls/appen-b.html>

shows that 10,584 grievances were filed, showing a similar rate of grievances filed.<sup>38</sup> The same report shows that there were 1,442 Code 49 grievances filed, representing 13.6% of all grievances filed across the system during that period.<sup>39</sup> While the annual reports do not indicate the number of individuals who filed grievances, but rather the number of individual grievances filed, it is reasonable to assume that a significant portion of the incarcerated population uses the grievance system, even accounting for the reality that some individuals might file more than one grievance per year.

Statistics in the semi-annual report may not provide a complete understanding of the scale of grievances concerning staff harassment. In interviews and comments, multiple people said that often Code 49s are wrongly filed as Code 23s (housing operations) or other classifications to avoid the added attention that may accompany a Code 49, which is filed directly with the Superintendent.

*When a grievance comes in that may be deemed a Code 49 we have to send it to the Superintendent and he makes the final decision. So depending how the grievance is worded, the Superintendent may not proceed as a Code 49 when it might have been a 49.*

WOODBOURNE

*I recently filed a Code 49...I ran into a problem. Instead of coding it correctly [the IGP Supervisor] coded it a 07, which has nothing whatsoever to with a Code 49.*

CLINTON

*[In response to being asked to identify problems] Purposely refusing to forward grievances that allege staff misconduct, harassment, or retaliation.....Purposely refusing to categorize and treat harassment type grievances as such.*

CLINTON

Directive 4040 conveys how the superintendent does indeed have agency to determine what constitutes harassment.

*The Superintendent or his/her designee shall promptly determine whether the grievance, if true, would represent a bona fide case of harassment as defined in section 701.2, above. If not, then it shall be returned to the IGRC for normal processing.<sup>40</sup>*

The text on what defines a harassment grievance in 701.2 is extremely vague and open to interpretation by each superintendent.

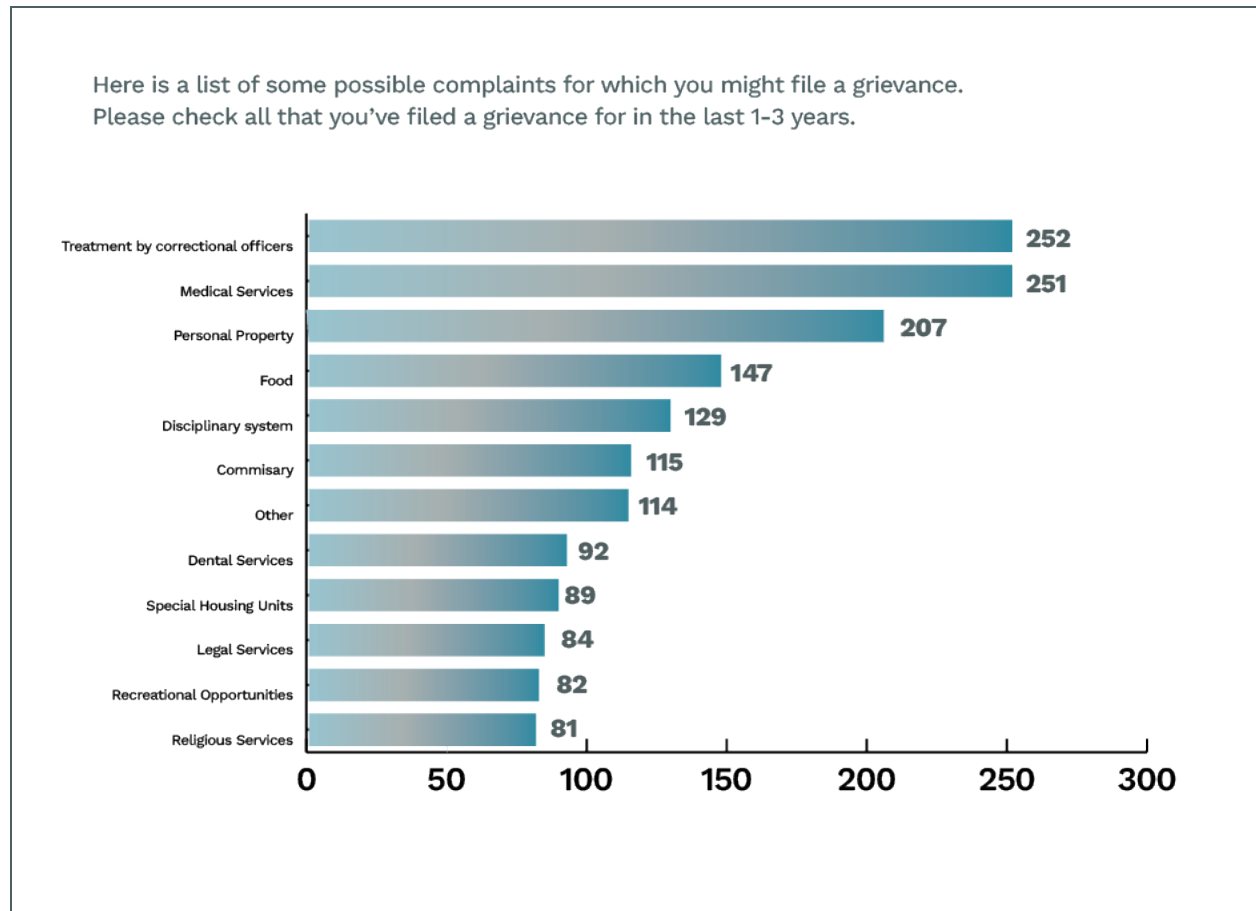
38 Incarcerated Grievance Program Semi-Annual Report. Department of Corrections and Community Supervision, 2022. <https://doccs.ny.gov/system/files/documents/2022/09/incarcerated-grievance-program-semi-annual-report-2022.pdf>

39 Ibid

40 <https://doccs.ny.gov/system/files/documents/2022/12/4040.pdf>

*(e) Harassment grievances - those grievances that allege employee misconduct meant to annoy, intimidate or harm an incarcerated individual.<sup>41</sup>*

The fact that this is an internal decision highlights the need for independence from the staff and administration managing the prison at which the grievances was filed and is a weakness in procedural safeguarding. Due to these identified issues with classification, it is informative to document how incarcerated people classify grievances' themes.



The self-reported data shows treatment by correctional officers, and medical issues as the issues most subject to grievances. It is notable that incarcerated people identify specific problems with both of those two categories. As detailed in [Sub-Section C](#), the lack of medical expertise on the IGRC makes it impossible for many medical grievances to be accepted. As detailed in [Sub-Section D](#), there are very low rates of acceptance and a lack of scrutiny of the superintendents' process for making decisions on Code 49 grievances.

<sup>41</sup> Ibid

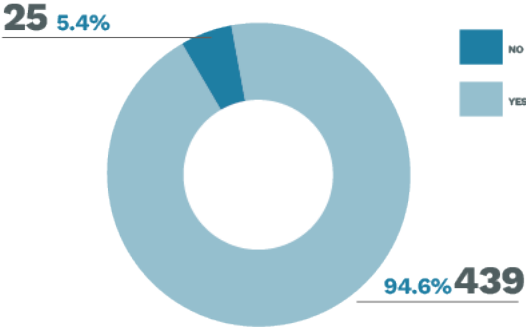


# Awareness of the process and its elements

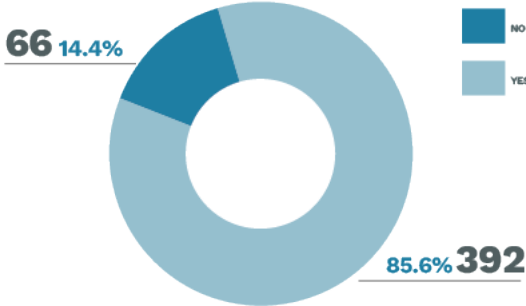
## General awareness and means of information

We have seen that the grievance program is widely used. There is a corresponding level of knowledge around its existence and general awareness of how the program works.

Before you received this survey, were you aware that a grievance program existed?

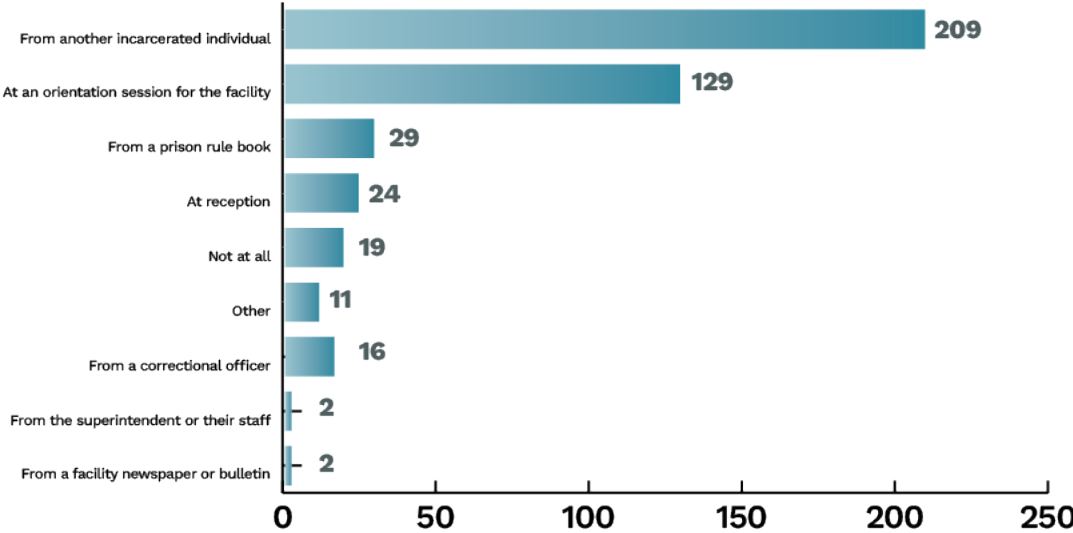


Are you generally aware of how the grievance program works?



When describing the process, people were inclined to say that their main source of information was other incarcerated people.

How are incarcerated individuals mainly informed about the IGP?



The reasons for the level of knowledge around the system may speak to the importance of the program to incarcerated people. However, general awareness does not eliminate misunderstandings of the process.

## Gaps in knowledge of procedures

In interviews, IGP supervisors suggested that the reliance on other incarcerated people for information meant that, while people were aware of the process, they often understood key aspects of the process incorrectly, resulting in time wasting and frustration. Much of the time, grievances are immediately dismissed because people don't appreciate that a grievance is not simply a complaint against a member of staff.

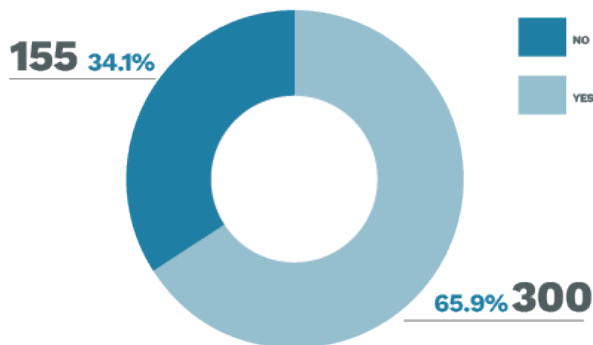
*There are two very challenging aspects to the grievance program: 1.) Getting guys to understand the difference between a grievance and a gripe. A grievance is when policy is not being followed and a gripe is a policy they don't like but well is established. There is a difference, but most guys just want instant gratification and become emotional when not getting their way.*

**WOODBOURNE**

Similar views were expressed in key-informant interviews. At Bedford Hills, people made the same observation that the process is used in “desperation”. People were using it as a way of finding “gripes with the system.” In informant interviews, people suggested that a way to avoid these misunderstandings was better orientation sessions. It should be noted that directive 4040 701.2 make clear that a grievance can concern “any” policy, and include harassment grievances, which are not linked to policy at all.

## Knowledge of the drop box

Do you know where the grievance drop-box is located?



The majority of people are aware of where the box in which grievance forms are deposited is located. However, there were issues in knowledge of precisely what happens when they are filed.

*I have tried to file two grievances on HALT Act violations and have received no response. The COs collect the mail, so grievances get intercepted. I don't know if this is the case in my situation or if IGRC is just ignoring me.*

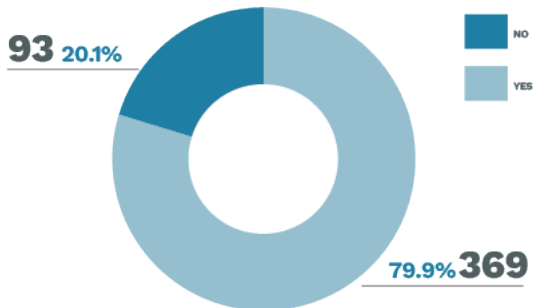
UPSTATE

The uncertainty or lack of knowledge that respondents express about the drop box appears to largely concern the outcome of grievances that are placed in the drop box, rather than the location of the box itself. This uncertainty overlaps with the themes in subsection on obstacles to filing grievances.

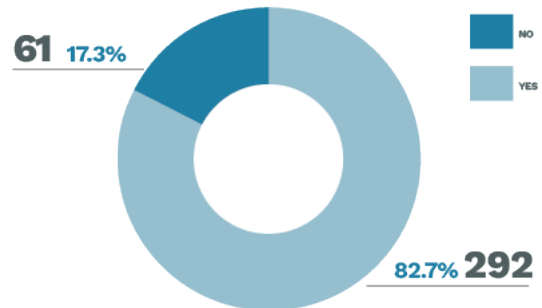
## Knowledge of the IGRC and election

The survey asked about awareness of the IGRC and the election process.

Are you aware of the Incarcerated Grievance Resolution Committee (IGRC) in the prison?



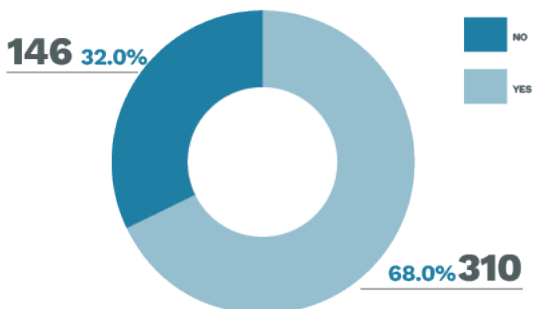
Are you aware that, per Directive 4040, IGRC representatives should be elected to the committee by their peers?



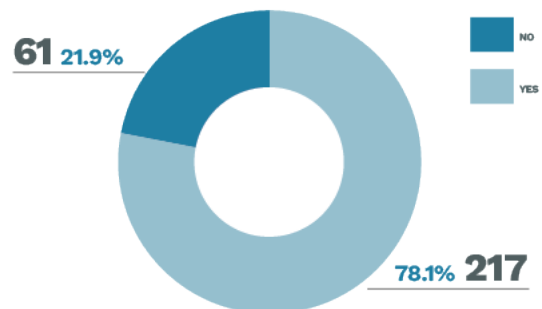
## Awareness and accessibility of Directive 4040

Most people said that they were aware of Directive 4040 and that they were able to access it without difficulty.

Are you aware of Directive 4040, which explains the grievance program?

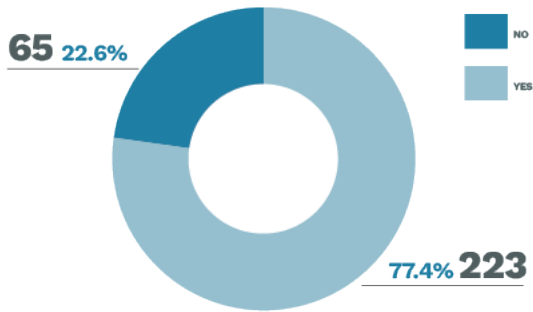


Is Directive 4040, which explains the grievance program, available for incarcerated people to read?

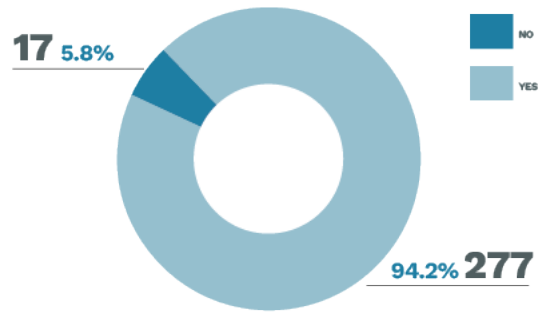


Additionally, the majority of people reported that it was easily understood and in a language that they could understand. The survey was only administered in English and so it has not been possible to accurately assess instances in which Directive 4040 was not followed by people because of language comprehension issues.

Is Directive 4040 easily understood (e.g. free from legal jargon)?



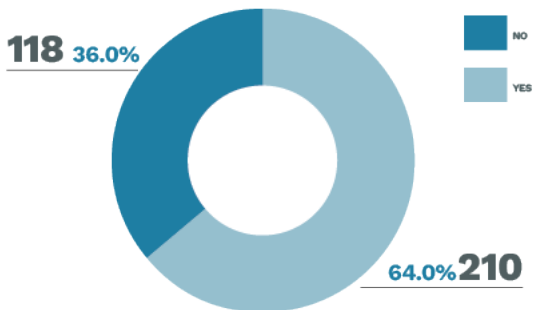
Is Directive 4040 written in a language you can understand?



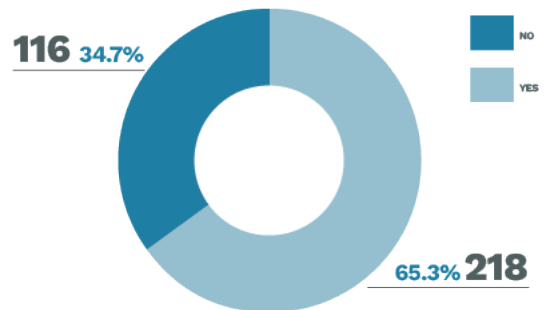
## Knowledge of appeals process

A similar majority of people were aware of the appeals process.

Do you know what your options are if you do not agree with the outcome of your grievance?



Do you know how to appeal a grievance outcome to the Central Office Review Committee?



Across different aspects of the process, there are majorities of people with knowledge of components of the IGP. While there may be room for improvement, and it is unacceptable that significant minorities clearly lack knowledge on key elements, it is apparent that awareness of the IGP itself is not the fundamental problem. This is likely due to the fact that people are desperate for avenues of recourse, even if flawed, and will therefore invest time and energy into understanding the process.

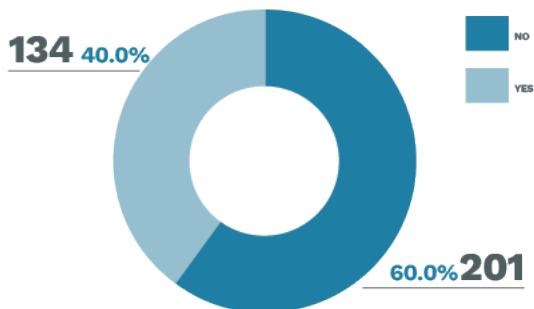
Furthermore, because there may be cases in which the IGP’s particular processes are not fully clear, the reason that people are treating the grievance system as a complaints mechanism is that no complaints mechanism exists. This further highlights the need for an established ombudsman role and informational approach.

## The role of the IGRC, IGP Supervisor, Superintendent and CORC

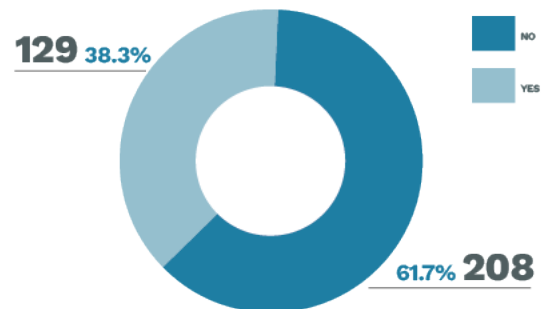
### The election and procedural role of IGRC representatives.

The previous section demonstrated that there is basic awareness of the IGP, survey data demonstrates a key disparity between how people understand how the program should work, and the way that they experience it. One important such area is in the election of the IGRC.

Did you vote for the IGRC representatives?



Do you believe that the IGRC election process is transparent?



In some prisons, people expressed that elections simply don’t take place.

*We have not had any elections in years.*

**COXSACKIE**

Others said that the only time that the IGRC members are active is election time.

*It’s almost non-existent unless it’s time to vote, then they come around and do some work. But it all falls by the wayside by IGP supervisor.*

**BEDFORD HILLS**

Some people felt poorly informed about the election process and the candidates.

*[There] is no system in place here to properly inform the population of...the upcoming election...half the time no one knows who is running.*

**CLINTON**

*Because movement is restricted you may not [know] who it is you are voting for. So basically guys just vote for the oldest DIN # on the ballot.*

**WOODBOURNE**

Some comments also suggested that the process is corrupt:

*I cannot trust the selection process because the staff is corrupt, and they have been known to target prisoners that get what they believe is too many votes and accuse them of putting pressure on others to vote.*

**CLINTON**

*When [the] time [comes] to vote...each one [should] make their vote and not just do what sergeant wants or what the non-inmate participants may want...This is their current practice.*

**MARCY**

*I would find a way to have a real election, not one easily corrupted where the ballots are disposed of or forged.*

**WALSH REGIONAL MEDICAL UNIT**

Others suggested that the problem is impacted by a lack of transparency or term limits:

*No, the election process here is not fair. It doesn't give other[s] that have never worked in the area the chance to submit their names. [It] is the same people up there time and time again. Kind [of] makes the population feel that they are not up there for them, therefore having little faith.*

**CLINTON**

*IGRC reps need term limits like ILC reps have.*

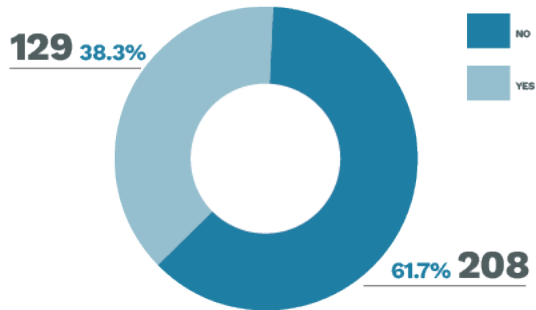
**WALSH REGIONAL MEDICAL UNIT**

*[Recommendation for] Rotation of IGP representatives. Not having someone be a Rep. for years on end...[when you're] suppose[d] to fallback after two terms.*

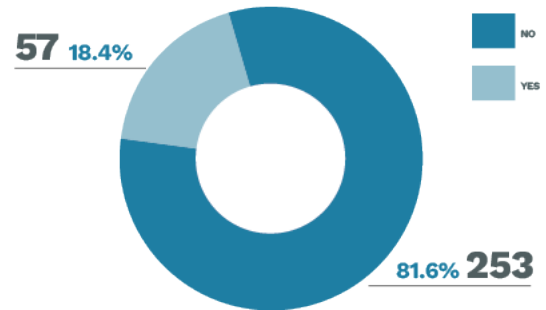
**BEDFORD HILLS**

Concerns about the elections corresponded with other concerns that people had on the day-to-day functioning of the IGRC.

Do you believe that the IGRC election process is transparent?



Was [your most recent grievance] solved in your favor?



Survey comments suggest that a key issue is the perceived “weakness” of the IGRC representatives.

*I would give a grievance committee decision some form of authority. As it stands, even if an IGRC is in an II'S favor, it is meaningless as the IGRC cannot enforce its decisions.*

**WALSH REGIONAL MEDICAL UNIT**

*The state has allowed this Correctional Facility...to get away with so much that goes against most Policies and Procedures that are in place to allow the Civilian (ORC who is now sitting in) to dictate how the Hearing is conducted and the flow of the hearing as well as the final votes which...hardly ever happens.*

**MARCY**

Some incarcerated people highlighted some positive examples of IGRCs working well, which they believed could be replicated. Most of these highlighted a greater degree of agency for IGRC representatives as a key factor.

*Greenhaven and Otisville ha[ve] very good grievance programs because the reps ha[ve] lots of input in investigations.*

**CLINTON**

*Green Haven is way better [than Clinton] because the Committee (inmates) will advocate for you.*

**GREEN HAVEN**

The facilities where the grievance program is most effective are those that allow the grievance representatives to speak to staff about certain issues where practical and [where] the grievance supervisor and/or Sergeant [conduct] investigations and [give] responses that address the issues specifically and honestly.

**CLINTON**

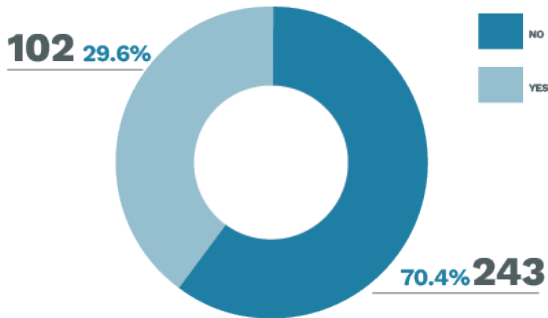
When I was at Auburn Corr. Fa., the grievance process was quite fair and that was because of the representatives that we had. I was one of the reps and my boss and security staff were fair and just.

**WALLKILL**

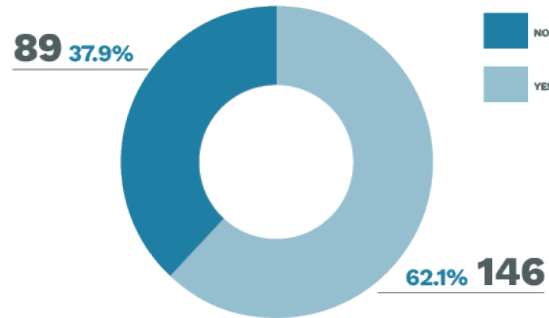
### The role of IGP supervisors

Survey data showed serious concerns that people have with both the IGP supervisor’s role and the way in which it is communicated to the incarcerated population. Some comments identified a lack of protocols, the perception of bias, and a lack of specialization and training in the way in which IGP supervisors enacted their role.

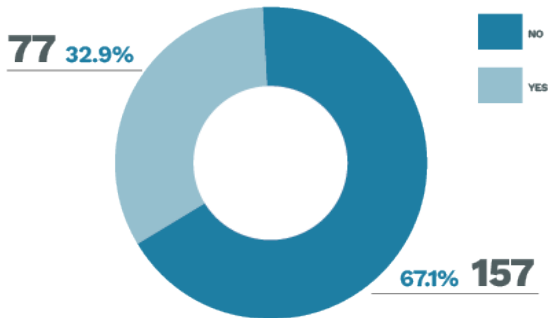
Do you trust the IGRC representative to represent incarcerated people’s interests fairly in the grievance process?



Is the role of the IGP supervisor clear to you?



Do you believe that the IGP supervisor clearly communicates the grievance program to you?





*[on necessary reforms for the prison] Rigorous staff development courses for Incarcerated Grievance Program Supervisors.*

**ELMIRA**

*It makes me not trust more when [the IGP Supervisor] does not follow her own policies, procedures and protocols. Not to mention, she constantly either shuts us down or does not even see to our grievances.*

**BEDFORD HILLS**

*There's a huge distrust because of the way the supervisor cooks the books here at Sing Sing.*

**SING SING**

*Albion Correctional Facility is the most effective because they call us, we sit in hearings and they are not biased. Bedford Hills Correctional Facility is the least effective because the body of the program cannot be successful with a malfunctioning head.*

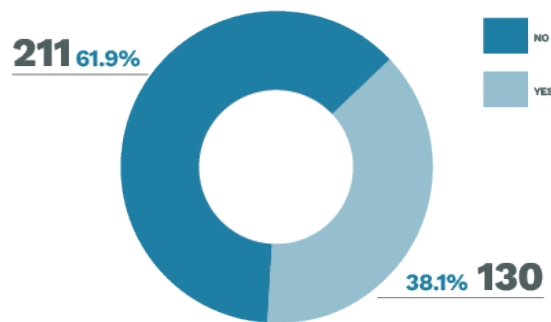
**BEDFORD HILLS**

*[The] grievance supervisor should primarily be a grievance supervisor.*

**BEDFORD HILLS**

Others explained in comments and responses that there was a shortage of exposure to the IGP supervisor.

Generally, did the IGP supervisor meet with you on your grievance?



*[In] my entire time within this facility the IGP has never met with [any] prisoner face to face to communicate about [their] grievance.*

**CLINTON**

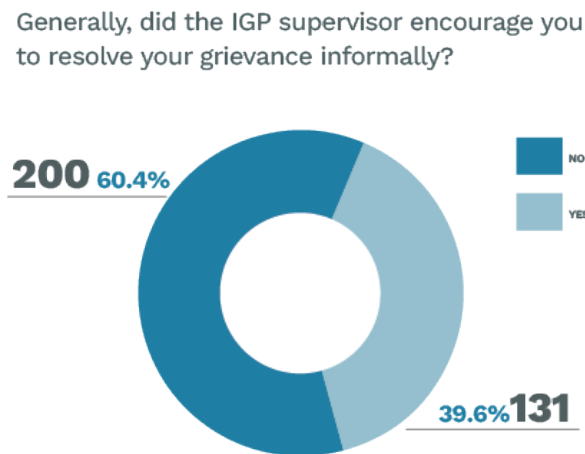
One of the reasons that people highlighted unfairness was because of inconsistencies in the way IGP supervisors apply their work. The role of the IGP seems to vary from facility to facility.

*The effectiveness is truly based on who the IGP supervisor is.*

**WALLKILL**

It is not acceptable for the system to rely on the goodwill of IGP supervisors and to be so dependent on the approaches of individuals. People express the IGP's role as a key component of the differing cultures identified in the final part of this section.

*The IGP supervisor's role in Informal Resolutions of grievances*



The role of the IGP supervisor is central to the informal resolution. Directive 4040 stipulates that the IGRC, in practice usually led by the IGP supervisor, will attempt to resolve grievances informally within 16 calendar days.<sup>42</sup>

It is clear that there are advantages to informal resolution based on the ability to solve issues quickly . However, there are multiple concerns with informal resolution.

*Attempting to resolve a grievance informally is usually a dangerous proposition. It means putting a target on your back. With most inmates, they usually have poor social communication skills, [so] informally resolving or attempting to do so leads to arguments with COs.*

**AUBURN**

<sup>42</sup> N.Y. Correct.Law § 139; 9 NYCRR Part 7695; Prison Rape Elimination Act <https://doccs.ny.gov/system/files/documents/2022/12/4040.pdf>

*An informal resolution is generally good because it resolves an issue a person is having. However, that just solves that problem for that person. The same issue could be happening to others but they did not file a grievance and the problem persists. It is effective for that person but has no lasting effects for others.*

**WOODBOURNE**

*The common practice at Woodbourne is the IGP supervisor uses intimidation or lies to informally resolve grievances.*

**WOODBOURNE**

*Grievance officers try to get IIs to informally resolve grievances in order not to have them officially reported to the CORC. If grievances are never reported to [the] CORC, then new policy and rules will never be implemented and the same issues will continue to happen.*

**WOODBOURNE**

As Schlanger argues, “Informal resolution of grievances may be efficient from the institutional perspective, but the requirement raises serious concerns about retaliation. If staff members become aware of allegations against them, they may apply implicit or explicit coercive or retaliatory pressure on the prisoner filing the grievance.”<sup>3</sup>

## The IGP sergeant

The survey did not ask explicitly about the role of the IGP sergeant. However, the importance of the role was identified in a number of comments.

*The most important person in the resolution of grievances is not the grievance supervisor, it is the grievance sergeant. The grievance supervisor is a civilian who is also an employee who has to work with security staff. The grievance supervisor is exposed to retaliation and harassment from security staff for doing the right thing. This is why a good grievance sergeant is very important. A lot of the incidents in the DOCCS would not happen if not supported [or] covered up by security supervisors.*

**CLINTON**

*The IGP works depending on who the Security Representative is (i.e. Grievance Sgt.). If a fair sgt. is assigned then they make it easier to get favorable resolutions. If [it's] a sgt. that [is] anti-incarcerated individual, then the process...is a waste of time regardless of merit b/c [it's] a mock circus.*

**GREEN HAVEN**

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43 <https://www.law.umich.edu/special/policyclearinghouse/Site%20Documents/FOIAReport10.18.15.2.pdf> page 11

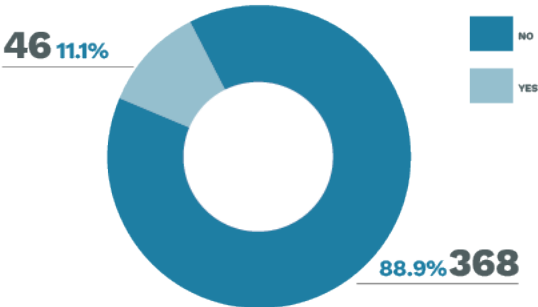
## The role of the Superintendent

The Superintendent within each facility is responsible for responding to appeals of decisions for all grievances that have passed through the IGRC process and is the first stage of review for Code 49 grievances. Most incarcerated people did not believe that superintendents were fair in judgements (89%, n=414) or considered the grievance process to be important (82%, n=400).

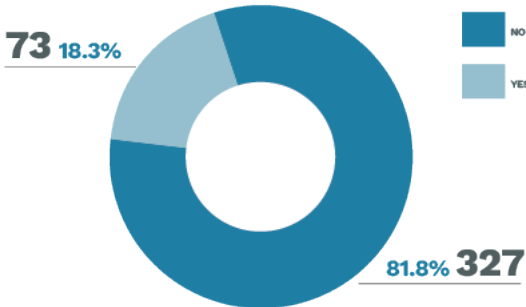
In interviews at Bedford Hills, the Superintendent and the Deputy Superintendent of Programs expressed uncertainty about why incarcerated people would appeal grievances to them despite having their grievance upheld at the first stage at the IGRC level. Whether or not this is due to fact that incarcerated people may need to appeal to fulfill the 'exhaustion of remedies' requirement of the PLRA, even if their grievance is upheld, this example demonstrates that superintendents may not be investing effort into understanding the reasons for which appeals are made.

Survey responses suggested that it is incredibly rare for superintendents to rule in favor of incarcerated people who file Code 49 grievances.

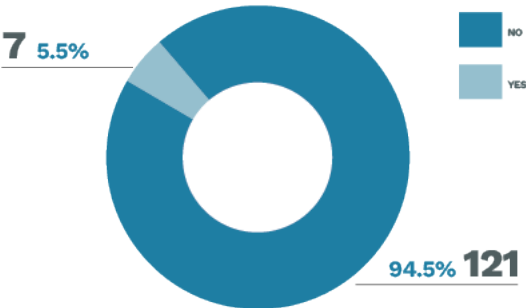
In general, do you think the Superintendent handles incarcerated individuals' grievances fairly?



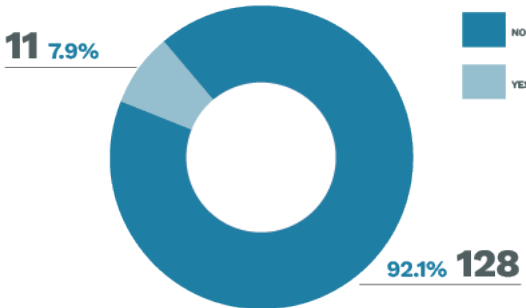
In your opinion, does your Superintendent think it's important to investigate incarcerated individuals' complaints?



Have you ever had a Code 49 grievance decided in your favor by the Superintendent.



Do you know of instances in which the Superintendent decided in favor of Code 49 grievances from other individuals?



In interviews with the IGRC at Sing Sing, figures were cited which demonstrated that not a single Code 49 grievance out of 194 had been filed in favor of an incarcerated person in 2022. According to staff there, this was because superintendents systematically referred cases to the Office of Special Investigations, without carrying out any investigations. This approach is one of three options specified in Directive 4040:

*(d) If it is determined that the grievance is a bona fide harassment issue, the superintendent shall:*

- 1. Initiate an in-house investigation by higher ranking supervisory personnel into the allegations contained in the grievance;*
- 2. Request an investigation by the office of special investigations; or*
- 3. If the superintendent determines that criminal activity may be involved, request an investigation by the New York State Police, Bureau of Criminal Investigation.*

According to interviewees, there are very rarely in-house investigations into Code 49 grievances at Sing Sing. The incredibly low responses showing Code 49 grievances to be found in incarcerated people's favor indicate that this trend may be system wide.

## **Inconsistencies in staff approaches and roles between different prisons.**

We have seen issues with the IGRC, IGP supervisor, and superintendents. The different approaches taken by these actors result in varying cultures related to the grievance program.

Respondents explained that inconsistencies heavily impact the perceived legitimacy of the IGP.

*The most challenging part is that I don't know what to expect because the grievance program seem[s] so arbitrary, like each prison has the[ir] own grievance program culture...sometimes I don't know if I'm going to get a response from the grievance office when I do file a grievance.*

**CLINTON**

*The most challenging aspect of the grievance program is expect[ing] those in authority to actually follow policy, directives and rules and base decisions solely upon those grounds.*

**ATTICA**

Some incarcerated people identified specific ways in which cultures are different across different kinds of facilities.

*The facilities that are farther away from the city have the least effective grievance programs because they're more nepotistic, which cause[s] the staff to cover for each other[']s wrongs more readily.*

**CLINTON**

*In max prisons, one would come across a mostly legitimate IGRC program. Mediums tend to mostly harbor manipulated structures.*

**MARCY**

*The bigger the facility the more challenging it is because the hostility and violence promote a[n] Inmate vs. Correction Officer environment.*

**WENDE**

*Maximum security prisons are most effective and minimum security the least. In max prisons people are serving decades and in minimum security, individuals are just trying to get home to family or start their lives over again.*

**WALLKILL**

People had concrete suggestions as to how some of the inconsistencies that have been witnessed could be addressed.

*Grievance needs to be run by Directive 4040 and nobody should change anything to fit how they may wish for [the] IGRC to be run.*

**MARCY**

*DOCCS cannot actively/effectively control every single one of its employees, so how the program works based on these employees does not make me not trust the dept. There are many rules/regulations that protect and give rights to incarcerated individuals. However, it [is] the DOCCS employees that cannot/do not follow these house rules as they should.*

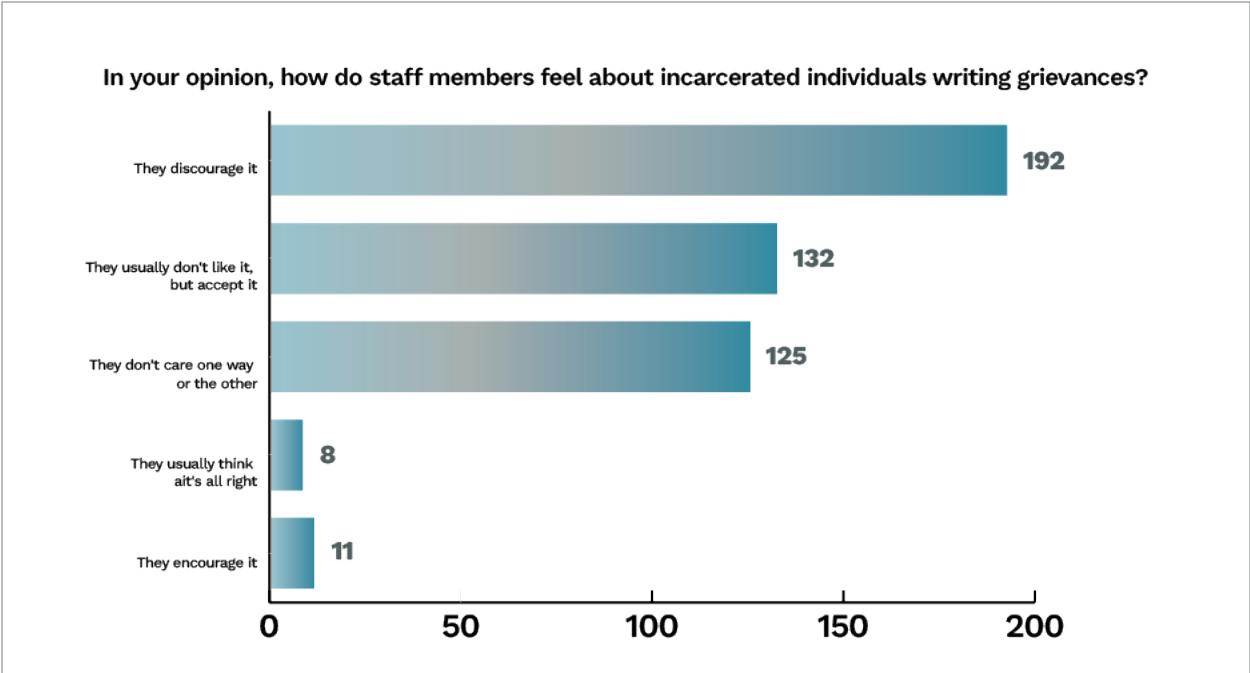
**GREEN HAVEN**

One comment suggested that the failure to enact IGPs in a standardized way across all prisons was documented.

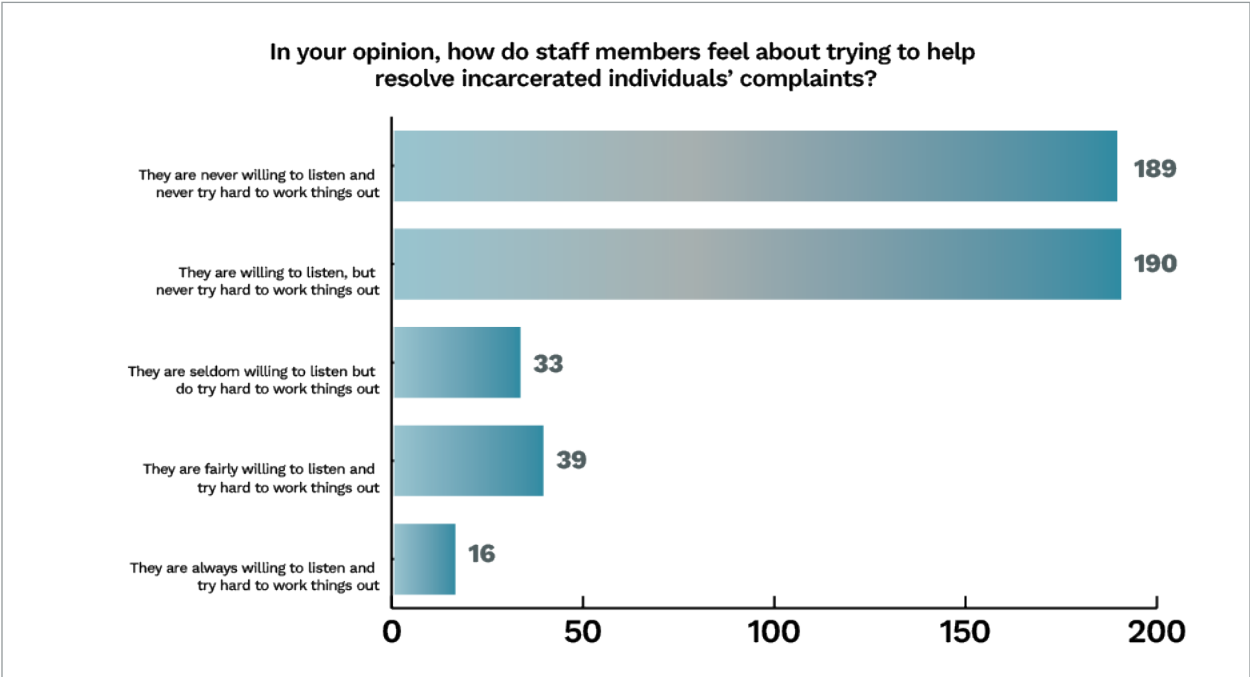
*This facility has a policy and procedure manual that allegedly claims that all of their rules/regulations supersede each and every one of the directives that the DOC has implemented and ha[s] had in place for decades! Bullshit! If that were true, the DOC's agreement to that would be placed in writing and stat[e] exactly that!*

**MOHAWK**

Closed ended responses showed that incarcerated people feel that staff don't value the process.



Consequently, incarcerated people largely do not see staff as positively engaging with the IGP.



In comments about ‘culture,’ a number of incarcerated people explained that there are significant differences in the way that different staff approach the IGP.

*I would like to note that in reference to “staff” I am referring to corrections officers. In my experience, all of my ORC/counselors have been nothing but helpful, doing their best 100% of the time.*

**AUBURN**

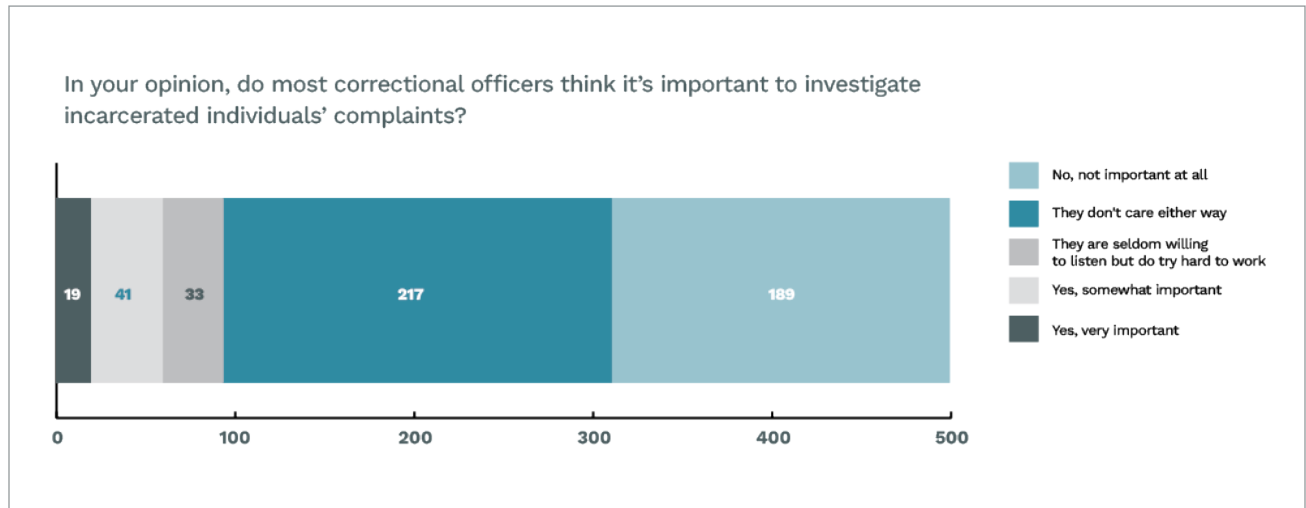
*On more than one occasion, instead of filing a grievance I have written directly to my ORC/counselor and most of the of the time the outcome was favorable – given that my counselor had the capability to assist me.*

**AUBURN**

*The answers I have given only concern the correctional officers here at Mohawk Corr. Fae. and do not apply to civilian workers, ORCs or anyone else.*

**MOHAWK**

When asked specifically about correctional officers’ perceptions of the process, people answered as follows:



The lack of consistency across facilities and staff is a significant driver of the mistrust in the IGP. While there was inconsistency in the way that people perceived the process among different staff, there was a general view that there is not enough separation between staff members to allow for change.

*The grievance program here is non-existent due to the fact that everyone know[s] one another or [is] related somehow so everything gets swept under the rug.*

**CLINTON**

*So many of the people that work here are either family on some level or friends.*



*Many of them gr[ew] up in this area and now work together here ... [To prevent these connections from being an issue, they could] put a box on each block and not allow other members to handle them. Other than someone from the grievance department.*

**CLINTON**

*The grievance process is a joke and [i]neffective because the IGRC supervisor [is]... related to someone in the facility.*

**FIVE POINTS**

*Even though you have staff that are fair and just, I can never really trust DOCCS because they will always cover for each other even if they know that that their co-workers are in the wrong, the blue code they call it.*

**WALLKILL**

*I [would] change [the system so] that the IGP supervisor [was] someone with no ties to the facility staff members, someone that is neutral.*

**WALLKILL**

*Hire non-correctional staff with some legal knowledge [who] are not intimidated by security staff.*

**WALLKILL**

*The IGP supervisor works every day in the prison. He/she is a co-worker to all staff that works here and is not going to say that their co-worker is either not doing their job or is doing something wrong.*

**WOODBOURNE**

Incarcerated people report moving from prison to prison without a sense of what the correct policy should be. Even within facilities, comments suggest that there are different approaches carried out by different staff members. Rectifying inconsistencies will require greater independence and transparency.

*The most fundamental way to help make the grievance program/process more effect[ive] is to [teach staff about] the incarcerated individual grievance program in DOCCS employee annual training. Hopefully, this...can assist in the removal of prejudice.... and...allow prison officials to understand the grievance program, not as a matter of reporting complaints, but as a vehicle to address internal issues.*

**EASTERN**

## The role of the Central Office Review Committee

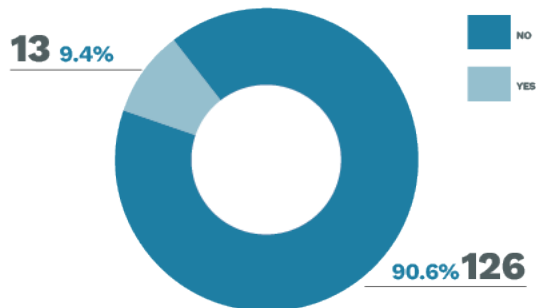
After grievants submit an appeal to the superintendent, or the superintendent has overseen a Code 49 grievance, the final stage of appeal is for grievances to be addressed by the Central Office Review Committee in Albany. The role of CORC is described in Directive 4040 as follows:

*(i) The CORC shall consist of the Deputy Commissioner and counsel, Deputy Commissioner for Correctional Facilities, Deputy Commissioner for Program Services, Deputy Commissioner for Administrative Services, and the Deputy Commissioner and Chief Medical Officer, or their designees expressly authorized to act for them. A representative of the Office of Diversity Management will attend CORC hearings and have input on grievances alleging discrimination, but will not vote. ...*

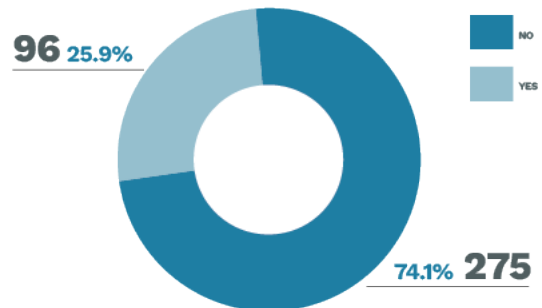
*(ii) The CORC shall review each appeal, render a decision on the grievance, and transmit its decision to the facility, with reasons stated, for the grievant, the grievance clerk, the superintendent, and any direct parties within thirty (30) calendar days from the time the appeal was received.<sup>44</sup>*

The vast majority of people had never had a grievance ruled in their favor (91%, n=139) and did not believe that CORC handles grievances fairly (74%, n=371).

Was [your appeal to CORC] decided in your favor?



In general, do you think grievances are handled fairly when they are appealed to CORC?



*When the incarcerated individual follows through with the process and goes to CORC, the grievance takes more than a year to be resolved.*

**WOODBOURNE**

*Being generous I would say inmate grievances upheld by Albany are around 1 or 2%.*

**MOHAWK**

The scope of the investigation conducted by CORC, the quality of explanations for decisions at CORC, and the extended delays in resolving grievances at CORC are addressed in later sections of this report.

<sup>44</sup> <https://doocs.ny.gov/system/files/documents/2022/12/4040.pdf>

## Procedural integrity and fairness

The previous section documented issues with specific roles involved in the process. This section identifies procedural aspects of the IGP that cut across these different roles.

### Procedural issues preventing adequate hearing on medical grievances

One particular procedural problem relates to the filing of a medical grievance. As described by IGRC representatives, medical grievances cannot be adequately assessed by the IGRC itself which often does not possess the technical expertise required to make judgements on clinical aspects of medical care. Therefore, grievances concerning medical care may be frequently denied at facility level. A grievance concerning the quality of medical care can therefore not be heard by a healthcare professional until the CORC stage of appeal. Due to the duration of the process, and the systemic failures to address grievances within deadlines, a hearing by CORC will take place far too long after the filing of a grievance to address time-sensitive medical issues.

*Sometimes I don't doubt that there is nothing they can do. Medical is a perfect example where there absolutely 100% should be separate grievance offices/hearings...*

**AUBURN**

*For small insignificant problems the grievance can help sometimes. If it's a large safety issue, say with a CO, the effectiveness becomes nil. If medical, it's zero effectiveness.*

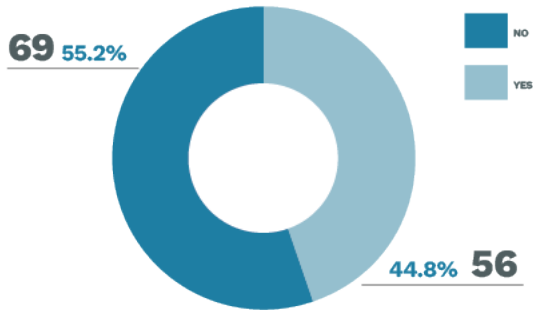
**MOHAWK**

The failure to ensure that medical grievances are adequately addressed may have serious impacts on the health and wellbeing of the incarcerated population.

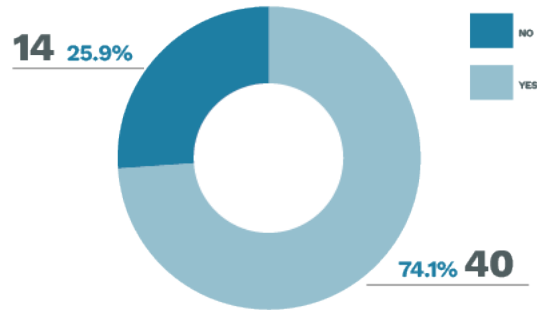
### Explanations of decision-making processes

Only around half of respondents (45%, n=125) said that they were aware of the outcome of their cases and 74% (n=54) said that they were given an explanation of the reasons behind outcomes. Only a small number of respondents (24%, n=38) said that the explanations addressed the points raised in their grievances.

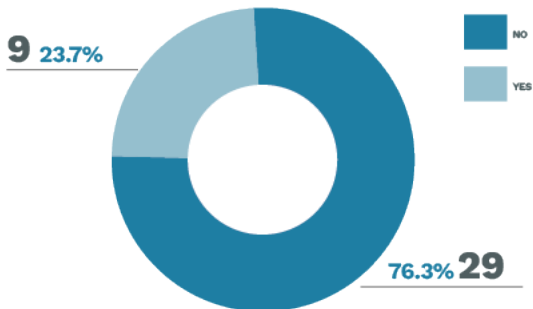
Are you aware of the outcome of your case?



If dismissed or denied, was an explanation given to you?



If yes, did the explanation address the points raised in your grievance?



In comments, respondents expressed frustration that grievances were not resolved.

*6 grievances have gone unacknowledged, despite multiple submissions, memos, and finally a certified letter containing said six grievances. Even then, no response was made.*

**MARCY**

Others went into depth on the issues faced around getting grievance responses to address the specific issues raised.

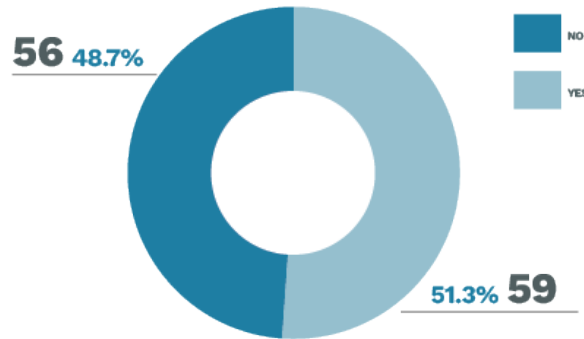
*The number one reason for individuals failing to utilize the program is the failure to address specific issues honestly. There is a tendency to dance around the issue being addressed and responses given...do not correspond with the allegations, especially when the grievant's claim has validity. When a grievant[s] claims ha[ve] no validity then the investigations and responses are on point. When the claims are legitimate the narrative changes.*

**CLINTON**

*[The] challenge is to get your point actually addressed.*

**CLINTON**

If your CORC appeal was denied, was there a detailed written explanation for the denial?



The problem of explanations for decisions was also expressed repeatedly, specifically in relation to CORC where people cited that there were frequent failures to provide individualized and relevant responses.

*[To improve the grievance program, I would] change the way CORC handles all appeals [as]as they always change the issues to fit their ruling/decisions and most of the time, [it] is not what the grievant argued in the first place.*

**WALLKILL**

*I would say 95% of those grievances are either moot or affirmed by CORC with boiler plate language.*

**WOODBOURNE**

It is perhaps not surprising the CORC provides explanations in boiler plate language given that it is difficult for a centralized body to conduct in-depth investigations into the details of a case.

## Transparency in sharing decisions and decision-making processes with the public

The survey did not ask the incarcerated population about the way in which data from grievances is shared publicly. However, the need for shared information was raised by multiple people.

*As of 12-22-22, Monthly Statements are not being passed out to the inmate population, if at all.*

**CLINTON**

*I recommend the program's in-house process become more transparent to the outside world via decisions made public online.*

**EASTERN**

*[There should be] more transparency of the ongoings within...facilities, not just [with] the prisoners, but [with] the outside communities at large. Such secrecy is an indicator that something is amiss and [is] not a security issue. Accountability for the wrongdoings and transgressions perpetrated by staff.*

**SING SING**

## The need for the cameras to be used as part of the IGP

A straightforward solution to improve procedures is the use of cameras. As DOCCS completes the systemwide installation of cameras, they should be used to provide transparency across the grievance process.

*Investigations take months, most of which are Code 49s. They have cameras here. They should not take that long.*

**COXSACKIE**

*Where...evidence on audio/video ha[s] been alleged,...such evidence should be introduced in support of either parties' argument.*

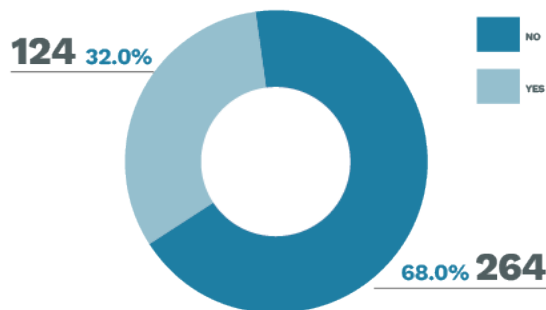
**ELMIRA**

*With cameras now in most places, it's no longer easy for an officer to simply deny something took place or lie about it.*

**GREAT MEADOW**

## Procedural guarantees of implementation of decisions

Do staff carry out the decisions reached on grievances when the decisions are in the incarcerated individual's favor?



Although survey responses indicated that very few grievances are found in favor of incarcerated people, 68% (n=388) of respondents said that staff do not carry out decisions

even in the small minorities of cases which are found in incarcerated people's favor. This causes additional damage to the perception that people have of the utility of the IGP.

*There is no effective part of [the] grievance [process] because even if we win the grievance, most officers never respect the decision unless the decision is against [incarcerated individuals].*

#### ALBION

*When a grievance has been filed and the outcome is in the grievant's favor, the action [that is supposed] to take place might happen for a brief time but then reverts back to what was happening before.*

#### WOODBOURNE

## Access

### Lack of access to recourse due to limitations on issues subject to the IGP

Multiple aspects of the prison life are not subject to the grievance program as detailed in Directive 4040:

*(1) An individual decision or disposition of any current or subsequent program or procedure having a written appeal mechanism which extends review to outside the facility shall be considered non-grievable.*

*(2) An individual decision or disposition of the temporary release committee, time allowance committee, family reunion program or media review committee is not grievable. Likewise, an individual decision or disposition resulting from a disciplinary proceeding, inmate property claim (of any amount), central monitoring case review or records review (freedom of information request, expunction) is not grievable.*

*(f) Outside agencies excluded. Any policy, regulation or rule of an outside agency (e.g., the Division of Parole, Immigration and Customs Enforcement, the Office of Mental Health, etc.) or action taken by an entity not under the supervision of the Commissioner is not within the jurisdiction of the IGP.<sup>45</sup>*

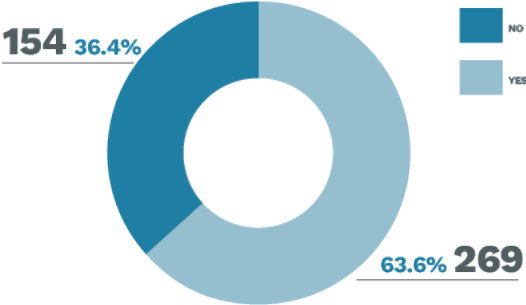
Of the limitations to grievable issues that are specified above, it is those that are related to outside agencies which are most often raised.

During CANY visits, incarcerated people often describe frustration that they cannot use the IGP for issues related to tablets. For example, if pictures or correspondence go missing. Instead, they are directed to a JPAY helpdesk that has even less accountability and reportedly performs very poorly.

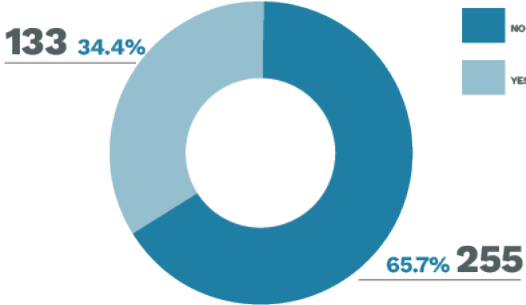
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45 <https://doccs.ny.gov/system/files/documents/2022/12/4040.pdf>

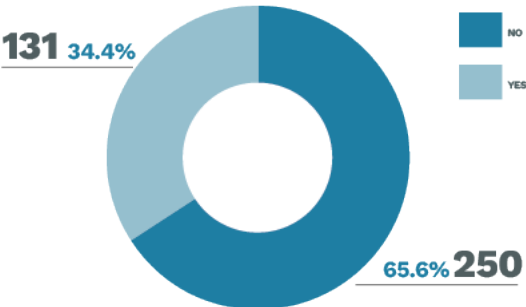
Are there issues that you would like to file a grievance for, but are unable to do so?



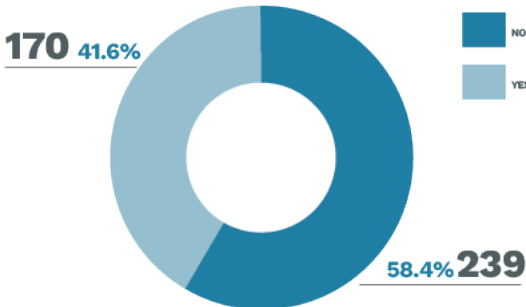
Are you able to solve the issues you can file for a grievance for through alternative methods?



Are you able to solve the issues you cannot file a grievance for through alternative methods?



Are there people who would like to file a grievance on your behalf but are unable to do so?

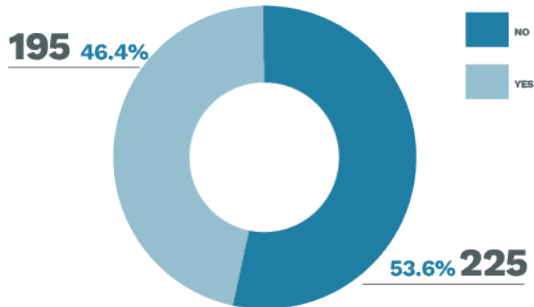


### Lack of access due to physical obstacles

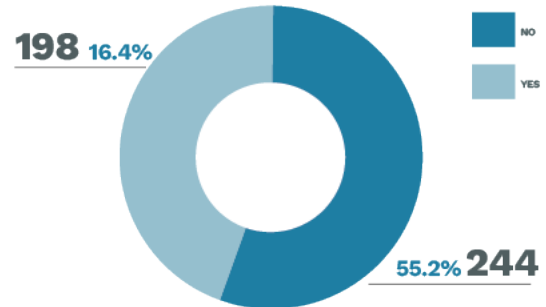
The survey also assessed the possible need for people to file grievances on behalf of others. A substantial number of people (42%, n=381) were impacted by the requirement for them to file grievances for themselves only.



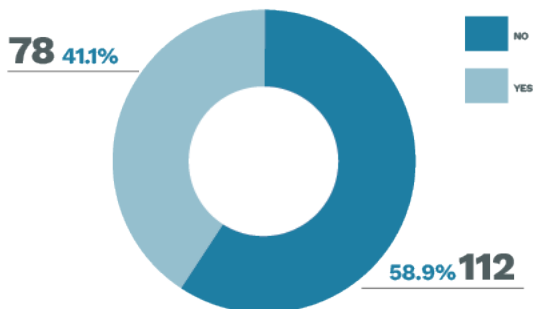
Can incarcerated individuals get the forms needed to submit a grievance when they want them?



Have you ever been unable to physically submit a grievance to the grievance officer because of confinement and/or mobility issues?



If yes, were you able to find an alternative method to get the grievance to the IGRC?



## Interception of grievance before they reach the drop box.

There are specific issues that prevent people in the SHU from filing grievances into the drop box across all facilities. The issue is especially prevalent at Upstate which is an all SHU/RRU facility:

*When [you're] in the SHU and you know a CO that throws mail away, you have to wait until one [is] working that do[esn't] do [that] or have another prisoner drop your mail if you[re] a target.*

**CLINTON**

*Upstate Correctional Facility routinely discouraged IIs [(incarcerated individuals)] from filing grievances by not having grievance forms available.*

**WOODBOURNE**

*Upstate is the least effective because you need to rely on the CO to drop your grievance off; and because of this, it may not be dropped off.*

WENDE

Even when people weren't in SHU, they had issues accessing the drop box and obtaining forms.

*Grievance lockboxes should be affixed in a central location, in plain view, in order to promote accessibility.*

ELMIRA

*The most important thing I can share is there are never any grievance forms available to us and there isn't even a grievance box.*

ATTICA

## Interception of grievances after they reach the drop box or mailbox

Even after filing grievances in the drop box, which is often the same as the mailbox, there is uncertainty around whether the grievance will reach the IGP or IGRC office.

*The most challenging part is that an incarcerated individual can't witness who receives the grievance and do[es]n't know if the grievance reaches individuals that can make changes.*

CLINTON

*Unfortunately, this facility has never put in place a box for just our grievances. We have to place them in the mailbox. It's taken up to the mail room and then I can only guess that they are picked up by the grievance supervisor who gets them first and then they are brought to the grievance office.*

CLINTON

*Since [Supervisors and Grievance Sergeants] are intent on doing everything to obstruct the grievance process, from disposing of grievances without processing them to informing other staff of the grievance contents so that IIs are harassed and threatened into "signing off" on their grievance, the grievance process cannot work as currently implemented.*

WALSH REGIONAL MEDICAL UNIT

Other people said that the lack of rounds taken by the IGP supervisor made it easier for grievances to go missing.

*According to Directive #4040, grievance is supposed to make rounds weekly. This never happens, so it's very easy for grievances to disappear.*

CLINTON

*The facilit[y], I can say from personal experience, that [is] the worst so far for filing a grievance [is] Great Meadow, which disposes of any serious grievance or any grievance which is other than some petty, easily addressed concern.*

**WALSH REGIONAL MEDICAL UNIT**

The uncertainty over the processing of grievances contributes to the confusion and mistrust of the process felt among the incarcerated population.

## False claiming time limits to prevent grievances from being filed

A further issue related to access is the restrictions around the enforcement of time limits. In Directive 4040, they are stated as below:

*“(1) Time limit for filing. An incarcerated individual must submit a complaint to the clerk within twenty-one (21) calendar days of an alleged occurrence.....Note: Exceptions to this time limit or any appeal time limits may be approved by the IGP supervisor under section 701.6(g), below. “*

According to incarcerated people, this restriction is often used to falsely suggest that people have not submitted grievances within time limits by delaying the filing of grievances until after 21 days have elapsed.

*The...IGP Supervisor...and Grievance Sergeant...purposely delay...the filing of...grievances...to falsely claim grievances are untimely in order to keep from filing them.*

**CLINTON**

*[Officers] do not file certain [grievances] and others...use underhanded tactics to prevent you from appealing to the Superintendent by claiming you didn't file within...the time limit.*

**GREAT MEADOW**

It is essential that there be a tamperproof system in place to collect information on when grievances are filed.

## Failures to allow people access to hearings

Although the survey did not ask about the subject explicitly, in survey comments, incarcerated people explained that a further issue related to access is the ability to attend hearings.

*I recommend...that anyone who refuses a hearing should be made to sign a refusal form and that IGRC [be] forced to notify prisoners in writing [of] the time of any upcoming hearings. That would make it so that if staff does not tell you of a hearing, then the grievance can't be dismissed for not attending the hearing*

**FIVE POINTS**

*The most challenging part of the grievance program is getting a hearing in a timely fashion...Another challenge is getting an adequate investigation as well as getting the opportunity to attend the hearing, as hearing[s] are often in the grievant's absence, alleging his refusal [to come], when he was actually never issued a call out for the hearing.*

**GREEN HAVEN**

*I have a file of about 30 grievances for issues such as refusal of medical care and being assaulted by staff. When I first got here, any grievances I tried to make disappeared and never got filed. I started keeping carbon copies of grievances and made staff aware that I was doing so. At this point, whenever I had a call-out for [a] grievance, I would not be let out of my cell to go to the hearings. My grievance would be dismissed because I didn't go to the hearing.*

**FIVE POINTS**

In this section we have seen that there are problems with access to the drop-box, uncertainty about whether grievances make it to the IGRC after being filed, and false allegations that grievances are not filed within time limits. Some incarcerated people proposed tablets as a solution to these problems.

*If the grievance process was incorporated into our inmate tablets as an additional application, it would enable an easier grievance process and also enable the circumvention of most employee malfeasance attached to the current grievance process. It would also allow an overseeing entity outside of just DOCCS...to monitor whatever issues arise directly from the mouths and minds of incarcerated individuals.*

**CLINTON**

*I would recommend allowing IIs to file their complaints on the tablet/kiosk, ensuring it is received and documented.*

**WALSH REGIONAL MEDICAL UNIT**

*There should be a grievance/[C]ORC history app on the tablet where IIs can look up recent or ruling decisions so they do not have to file a grievance when an issue has already been addressed.*

**WALSH REGIONAL MEDICAL UNIT**

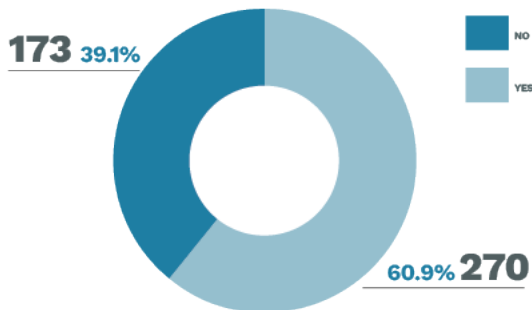
## Retaliation and fear

Directive 4040 prohibit reprisals for filing grievances.

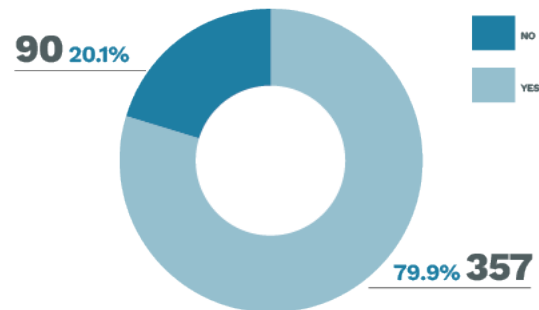
*(b) Reprisals prohibited. No reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism. A grievant shall not receive a misbehavior report based solely upon an allegedly false statement made by the inmate to the grievance committee.*

The problem with this prohibition is that there are no procedural aspects to ensure that reprisals do not take place as a result of grievances being filed. The evidence from survey comments suggests that retaliation and reprisals from grievances are routine. In fact, 61% (n=443) of respondents reported having experienced retaliation from filing a grievance.

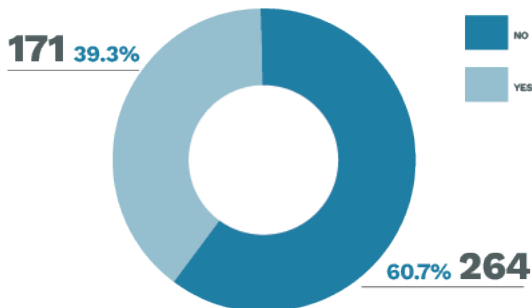
Have you ever experienced retaliation from filing a grievance?



Have you ever decided not to file a grievance despite having a reason to do so?

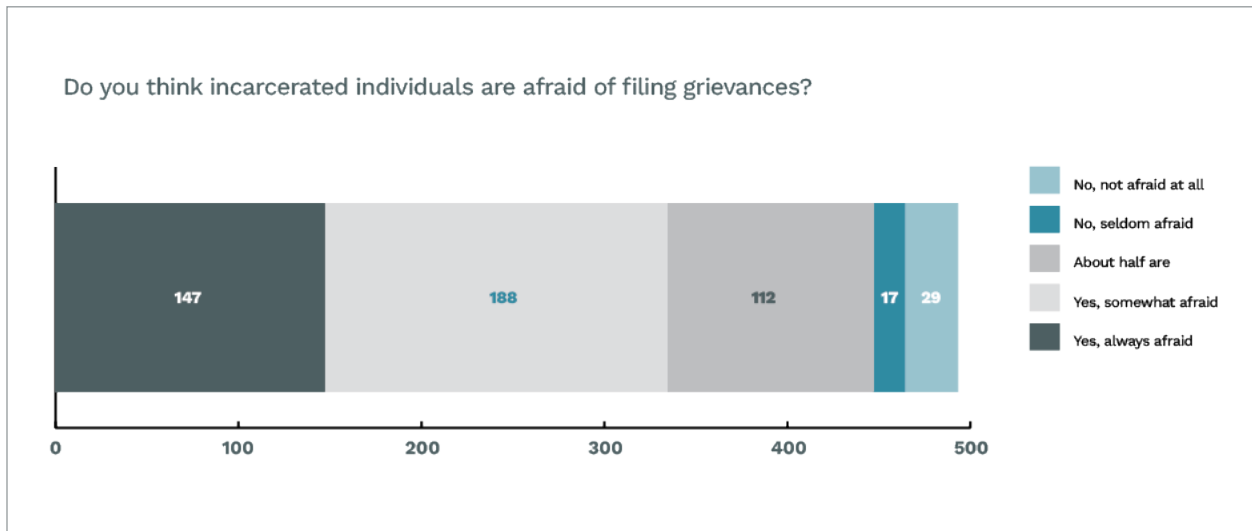


Have you ever withdrawn a grievance before a hearing?



In comments, most people suggested that the reason they did not file grievances was due to a fear of reprisal. Similarly, of those that had withdrawn a grievance, many said this was because they were pressured into doing so.

The extent of perception of fear was seen with 67% (n=335) saying that people are ‘always afraid’ or ‘somewhat afraid’. Just 6% (n=29) said that incarcerated people were not afraid at all.



In open ended survey responses, the issue of retaliation was directly cited by many people and the consistency of the systemic presence of retaliation is shown in the breadth of these, in which several contributing themes emerge.

## Lack of confidentiality leading to retaliation

A number of comments identified that the lack of confidentiality is a driver of retaliation.

*Once the grievance is up in the grievance office, it is allowed that whatever officer is assigned to that area...will be the one to take the grievances...down to the law library...to make copies...I'm more than sure [they] will read it and let whoever know that such and such has filed it against them.*

**CLINTON**

*When an II does file a grievance, it's more than likely that other employees [involved in] the grievance gain knowledge of the grievance...and take some type of adverse action again the individual who filed the grievance (such as flipping the II's cell or not allowing the II to eat or attend recreation).*

**CLINTON**

*It is so crazy that [an] officer g[ot] a copy of the grievance I wrote on him and tape[d] it outward from the officers' station so everyone c[ould] see it.*

**WALKKILL**

*The grievance program at Albion would be more effective if the civilian who oversees our complaints would be more confidential. He tells officers that we grieved them, that way the retaliation comes quick.*

**ALBION**

*Officers or staff always find out when one griev[es] them, then seek retaliation.*

OTISVILLE

## Lack of consequences for staff as a cause for retaliation

Others identified that the lack of consequences for staff when they retaliate against people for filing grievances was a key driver of the trend.

*It is my experience that staff here know that they are not really going to get into trouble for whatever issues are brought up.*

CLINTON

*The problem is that there is little or no accountability for staff when they break the rules. Why would staff respect our rights? They know nothing shall happen to them.*

ATTICA

## Forms of retaliation

Respondents described a wide range of forms of retaliation:

*The most challenging parts are really embedded in the chain of events that take place as a result of submitting a grievance. For example, facility officials would be notified that they have a grievance on them and they would find creative methods of retaliation against the grievant.*

EASTERN

*Restriction of packages:*

*I've seen people not get their packages that they had their family pay for because of them filing a grievance.*

CAPE VINCENT

*Transfer to different prisons:*

*I currently have a pending claim for excessive force that was used against me at Collins Corr. Facility. When I filed a grievance it was never processed, and I was transferred out of the facility in 21 days. This was retaliation on [the] part of the Sergeant...who was the main person behind the assault that happen[ed] to me.*

FIVE POINTS

*Parole hearings:*

*In my most recent grievance about programming, I was retaliated against by ORC (Offender Rehabilitation Coordinator) and SORC, SORC for parole, and program Deputy Superintendent. They all worked together to put inaccuracies on my Parole Board Report and paperwork.*

CLINTON

### *Stopping methadone treatment:*

*I have been threatened numerous times that [staff] will decrease or stop my methadone treatment if I keep writing grievances or letters to state agencies.*

**FIVE POINTS**

### *Fake charges*

*If one makes a complaint to the Superintendent and especially Albany, expect to be assaulted at some point or even set up with something being found in your cube like a weapon or drugs.*

**MARCY**

*The IGRC is flaw[ed] starting with the officer that files false reports. Then, the sergeants use reprisals to settle sensitive grievances.*

**SING SING**

### *Assault and harassment:*

*For more than 7 months, I was being threatened and harassed by several officers here at Wallkill. I used the grievance process, and it only made the harassment worse.*

**WALLKILL**

*If you file a grievance here at Wallkill, it automatically puts a target on your back.*

**WALLKILL**

*The most challenging [thing] is being able to prove that you have become a target because you filed a Code 49.*

**WALLKILL**

The extent of retaliation for filing grievances has been well documented with high profile cases in New York and across the US.<sup>46, 47</sup> Retaliation has been shown to be exacerbated by the PLRA. In one study, more than 90% of prisoners believed that “staff will retaliate or get back at” them. Therefore, according to many prison supervisors, “a substantial number of inmates’ do not file grievances despite having legitimate issues.”<sup>48</sup>

46 <https://www.washingtonpost.com/outlook/2019/11/15/why-incarcerated-people-must-be-able-to-speak-out-about-abuse/>

47 <https://nysfocus.com/2022/11/03/prison-sexual-assault-investigation-new-york/>

48 <https://journals.sagepub.com/doi/abs/10.1177/0734016810367797>



## The consequences of retaliation

As a result of retaliation, some incarcerated people said that they had to adopt particular strategies to file grievances.

*I file most of my grievances when I'm in solitary because I have the time and [I'm] not in fear of retaliation because I'm already in solitary. In population, I don't file against security because they set you up with weapons and assault charges.*

CLINTON

Others said that fear prevents serious issues from going through the process:

*There are many occasions where grievance program supervisors gave correctional officers advance notice of the grievance[s] that prisoners had filed against them which led to threats that then led to withdrawal of grievances and sometimes bodily harm to prisoners. So oftentimes prisoners only file grievances that won't lead to retaliation, which means that many of the more serious issues we are facing never go through the grievance process.*

CLINTON

Numerous comments showed that the risk of retaliation is so great that it is perceived as not worth it.

*I do not file grievances because staff retaliates 90% of the time in some way.*

ATTICA

*I've asked...other prisoners why they do not file grievances for injustices...and they always answer the same 2 ways; (1) It never changes anything and (2) For fear of the retaliation that inevitably comes with a grievance. Unfortunately, I agree with those sentiments because we hardly ever see a positive change...as a result of a grievance.*

CLINTON

*I haven't filed a grievance for the fact that it never works. They never help with nothing. When you grieve stuff, they just don't fix the problem, then if you keep up with the grievance, they beat you up or move you to a different jail.*

ELMIRA

## Retaliation against IGRC members

Other incarcerated people commented that retaliation was not just faced by those filing grievances, but also by IGRC members who work on the process.

*In many facilities reps are asked to write a decision agreeing with staff for fear of retaliation. There is a committee on paper, but there is no actual hearing where all voices are being heard. You receive a call to the IGRC office where a decision has already been made and the reps will tell you about an appeal process. That's in the case of your grievance actually getting process[ed], [in] other cases, you risk betting being met by security and being assaulted and made to sign off.*

CLINTON

## Fear of retaliation that comes from this report and speaking with CANY

A related issue, demonstrating the scale of the culture of fear, is the fear of retaliation observed during multiple monitoring visits that CANY has undertaken, including during visits to Bare Hill in March 2022 and Marcy in October 2022. At Bare Hill, “There were eight instances of incarcerated respondents expressing hesitation to speak openly with CANY representatives for fear of retaliation by correctional staff.”<sup>9</sup> These same fears were observed in responses to the survey itself.

*I had to send this to my people and have them send it to you because the COs told that if I mailed this survey out, I was going to get beat and sent to the box.*

CAPE VINCENT

*There [are] many things I'd like to discuss with you, but I don't feel comfortable in these letters, and the phone will be even worse...Also, this correspondence from you was given to me opened, why is that? It should have gone through the facility legal mail process.*

MOHAWK

The justified fear that incarcerated people express when filing grievances and communicating with CANY is a deeply serious matter, requiring serious steps from DOCCS.

## Duration and the PLRA

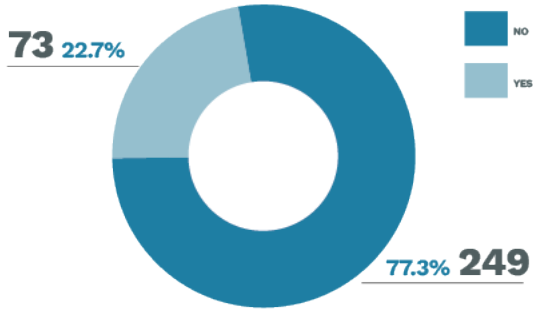
Timeframes for both incarcerated people to file grievances and for the system to respond are defined by DOCCS and specified in directives. When incarcerated people fail to file grievances and appeals within the timeframes indicated, their grievances are dismissed.

When DOCCS fails to comply with timelines at all stages, as acknowledged by staff, and shown in the survey data, there are no consequences. At both the facility level and at the CORC review, committee failures to meet specified time limits were extremely consistent.

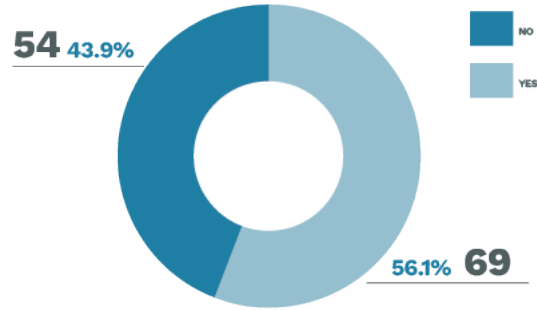
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49 [https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/63f29d7dd8dcfa5d15da4ec8/1676844418960/2022\\_PVB-06-BareHill.pdf](https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/63f29d7dd8dcfa5d15da4ec8/1676844418960/2022_PVB-06-BareHill.pdf) p.4

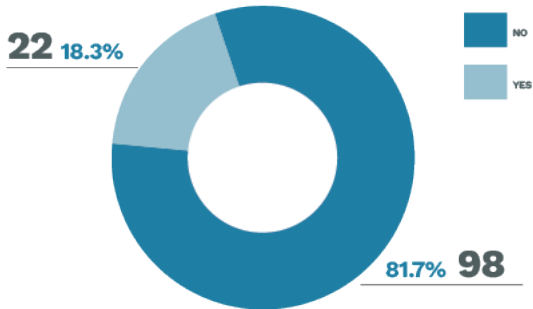
Was your most recent grievance heard or resolved informally within 16 calendar days of when it was filed?



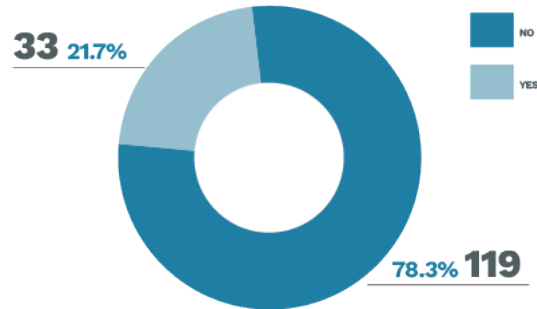
If you filed an appeal, was the Superintendent's response to your grievance within 45 days?



For the most recent Code 49 grievance you filed, did the Superintendent make a judgment within 25 days?



Did the CORC review your appeal within 30 days?



During interviews with staff and the executive team at Bedford Hills and Sing Sing, members of staff conceded that they were not in compliance with the directive, saying that the primary reason was staff shortages. At Bedford Hills, for example, the IGP supervisor is an ORC who has many other responsibilities aside from the IGP supervisor role.<sup>50</sup>

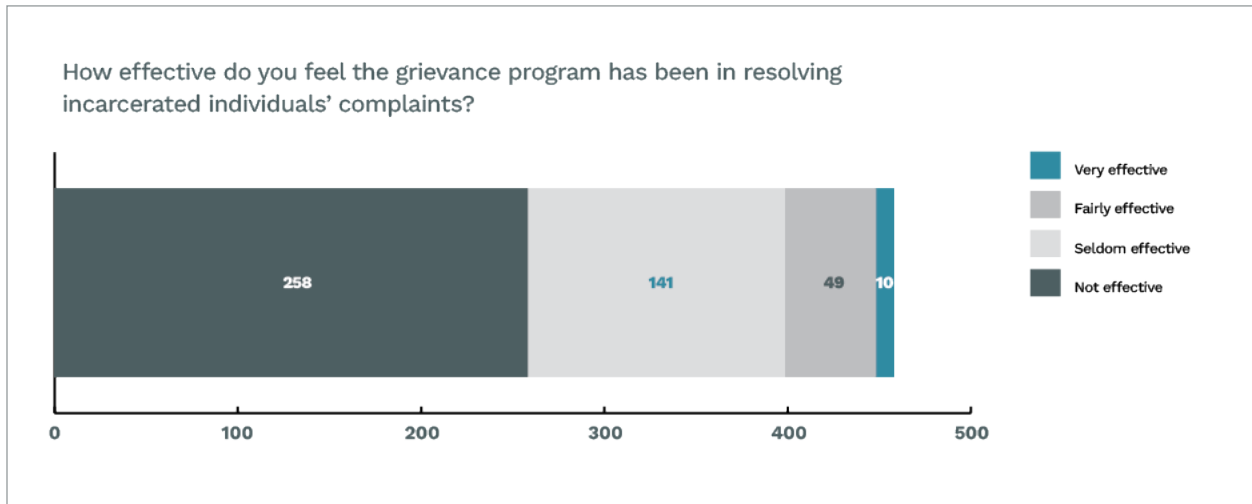
## Procedural implications of the PLRA

In addition to significantly damaging trust in the system, preventing timely recourse, and enforcing double-standards on incarcerated people and DOCCS, the failure of the grievance process to meet deadlines prevents people litigating in state courts by filing an Article 78, and creates confusion about whether people can file in federal court 1983. This is due to the 'exhaustion of remedies' requirement stipulated by the PLRA.

<sup>50</sup> In June 2022, CANY received statistical data on the number of grievances filed statewide. Analysis of this data will be undertaken and published over the coming months.

Nearly half of people (47%, n=300) said that they had filed a grievance purely to preserve their rights to sue.

In response to the request for people to identify positive aspects of the IGP, many people cited that it would allow for a record that they had exhausted the process. Simply put, the single most positive thing that many people could say about the IGP is that it could be navigated so that people could litigate.



*Preserving possible litigation through exhaustion is what is most effective.*

**GREAT MEADOW**

*I would say the most effective part of the grievance program for me is that it is a vehicle to use if one wishes to preserve documents to bring up/use for court filings.*

**EASTERN**

*The most effective part of the grievance program is the ability to make a formal record of our complaint.*

**EASTERN**

*Getting something on paper [to use] at a later date or to prevent an immediate threat is the most effective part of the IGP.*

**EASTERN**

Many people highlighted the frustration that comes from the exhaustion requirement.

*[IGPs at all facilities] operate and function to undermine [their] original intent. This practice has become entrenched as a culture within the department; specifically, to undermine the exhaustion of State remedies prior to filing a Federal lawsuit.*

**EASTERN**

Others were unclear about whether the exhaustion requirement was fulfilled when the CORC failed to file grievances in time.

*For the CORC to take 12 to 18 times longer than Directive 4040 allows for grievances to be decided (30 days) shows me that DOCCS is deliberately delaying decisions to take off the Article 78 law...that does not allow claims to be filed until a final CORC decision.*

**GREAT MEADOW**

*I recommend that Directive 4040 be changed to specifically state that CORC decisions not made within 60 days are to be considered FINAL DENIALS and that the inmate then has the option to seek judicial intervention.*

**GREAT MEADOW**

*The state legislature should look at the exhaustion of remedies problem...The state courts in Article 78 proceedings are not considering a lack of a CORC decision as a final decision... and [they] are dismissing claims (without prejudice), regardless of the merit. Not so with federal courts that consider a lack of a CORC decision after 60 days to be a final denial. This gives the appearance of partiality by the state court system to delay, if not deny, prisoners timely justice. From the date of a grievance, a prisoner would have to wait approximately 4 months to request judicial relief in federal court. But only for federal law claims. [However], most prisoner claims are properly state law based. To file in state court, it would most likely take 12 months, at the least.*

**GREAT MEADOW**

*The CORC is not rendering decisions within 30 days and is not doing their own independent investigations. They are only going by whatever these facilities have to say about our complaints.*

**CLINTON**

*CORC needs to be reviewed...[and] replaced by a new...committee that serves as...a panel to monitor IGP undermining by DOCCS.*

**GREEN HAVEN**

*Most incarcerated individuals are already in court on their Article 78 motions when CORC responds.*

**WALLKILL**

*Once, when [I] appealed a grievance to the CORC, the IGP office informed me that it would take up to two years for a reply, [thus] deliberately discouraging me from filing the appeal.*

**WOODBOURNE**

*My biggest complaint: CORC regularly oversteps their 30 day time limit, and it is unclear what an inmate can do about it.*

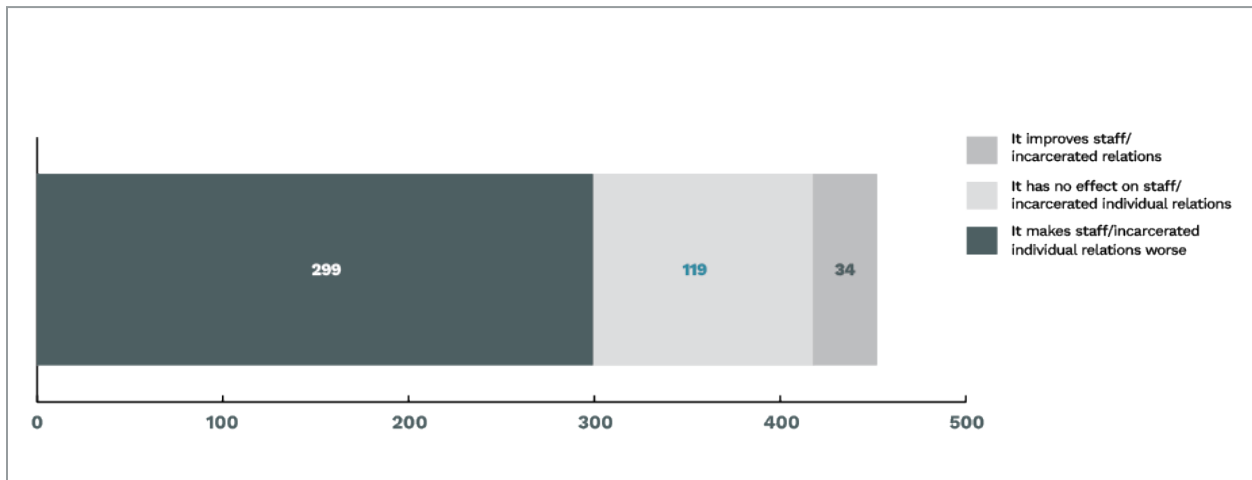
**ATTICA**

*I still haven't received my appeal decision from Albany, and it's been over 3 and a half months. I want to proceed with an Article 78, but I'm scared of the retaliation that comes with it.*

**ALBION**

## Consequences: Mistrust and illegitimacy

The consequences of the failures discussed above are that incarcerated people perceive very low rates of value in the IGP, even as they continue to use the process.



While it may be assumed that these perceptions are due to the inclination of incarcerated people to perceive every aspect of their incarceration negatively, there are more nuanced perspectives expressed in multiple comments which lament how the potential of the IGP is not realized.

*{The IGP} can be beneficial if it[s] impartial and r[u]n fairly, without prejudice.*

**WALLKILL**

*The reality is, if those Supervisors and grievance Sergeants who ran each facility IGP were interested in resolving issues the /Is face, the IGRC would be a very [e]ffective thing.*

**WALSH REGIONAL MEDICAL UNIT**

*I believe in the grievance process and do not want you to think that it doesn't work. It does with certain things and [with] others it is waste of time. The biggest problem with grievance[s] is that we, the incarcerated population, have no credibility. What I mean by this is [of] every grievance I have ever read, not a single one said staff did not do their job correctly and by the book. And 99% of the appeals are affirmed by the Superintendent and he strictly goes with what the area supervisor says. I have never seen a decision in which the Superintendent uses what the Grievance Committee recommends.*

**WOODBOURNE**

Many comments described the process as “fake” or a “sham” that resulted in increased mistrust with DOCCS. These comments are gathered below.

*I feel the grievance program is just something the corrections system can say they have in place for incarcerated individuals.*

**CAYUGA**

*The perception of the grievance process, for the most part, is that it[s] a vehicle for DOCCS to cover up its wrong doings.*

**CLINTON**

*The grievance program is a complete fraud. The men who all lost their lives in the Attica riots so that we men c[ould] have a IGP - are turning in their graves.*

**EASTERN**

*[The grievance program] is a farce. Any prisoner will attest to this as it only purports to provide an outlet for resolution but never does.*

**GREAT MEADOW**

*I would describe the grievance program as a gimmick and a bias orchestrated program.*

**SING SING**

*I am sad to say that the grievance program is a simple smoke screen put in place to silence prison complaints.*

**ORLEANS**

*[The grievance program is] a sham design[ed] to keep grievance filers losing with no confidentiality.*

**OTISVILLE**

*The grievance process is a joke. Its purpose is to give inmates and the public the false perception that we receive due process.*

**ATTICA**

*I will describe the grievance program as a way to pacify the IIs [in] general population.*

**WALLKILL**

*The grievance program is a front to look good on paper while doing nothing to assist IIs in reality.*

**WALSH REGIONAL MEDICAL UNIT**

The absence of genuine recourse and feeling of illegitimacy about the process leads to a culture of mistrust that also surfaced consistently during comments as outlined below.

*There is a culture of distrust between prisoners and the grievance program which also exten[ds] to DOCCS.*

**CLINTON**

*I should not have any trust at all in [DOCCS] because even mechanisms that should assist to resolve [grievances] are corrupt.*

**GREAT MEADOW**

*My current perception of the grievance program completely negates any sense of real trust in DOCCS, particularly whenever I [receive] an officers' brazen reply... about wiping their ass with one's grievance.*

**GREENE**

*The grievance program and its partiality and ineffectiveness force me to face the reality that officers and administration can do whatever they want whenever they want and there's nothing prisoners can do about it.*

**GREEN HAVEN**

*My experience is that the program not only puts a target on your back for serious grievances, but more importantly...offers zero protection so that would be a zero for trust.*

**MOHAWK**

*The grievance program was created in the wake of the Attica uprising to give a voice and avenue for prisoners to have their issues addressed, particularly those that affect the quality of life for prisoners. Unfortunately, over the years, the process has become nothing more than a formality to placate prisoners, and to leverage good PR for the dept. where rights, liberties, and privileges appear to be serious concerns at large, despite the opposite being true.*

**SING SING**

*How do you trust someone who falsifies documents in an effort to excuse themselves to do their jobs.*

**SULLIVAN**

*Nobody wants to write grievances and most people give up. Almost anybody I ask says they don't even bother with grievances because it never changes anything.*

**FIVE POINTS**

*I barely grieve anymore because there are no boundaries, not one percentage of trust.*

**ALBION**



*The [grievance] program...creates conflict between the incarcerated individuals and the correctional officers.*

**GREENE**

The perception of the process as a sham and the resulting lack of trust resulting from the documented failures clearly result in poorer relationships between incarcerated people and staff.

As Armstrong argues, “When prisoners perceive the prison administration as legitimate (i.e., that the policies are neutral and fairly applied), prisoners are more likely to contribute to an orderly and safe prison environment.”<sup>51</sup> In the view of many incarcerated people, this fundamental need lies within the need for independence. There is consistency in the way in which people see this need as articulated in the many comments on this topic which are collected below:

*The grievance program ought to be handled by an agency other than DOCCS in order for it to possess any actual meaning.*

**GREENE**

*The system could be drastically improved...by employing a two-pronged approach of communication with inmates regarding its process, and by at least partially taking the process “out-of-house,” thereby removing at least some of the institutional bias.*

**AUBURN**

*[The] only way this [prison] can improve [the grievance program] is by giving it up and allowing people independent from DOCCS to do the job. May sound harsh but it's the truth.*

**CLINTON**

*The grievance process is a flaw[ed] process because those who oversee the process all work for DOCCS which make them inclined to rule in the interest of DOCCS.*

**CLINTON**

*Instead of filing a complaint to the same individuals who work amongst the individuals you're filing against, all grievances should be handled elsewhere. Maybe even through a toll-free number available to inmates statewide 24/7.*

**CAYUGA**

*I recommend that there be an external process for grievances that have to do with prisoners' safety...coming from staff...most prisoners are really afraid to address this*

51 Armstrong, Andrea C. “No Prisoner Left behind? Enhancing Public Transparency of Penal Institutions.” *Stanford Law & Policy Review* 25, no. 2 (2014). <https://doi.org/10.2139/ssrn.2324387>  
Correctional Association of New York

*issue through the facility grievance process due to retaliation.*

**CLINTON**

*I recommend that grievances should be handled by a separate office that has no affiliation with the institution the griever is residing at.*

**CLINTON**

*Because there is no serious outside entity overlooking the...[grievance] process, the individual [correctional] facilities and their employees will continue to get away with manipulating and discouraging the grievance process.*

**CLINTON**

*My recommendation [to improve the grievance program] would be to have a mutual party [to resolve grievances] that has no ties to anyone in the facility.*

**FIVE POINTS**

*Whoever is on the panel [to resolve grievances] should be independent of DOCCS and insusceptible to influence and pressure and that means no officers or sergeants. Meanwhile, OMH is independent of DOCCS. Where prisoners are concerned, the current process is okay as long as there [no one from DOCCS on the panel to coerce and influence their decision making.*

**GREAT MEADOW**

*To say that the IGP program is adequate is akin to saying a[n] aspirin is adequate for a gunshot wound to the head. The DOCCS system has no incentive to acknowledge that inmates have legitimate complaints, as that would result in additional work by employees and suggest that DOCCS has problems internally. The largest problem with the IGP program, is that the agency and individuals that investigate complaints are exactly the agency and individuals the complaints are lodged against.*

**MARCY**

*Years ago, pre-grievance, there was what was called “the ombudsmen” assigned to resolve issues. I remember progress back then, BUT, if properly followed with non-biased staff, the grievance program can be effective.*

**MOHAWK**

*My recommendation would be to have someone who does not work for DOCCS to take grievances in real time. Perhaps even verbal[ly]. Afterwards, bring it to the attention of a sergeant and see if it can be resolved without writing an actual grievance.*

**WENDE**

*A great leap forward could be made by having a neutral third party...implement investigations while keeping the grievant's identity anonymous during the investigation as much as possible.*

**MARCY**

*The only way to fix the grievance [program] would be [to] break any and all ties to correctional facilities.*

**MOHAWK**

*Have an out of facility entity run grievance that is not buddy buddy or friends with correction[al] officers or staff.*

**OTISVILLE**

*Have [the grievance program] run by an outside organization. A training course should be performed on how to submit a grievance. A new CORC [should] be implemented.*

**OTISVILLE**

*Get people that are backed up by an outside entity [to run the grievance program] so there is no intimidation involve[d] so that [they] can actually do [their] job.*

**SING SING**

*The members of the grievance program in each facility should be people from outside not connected to the administration.*

**SING SING**

*CORC appeals should be handled by a civilian panel outside of the Dept., instead of insiders whose goal is to further the Dept.'s agenda, which is usually diametrically opposed to the well being of those within its charge: CORC protects the establishment instead of protecting the prisoner[s]' best interests.*

**SING SING**

*In order to diminish the influences of implicit bias, independent review committees should be established and conducted by a disinterested entity.*

**ELMIRA**

*[We should] change the staff and mix them up. It's hard to figure out change if the same corrupt people are still working [in] that area or program.*

**UPSTATE**

*The problem is there is no independent oversight. From the IGP supervisor all the way up are state workers. An independent investigator who answers to no one in the prison might work, but I doubt the State would allow that.*

**WOODBOURNE**

*Put the grievance program in the hands of an agency...[like] Prisoners' Legal Services, non-DOCCS employees.*

**ATTICA**

*[It should be run] by an outside entity having no relation to person[s] or fashion[s] dealing with the Department of Corrections.*

**ATTICA**

*The...IGP Supervisor...and the Grievance Sergeant are purposely not having grievances investigated by a higher ranking supervisory staff member. They are purposely and improperly having the staff who are the subject of grievances answer and investigate grievances against THEMSELVES and they are purposely mishandling and falsifying grievances at this facility.*

**CLINTON**

## CONCLUSION

In the preceding sections of this report, we have demonstrated that:

- There are misunderstandings about which issues are viable, leading to dismissals at the first stage.
- Most people did not vote for the IGRC reps and don't trust them to represent their interests.
- The IGP supervisor's role is unclear to most incarcerated people.
- Medical grievances are routinely dismissed at facility level because the IGRC lacks expertise.
- Explanations for denial or dismissal rarely address points raised in grievances.
- It is unclear when the grievance process is exhausted when time limits are not met.
- Decisions in favor of incarcerated people are not always implemented.
- Staff harassment grievances (Code 49) are often misfiled as something else.
- The IGP does not apply to all aspects of incarceration.
- Many incarcerated people cite inaccessibility of the drop box or cannot access forms.
- There is uncertainty over whether grievances arrive at the IGRC after being filed.
- Only a small minority of grievances were resolved within time limits specified by the department.

- There is widespread retaliation and corresponding fear from filing grievances.
- Most people do not perceive the IGRC, IGP, Superintendent, or CORC as fair.
- There are very low rates of grievances being found in incarcerated peoples' favor.

Together these findings show a failure of the IGP to fulfil its purported role. However, numerous comments from incarcerated people demonstrate the perception that the IGP would fulfill an essential role if it functioned adequately and consequently, was trusted by the incarcerated population as a genuine avenue for recourse. Innovations in other states, such as the implementation of tablets to file grievances in Vermont, demonstrate that there are concrete and realistic solutions, some of which have already been contemplated in New York.

In 2023 CANY release additional reporting on the incarcerated grievance program. These reports will include an analysis of administrative data on the time spent resolving grievances on a system-wide level, a report documenting the impact of the PLRA, and a detailed set of recommendations for change of the existing grievance process. The set of detailed, achievable, and realistic recommendations that CANY will submit to the legislature, the executive, and the public will be informed by a series of focus group discussions with IGRCs, ILCs and DOCCS management and facility staff. The resulting set of recommendations will provide a realizable framework for lasting change.

## APPENDIX A | Cover Letter

December 2002

Greetings,

The Correctional Association of New York is conducting a survey to understand the experiences and perspectives of incarcerated people around the Incarcerated Grievance Program. You have been selected at random to receive this survey along with approximately 10% of the population at each DOCCS facility.

CANY is a non-profit organization based in Brooklyn, mandated by the state to conduct independent oversight of NYS prisons. CANY carries out monitoring visits to prisons, engages with incarcerated people through surveys and other correspondence, and uses administrative data from DOCCS and other state agencies to form recommendations for improving prison conditions. Under Correction Law 146(3), CANY has the authority to communicate with incarcerated people confidentially; DOCCS is prohibited from seeking retaliation against individuals for communicating with CANY.

Participation in this survey is entirely voluntary. We encourage you to participate to inform CANY's understanding of the grievance process. Information provided through survey answers will be included in a public report but CANY will not publish details of your individual experiences. No identifying information will be published in any report or document CANY produces and we will not disclose your personal responses to DOCCS or any other entity. If you choose to participate, please mail the completed survey in the enclosed envelope no later than Monday, January 16, 2023.

If you would like to add to the answers provided in the survey, please send us your comments on a separate sheet. In particular, we would be interested in hearing your opinions on the following questions in addition to your responses to the survey:

1. How would you describe the grievance program in your own words?
2. How does your perception of the grievance program impact the level of trust you have in DOCCS?
3. What are the most challenging and effective parts of the grievance program?
4. At which facilities do you think the grievance program is most and least effective? Why?
5. What recommendations would you make to change the grievance program?
6. Anything else you'd like to share with CANY?

If you have any questions about this survey or would like to contact CANY, please write to the following address or call the number below:

Correctional Association of New York  
P.O. Box 793  
Brooklyn, NY 11207  
Telephone: 212.254.5700

Wishing you a healthy new year.

Sincerely,

CANY Staff

**APPENDIX B | Survey**

# Survey

Correctional Association of New York: System-Wide Survey on Incarcerated Grievance Program

A1. Name

A2. DIN:

Part One: Awareness of the program

B1. Before you received this survey, were you aware that a grievance program existed?  
 Yes  No

B2. Are you generally aware of how the grievance program works?  
 Yes  No

B3. How are incarcerated individuals mainly informed about the Grievance Program? (Check one)

<input type="checkbox"/> At reception	<input type="checkbox"/> From another incarcerated individual	<input type="checkbox"/> From a prison rule book
<input type="checkbox"/> At an orientation session for the facility	<input type="checkbox"/> From the superintendent or their staff	<input type="checkbox"/> Not at all
<input type="checkbox"/> From a correctional officer	<input type="checkbox"/> From a facility newspaper or bulletin	<input type="checkbox"/> Other

If other, please specify:

B4. Do you know how an incarcerated individual is supposed to submit a grievance at your institution?  
 Yes  No

B5. Do you know where the grievance drop-box is located?  
 Yes  No

Part Two: The role of the IGRC and IGP supervisor

C1. Are you aware of the Incarcerated Grievance Resolution Committee (IGRC) in the prison?  
 Yes  No

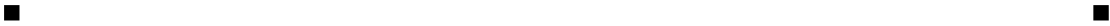
If no, skip to question C9.

C2. Are you aware that, per Directive 4040, IGRC representatives should be elected to the committee by their peers?  
 Yes  No

C3. Did you vote for the IGRC representatives?  
 Yes  No

C4. Do you believe that the IGRC election process is fair?  
 Yes  No

**APPENDIX B | Survey**



C5. Do you believe that the IGRC election process is transparent?

Yes  No

C6. Do you trust the IGRC representatives to represent incarcerated people's interests fairly in the grievance process?

Yes  No

C7. Comment on the selection of the IGRC:

C8. Comment on the adequacy/fairness of IGRC reps in the grievance program:

C9. Are you aware of the Incarcerated Grievance Program (IGP) Supervisor in the prison?

Yes  No

If no, skip to Part Three.

C10. Is the role of the IGP supervisor clear to you?

Yes  No

C11. Do you believe that the IGP supervisor clearly communicates the grievance program to you?

Yes  No

C12. Do you believe that IGP supervisor has a fair approach to resolving grievance program?

Yes  No

C13. Are there ways in which you think that the IGP supervisor could improve their job? Please explain.

C14. Comment on the role of the IGP Supervisor:

Part Three: Accessibility of the Program

D1. Have you ever filed a grievance?

Yes  No

If you have never filed a grievance, skip to question D4.





## APPENDIX B | Survey



D2. Here is a list of some possible complaints for which you might file a grievance. **Please check all that you've filed a grievance for in the last 1-3 years.**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Work assignment            | <input type="checkbox"/> Personal privacy                   | <input type="checkbox"/> Treatment by other incarcerated people |
| <input type="checkbox"/> Food                       | <input type="checkbox"/> Treatment by correctional officers | <input type="checkbox"/> Counseling services                    |
| <input type="checkbox"/> Clothing issued            | <input type="checkbox"/> Vocational training                | <input type="checkbox"/> Religious services                     |
| <input type="checkbox"/> Recreational opportunities | <input type="checkbox"/> Educational programming            | <input type="checkbox"/> Phone problems                         |
| <input type="checkbox"/> Medical services           | <input type="checkbox"/> Other programming                  | <input type="checkbox"/> Special Housing Units                  |
| <input type="checkbox"/> Mental health services     | <input type="checkbox"/> Classification matters             | <input type="checkbox"/> Commissary                             |
| <input type="checkbox"/> Dental services            | <input type="checkbox"/> Personal property                  | <input type="checkbox"/> Disciplinary system                    |
| <input type="checkbox"/> Visitation rules           |   | <input type="checkbox"/> Other                                  |
| <input type="checkbox"/> Legal services             |   |   |

If other, please specify:

D3. Can you describe some examples of things you've filed a grievance for (can be things mentioned above or others) and what happened when you filed?

D4. Are there issues that you would like to file a grievance for, but are unable to do so?

- Yes  No

D5. If yes, describe those issues:

D6. Are there people who would like to file a grievance on your behalf but are unable to do so?

- Yes  No

D7. Are you able to solve the issues you **CAN** file a grievance for through alternative methods?

- Yes  No

D8. Are you able to solve the issues you **CAN NOT** file a grievance for through alternative methods?

- Yes  No

D9. Are you aware of Directive #4040, which explains the grievance program?

- Yes  No

If no, skip to question D13.

D10. Is Directive #4040, which explains the grievance program, available for incarcerated individuals to read?

- Yes  No



## APPENDIX B | Survey

D11. Is Directive #4040 easily understood (e.g., free from legal jargon)?

 Yes No

D12. Is Directive #4040 written in a language that you can understand?

 Yes No

D13. Can incarcerated individuals get the forms needed to submit a grievance when they want them?

 Yes No

D14. Have you ever been unable to physically submit a grievance to the grievance office because of confinement and/or mobility issues?

 Yes No

D15. If yes, were you able to find an alternative method to get the grievance to the IGRC?

 Yes No

D16. If yes, please describe that alternative method:

D17. Have you ever decided not to file a grievance despite having a reason to do so?

 Yes No

D18. If yes, why?

D19. Do you think incarcerated individuals are afraid of filing grievances? **(Check one)**

 Yes, always afraid No, seldom afraid Yes, somewhat afraid No, not afraid at all About half are

D20. If yes, why?

D21. Have you ever experienced retaliation from filing a grievance?

 Yes No

D22. If yes, from who? What kind of retaliation?

D23. Have you ever withdrawn a grievance before a hearing?

 Yes No

## APPENDIX B | Survey



D24. If yes, why?

Part Four: Procedure and Duration

E1. If you've ever filed a grievance, on average, how long did it take to receive a response of any kind?

- Within 1-2 days
- Within one week
- Within 1 month
- Longer than 1 month
- I have not received a response
- I have never filed a grievance

If you have never filed a grievance, skip to Part Five.

E2. Generally, did the IGP supervisor meet with you on your grievance?

- Yes
- No

E3. Generally, did the IGP supervisor encourage you to resolve your grievance informally?

- Yes
- No

E4. Generally, what are your thoughts on the informal resolution of grievances? Is it an effective process? Why or why not?

E5. When was the last time you filed a grievance? (mm-dd-yyyy)

--	--	--	--	--	--	--	--	--	--

E6. Was your **most recent grievance** heard or resolved informally within 16 calendar days of when it was filed?

- Yes
- No

E7. Was it resolved in your favor?

- Yes
- No

E8. If the grievance was dismissed, did you file an appeal with the Superintendent?

- Yes
- No

E9. If you filed an appeal, was the Superintendent's response to your grievance within 45 days?

- Yes
- No

E10. Are you aware of the outcome of your case?

- Yes
- No

E11. If dismissed or denied was an explanation given to you?

- Yes
- No

E12. If yes, did the explanation address the points raised in your grievance?

- Yes
- No



## APPENDIX B | Survey

■

E13. Have you ever filed a Code 49 grievance (staff conduct)?

Yes  No

If no, skip to question E16.

E14. If you have ever filed a Code 49 grievance, when was the last time you filed a Code 49 grievance? (dd/mm/yyyy)

E15. For the **most recent** Code 49 grievance you filed, did the Superintendent make a judgment within 25 days?

Yes  No

E16. Have you ever had a Code 49 grievance decided in your favor by the superintendent?

Yes  No

E17. Do you know of instances in which the superintendent decided in favor of Code 49 grievances from other individuals?

Yes  No

E18. Do you know what your options are if you do not agree with the outcome of your grievance?

Yes  No

E19. Do you know how to appeal a grievance outcome to the Central Office Review Committee (CORC)?

Yes  No

E20. Have you ever appealed a grievance outcome to CORC?

Yes  No

If no, skip to question E23.

E21. Approximately how long ago did you last appeal a grievance to CORC? (mm-dd-yyyy)

E22. Did the CORC review your appeal within 30 days?

Yes  No

E23. How long after you appealed to CORC did CORC issue a decision?

E24. Was the appeal decided in your favor?

Yes  No

E25. If your CORC appeal was denied, was there detailed written explanation for the denial?

Yes  No

E26. Have you ever filed a grievance solely or in part to preserve your right to sue?

Yes  No

If no, skip to Part Five.

■

## APPENDIX B | Survey

E27. If so, did you end up filing a suit?

- Yes  No

E28. Can you describe how the grievance program impacted your litigation, if at all?

### Part Five: Perception of Fairness of the program

In this section, answer the following questions based on your **current facility**.

F1. How effective do you feel the grievance program has been in resolving incarcerated individuals' complaints? **(Check one)**

- Very effective  Seldom effective  
 Fairly effective  Not effective

F2. Which of the following reflects your opinion about the grievance program? **(Check one)**

- It improves staff/incarcerated individual relations  
 It has no effect on staff/incarcerated individual relations  
 It makes staff/incarcerated individual relations worse

Check the statement below that most clearly reflects your view of the grievance program. **(Check only one)**

F3. The grievance procedure is:

- A good way to settle incarcerated individuals' complaints, *since most grievances have merit*  
 A good way to settle incarcerated individuals' complaints, *even though most grievances do not have merit*  
 A good way to settle incarcerated individuals' complaints, *regardless of whether they have merit or not*  
 A bad way to settle incarcerated individuals' complaints *even though most grievances have merit*  
 A bad way to settle incarcerated individuals' complaints *because most grievances do not have merit*  
 A bad way to settle incarcerated individuals' complaints *regardless of whether they have merit or not*

F4. In your opinion, how do staff members feel about trying to help resolve incarcerated individuals' complaints? **(Check one)**

- They are *always very willing* to listen and try hard to work things out  
 They are *fairly willing* to listen and try hard to work things out  
 They are *seldom willing* to listen but do try hard to work things out  
 They are *willing* to listen, but never try hard to work things out  
 They are *never willing* to listen and never try hard to work things out

F5. In your opinion, do most correctional officers think it's important to investigate incarcerated individuals' complaints? **(Check one)**

- Yes, very important  They don't care either way  
 Yes, somewhat important  No, not important at all

## APPENDIX B | Survey

- F6. In your opinion, how do staff members feel about incarcerated individuals writing grievances? **(Check one)**
- They encourage it  They usually don't like it, but accept it  
 They usually think it's all right  They discourage it  
 They don't care one way or the other
- F7. Do staff carry out the decision reached on grievances when the decisions are in the incarcerated individual's favor?
- Yes  No
- F8. In general, do you think the **Superintendent** handles incarcerated individuals' grievances fairly?
- Yes  No
- F9. In your opinion, does your **Superintendent** think it's important to investigate incarcerated individuals' complaints?
- Yes  No
- F10. In general, do you think grievances are handled fairly when they are appealed to the **Central Office Review Committee**?
- Yes  No

### Part Six: Other Information

- G1. At which prison are you currently housed?
- 
- G2. What is your housing unit?
- General Population - Dormitory  Transitional Intermediate Care Program (TRICP)  
 General Population - Celled  Behavioral Health Unit (BHU)  
 Special Housing Unit (SHU)  Protective Custody (PC)  
 Residential Rehabilitation Unit (RRU)  Administrative Segregation  
 Reception  Work Release  
 Intermediate Care Program (ICP)  Other
- If other please specify:
- 
- G3. How long have you been incarcerated in the prison in which you are currently housed? **(Years)**
- 
- G4. What is your gender?
- Male  Non-binary  Prefer not to say  
 Female  Transgender  Other
- If other, please specify:
-

**APPENDIX C | Numbers of grievance per year**

Type	Subtype	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
Program Services	1) Program Committee	516	692	641	634	539	470	356	312	4160
	2) Incentive Wage Allowance	370	376	330	341	284	197	176	84	2158
	3) Correspondence	950	1099	1172	1204	1019	699	488	413	7044
	4) Phone Home Program	60	70	76	144	167	102	94	70	783
	5) Visiting	225	252	275	384	312	241	154	182	2025
	6) Guidance Unit/Counseling	994	949	1093	1156	1007	756	604	558	7117
	7) Recreation (TV, Yard, Movies, Radio, etc.)	253	311	309	280	280	235	232	203	2103
	8) Adult Basic Education	37	46	46	75	48	28	13	16	309
	9) GED/College Programs	56	47	59	47	47	40			296
	9) HSE/College Programs							18	24	42
	10) Language Assistance Program	12	10	6	5	3	4	4	2	46
	11) Vocational Programs	56	42	46	61	62	37	27	19	150
	12) Work Assignments	130	148	168	197	186	154	127	97	350
13) Hobby Shop/Arts & Crafts	3	12	16	7	10	12	8	3	71	

**APPENDIX C | Numbers of grievance per year**

Type	Subtype	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
	14) Volunteer Services	0	3	5	4	0	3	2	0	17
	15) Special Events/Inmate Organizations	91	118	117	113	120	110			669
	15) Special Events/Organizations							16	36	52
	16) Religion	634	706	626	596	618	451	206	246	4083
	17) Family Reunion Program	163	86	115	106	89	49	23	23	654
	18) Media Review	104	98	88	74	77	72	67	45	625
	19) General Library	97	115	125	140	113	67	40	22	719
	20) Alcohol and Substance Abuse Treatment	233	239	234	241	236	214	194	154	1745
<b>Program Services Total</b>		<b>4984</b>	<b>5419</b>	<b>5547</b>	<b>5809</b>	<b>5217</b>	<b>3941</b>	<b>2849</b>	<b>2509</b>	<b>36275</b>
Health Services	21) Dental	547	660	652	567	612	557	384	292	4271
	22) Medical	6008	6412	6441	6342	5583	4791	3678	3514	42769
	22.1) HIPAA (Health Information)	136	168	178	122	157	132	94	118	1105
<b>Health Services Total</b>		<b>6691</b>	<b>7240</b>	<b>7271</b>	<b>7031</b>	<b>6352</b>	<b>5480</b>	<b>4156</b>	<b>3924</b>	<b>48145</b>



**APPENDIX C | Numbers of grievance per year**

Type	Subtype	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
Facility Operations	23) Housing - Internal Block Affairs	1793	2359	2632	2574	2743	1990	1967	1796	17854
	23.1) Smoke-Free Policy	9	10	19	6	17	11	8	5	85
	24) Special Housing Units	1514	1623	1611	1566	1602	1235	1190	1226	11567
	25) Search & Seizure/Frisks/Contraband	357	621	526	509	408	336	204	234	3195
	25.1) Strip Search	16	16	20	20	8	10	16	11	117
	25.2) Strip Frisk	12	27	19	18	20	27	27	15	165
	25.3) Pat Frisk (Female Inmate)	10	7	3	0	5	1			26
	25.3) Pat Frisk (Female)							1	0	1
	26) Keeplock Policy & Procedure	77	98	138	186	172	160	141	129	1101
	27) Tier I and II Policy & Procedure	198	237	290	307	299	248	222	206	2007
	28) Tier III Policy & Procedure	475	494	533	528	482	455	293	287	3547
	29) Inmate Property	872	1055	1008	1127	1096	898			6056
	29) Property							582	627	1209
	30) Package Room	1377	1656	1827	1902	2121	16167	1597	1677	13774
	31) Rules & Regulations	533	630	631	615	599	467	482	436	4393
<b>Facility Operations Total</b>		<b>7243</b>	<b>8833</b>	<b>9257</b>	<b>9358</b>	<b>9572</b>	<b>7455</b>	<b>6730</b>	<b>6649</b>	<b>65097</b>

**APPENDIX C | Numbers of grievance per year**

Type	Subtype	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
Executive Direction	44) Incarcerated Grievance Program							347	346	693
	44) Inmate Grievance Program	610	559	652	590	560	445			3416
	45) Temporary Release Committee	23	25	20	28	20	18	23	13	170
	46) Inter-Facility Transfers	201	166	156	160	134	113	85	80	1095
	47) Grooming Standards	53	42	26	51	58	32	18	21	30
	48) Incarcerated Liaison Committee							13	17	30
	48) Inmate Liaison Committee	46	37	41	53	35	17			229
	49) Staff Conduct	5194	5427	5371	4979	4679	3832	2688	2366	34536
	49.1) Sexual Abuse						171	174	206	551
	49.2) Sexual Harrassment						212	238	312	762
	50) Miscellaneous	864	863	1022	1356	1320	1098	1141	1248	8912
<b>Executive Direction Total</b>		<b>6991</b>	<b>7119</b>	<b>7288</b>	<b>7217</b>	<b>6806</b>	<b>5938</b>	<b>4727</b>	<b>4609</b>	<b>50695</b>

**APPENDIX C | Numbers of grievance per year**

Type	Subtype	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
Counsel	40) Law Library	592	668	658	643	694	590	477	359	4681
	41) Legal Mail	264	340	395	280	313	284	236	222	2334
	42) Inmate Legal Rights	574	689	703	518	456	459			3399
	42) Legal Rights							291	211	502
	43) Mandatory Court Surcharge	35	42	35	52	43	25	25	13	270
<b>Counsel Total</b>		<b>1465</b>	<b>1739</b>	<b>1791</b>	<b>1493</b>	<b>1506</b>	<b>1358</b>	<b>1029</b>	<b>805</b>	<b>11186</b>
Administrative Services	32) Industry	76	63	75	67	60	58	32	26	457
	33) Personal Property Claims	463	630	611	651	527	350	193	243	3668
	34) State Issued Clothing and Hygiene Items	381	503	454	505	517	265	163	184	2972
	35) Commissary	371	550	642	571	725	533	350	394	4136
	36) Incarcerated Individual Accounts							489	836	1325
	36) Inmate Accounts	889	1125	1319	1381	1223	687			6624
	37) Mess Hall	974	1213	1125	1001	927	777	553	495	7065
	38) Laundry	93	85	87	107	127	92	41	37	669
	39) Facility Maintenance	527	537	706	677	639	393	247	218	3944
	<b>Administrative Services Total</b>		<b>3774</b>	<b>4706</b>	<b>5019</b>	<b>4960</b>	<b>4745</b>	<b>3155</b>	<b>2068</b>	<b>2433</b>
<b>Grand Total Total</b>		<b>31148</b>	<b>35056</b>	<b>36173</b>	<b>35868</b>	<b>34198</b>	<b>27327</b>	<b>21559</b>	<b>20929</b>	<b>242258</b>

## APPENDIX D | Additional Qualitative Data

# Additional Qualitative Data<sup>1</sup>

## C7: comment on the selection of the IGRC

### Fair Count: 29

#### QUOTES

- Good
- I think the IGRC selection process is good
- It's done properly

### Unfair count: 168

#### QUOTES

- They work with the facility
- Here in Wende, there is never an election process. The IGRC keeps the same representatives in heavy rotation
- Staff involved have been known to manipulate the election process in favor of candidates who appear more agreeable to staff positions and less likely to take positions against staff
- Its biased and predetermined
- I honestly believe representatives are handpicked here
- I've worked as a IGRC rep in Elmira and we were manipulated into closing grievances
- If we elect IGRC members that will advocate for us, they are usually transferred soon after

### Sometimes Count: 22

#### QUOTES

- This is my second NYS prison. My first in a maximum-security facility. I have not yet seen an election here. However, in the medium security facility I was in, I found the process to be clear.

### Miscellaneous Count: 32

#### QUOTES

- They do in his inconvenient
- It's hard to vote when you don't know the people behind the names (pdf 9, page 18)
- Don't know
- How does it work?
- No comment
- What is the IGRC

---

<sup>1</sup> This data is a categorization of responses to open-ended survey questions by theme. It also includes selected quotes in response to each questions

## APPENDIX D | Additional Qualitative Data

- We don't have choice in Upstate SH
- It's the only way to do it

### No voting: 33

#### QUOTES

- No voting happens. People are just placed
- Wasn't aware of election process
- I have no knowledge
- We don't select our IGRC
- I have never received nor seen a sheet on the clipboard to select a member of the IGRC
- I don't know how to comment because I never voted on this issue
- There is no IGRC here

### No Response Count: 204

## C8: comment on the adequacy and fairness of the IGRC reps in the grievance program

### Independent count: 19

#### QUOTES

- Excellent
- Excellent job
- Touch subject. I feel comfortable w/whom we have in office as of current (present)

### Lack Independence count: 186

#### QUOTES

- It's messed up
- Bias and Partial
- The inmate reps have limited to no power in resolving grievances
- Scared – in it for the donuts
- I don't think that the IGRC reps are good
- As an IGRC rep for over 8 years, I was not allowed to participate in many investigations

### Sometimes count: 39

#### QUOTES

- O.K
- It depends on what kind of reps have been elected. I have seen guys who are independent and fair without fear or influence from staff. Conversely, I have seen

## APPENDIX D | Additional Qualitative Data

guys who show obvious influence of staff and side with the prison often. We have a questionable group of reps in Sing Sing currently in fact

- I think they do their best, but might be restricted in the extent of their opinions, but I cannot affirm this opinion
- They don't process certain grievances
- Mainly the Incarcerated Individuals are more fair to our grievances...However, the civilians not so fair
- The inmate is okay but few you I have no control nothing gets done
- Some inmate reps do not fairly represent prisoners out of fear of retaliation, personal gain, or to gain favoritism

### Miscellaneous count: 26

#### QUOTES

- They do whatever they want
- Encouraged to not pursue or accept defeat
- For popular people (pdf 11)
- There is no ILC (I assume they mean IGRC) here
- Takes far too long here at Sing Sing (90 days)
- Think about it
- That depends on what facility you're in
- What the IGRC do for people

### No Knowledge: 8

### No response count: 210

## C13: Are there ways in which you think that the IGP supervisor could improve their job? Please explain

- File received statement, and formally state the issue in writing to the Incarcerated Individuals, instead of refusing to file and adding II to call out.
- Face problems with a realistic approach, not appeasing administration
- Accept what is right or wrong, not who
- I believe meaningful and consistent improvement would occur if the IGP were a non-employee of the prison. As long as the supervisor is a part of prison staff, they ultimately will remain partisan on issues occurring in the orison, especially serious issues (pdf 65). (these was shared by different participants)
- Working in the facility, they become too friendly with staff and become corrupted by the corrections officer/staff
- By interacting with the general population more, following the grievances directive more accurately.

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- Yes, by not putting people's grievance in the trash
- Communicate more and take our grievances more serious
- No one should have this post long term. Supervisors tend to abuse their discretion in favor of the staff and officers
- Yes, fire him and find or put someone who will do the job the right way not for the facility enough is enough. Stop the abuse of power
- Start by holding their peers accountable for their wrong doings, instead of sweeping it under the rug
- By teaching inmates how the program works

### **D3: Can you describe some examples of things you've filed a grievance for and what happened when you filed**

- Refusal to acknowledge/allow religious practices based on PSI listing, even though PSI is used for everything
- Americans with Disability Act – grievances were destroyed, cover up of misconduct by IGP supervisor
- I am of Asian descent, I've never been to prison, and that I was being targeted by C.O.s and inmates because I am the only Asian here.
- Being sexually harassed and nothing happened. The COs made a joke about the whole situation
- I had filed a grievance on not receiving mental health. I gave my letter to another I.I. and the CO took it. The grievance was never filed. I was not called for it.
- I filed a grievance which is enclosed about the low pay wage and the facility denied it
- Last February, I grieved on inadequate notice/response by the facility to a water contamination issue having arose. The facility admitted that it could have better informed the population, but sidestepped any further action being necessary. The inmate IGP reps all disagreed with the grievance completely, apparently unwilling to oppose the facility in any regards.
- Most of my grievances are code 49. Once they get filed, I get retaliated against violently
- Eye care at Attica correction facility. Harassment by staff. Potholes at the Clinton correction facility. As well as not receiving commissary
- One incident when officers (Female) not allowing I/I's to take a shower when directive 4009 state I/I's are entitled to 3 showers a week. After 4 grievances, they finally allow me to get a shower
- Yes, my personal property, they never got back to me. Then about COs trying to kill me. They came to my cell and said "do this again and we will kill you"
- Medication was not being given to me, even though I had a prescription
- How I am being treated where I am currently. I have filed several grievances that never made it to IGRC, as well as mail letters to Albany, they also never made it. I gave up

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- I was framed and assaulted by CO's
- On more than one occasion, my personal property disappeared from the package room. Package room officers abusive, antagonizing and hostile conduct. Not being allowed to participate in any vocational or education programs because I am in PC
- Installation of cameras, changing what's considered "non-food" to increase buy limit
- The most recent grievance I've filed was for staff stealing and destroying my outgoing legal mail, and for being in SHU for over 20 days in violation of the directive - Employee manual. Neither of these grievances have been replied to and when the IGP supervisor made rounds, he said he never received either grievance
- Lack of meals/portions in mess hall; Injuries from COs and I/I's; medical malpractice in dental; Not being called to sick hall after placing multiple slips
- Assaulted by officers and the grievance was responded to by the Sgt. Of the incident who indirectly threatened me
- I was at the Auburn SHU and our food was being violated. I grieved it and nothing changed. Never even heard back from it
- My work assignment and I won but never received back pay
- Well in September 16, I went to the SHU and I haven't ever received my property. I wrote two grievances & I still haven't been seen to this day, its crazy, no wonder people lose it, you're messing with people property, I lost my bible, rosary, legal paperwork from my case, my 3 sneakers, boots, all of my clothes, food,, everything, I didn't even get a I.64 (this number was not clear)
- Physical and sexual abuse by officers
- My commissary sheet was thrown away by staff
- The COs starving me, not giving me rec. 15 days in Marcy Box. And being kicked out
- Yes, I am legally blind and hearing impaired and I am being denied the most important thing – Reasonable accommodations due to lies and games ok
- A officer search my cell, throw my holy bible on floor. Officers beating up other incarcerated individuals
- I wrote a grievance on the H.A.L.T law not being followed here at great meadow pc unit
- My food package was deemed contaminated because tomatoes got crushed. I grieved it due to other items was good. I lost and the whole package was kept
- Writing for Dr. Appt. Packages sitting for weeks, packages not being delivered before we receive them (
- Regarding no pillow. Took weeks, Noting happened but I did get pillow weeks later. No grievances

## D5: Issues you want to file a grievance for

### Treatment of Incarcerated Individuals: 101

#### QUOTES

- Since my classification has dropped to medium – A, I remain incarcerated at a Max-A (Clinton Corr facility) for no reason



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- Rate of pay
- I have a sex case, I am treated horribly
- I want my back pay from the mess hall
- Recently on December 18th 2022, I had my mattress and covers took from me
- The COs in Marcy box are corrupt, and do what they want. How I was kicked out my program (pdf 14)
- I believe I'm entitled to rec for 1 hour even if I'm programmed because what do I do on my day off (pdf 15, 35)
- Officer not opening incarcerated individuals' cell because they don't like them officer beating on inmates, officers destroying inmates' personal property (pdf, 15, 43)
- Lack of rehabilitative programs (pdf 19, 3)
- Prison stealing fundraiser money we make on commissary items – supposed to be used for cable channels but they don't (pdf 19, 35)
- Well I've filed multiple grievances about the R.R.U and how its not ran by the mandates of Halt Act, corr. Law section 137 at all. I'm still waiting. They're not responding because they're trying to stop me from getting to the CORC. (pdf 19, 51)
- The messhall program that was taken from me for "security reasons" but there isn't no security risk on my behalf. Just a LT saying so! (pdf 20, 3)
- My religious services of NOGE don't exist here and I was told by staff and CO's if I file, that I will be harassed and then moved to different cell locations on a wheel punitivity (illegible) (pdf 21, 163)
- Lack of movement because we are still not getting afternoon recreation (pdf 21, 243)
- Treatment by staff: scared of the backlash if I do (pdf 21, 259)
- I was exonerated and my discharge was issued, the grievance supervisor was notified with documents confirming the exoneration, even went as far to confirm it herself, yet ignored and refuse to speak to me (pdf 23, 67)

### Retaliation count: 12

#### QUOTES

- Fear of retaliation from officers/weapons planted/cube ransacked/harassment (pdf 22, 11)
- The CO's beating people up for filing a grievance in the first place (pdf 22, 19)

### SHU (Special Housing Unit) count: 4

#### QUOTES

- The portions of food on the trays in SHU and RRU most of us are on loss of commissary and very hungry (pdf 17, 19)
- Here at UPSTATE corr. Facility (SHU). There are severe restrictions on our access to the phones. People who complain are retaliated against by staff (pdf 22, 171)
- I'm in the SHU and I have till 2029 in SHU. I'm going crazy in here. The officers are not feeding me here in Attica (pdf 22, 291)

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### Healthcare count: 25

#### QUOTES

- Medical services. I tell them and complain my stomach hurts and all they said is that I have nothing and to drink water
- Medical. Bad ICP Doctor going through a lot of pain (pdf 20, 11)
- Prostrate and colon exams. Surgery in my genitals (pdf 21, 139)
- It is difficult to file medical grievance when it pertains to HIPPA. I feel I have no way to effectively file a grievance w/o disclosing pvt. Medical information (pdf 21, 283)

### Mental Health: 2

### Facility operation: 10

#### QUOTES

- Allowing both officers and incarcerated individuals smoking indoors
- The conditions of this facility. The asbestos issues and the health issues it causes (pdf 24, 75)

### Legal: 3

### Other Incarcerated Individuals: 3

#### QUOTES

- Problematic inmates that are allowed to stay in the same unit causing trouble instead of being moved, and you're told to go to protective custody (pdf 17, 11)

### Nutrition: 10

#### QUOTES

- The food that is served, and the nutritional value of the food. There should be a chart posted of each meal's nutritional value (pdf 22, 139)
- The fact that we only got commissary in Attica once a month instead of every 2 weeks but yet there is a limit on all food you can buy (pdf 24, 251)
- Religious meals not being honored. IGRC not filing grievance (pdf 26, 315)

### HALT program: 1

### Clothing: 2

#### QUOTES

- I would like to grieve the facility rule of no double layered clothing. We live in W NY and get the coldest winter weather (pdf 20, 35)

### Access: 8

#### QUOTES

- JPAY's not allowing incarcerated Individuals to video gram with family and friends

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- How JPAY treats its customers, and removes items purchased without informing I/I, then not wanting to give us our money back (pdf 8, page 3)
- JPAY seizing emails and the theft of the paid for stamp currently there is No Electronic communications directive
- Here at Attica CF, they only let us go to the commissary once a month or within 3 weeks, when we supposed to go every other week but grievances don't do nothing... (pdf 18, 19)
- The M.A.T program

### Sexual harassment by officers: 1

#### Staff/Officer misconduct: 19

##### QUOTES

- Abuse by officers then you get set up
- Assault by S.E.R.T (pdf 17, 43)
- Cell search from officers. Take things and you can't prove they did after trash cell, allowable items (pdf 21, 115)
- When staff lose or throw away your personal property because you can't file grievances on lost or destroyed property (pdf 21, 339)
- Four C.Os assaulted me for 5 mins and there was nothing I could do (pdf 22, 307)

### Package room: 25

##### QUOTES

- Packages a lot of items go missing (pdf 14, 75)
- The package room not getting all my stuff that my people or 3rd party vendor has sent (pdf 15, 3)
- Officers stealing from incoming packages (pdf 23, 83)

### Grievance process and personnel: 20

##### QUOTES

- There should be a more organized and responsible way or a person from the outside to be in charge (pdf 11, 75)

### FOIL requests count: 3

##### QUOTES

- Foil requests take longer than 5 days for receipt (contrary to POL 89)
- For example, I had been asking under foil request for my pre-sentence report, but to no avail (pdf 13, 11)

### Miscellaneous: 31

- No response to grievance
- KKK COs

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- The fact that these people here are still harassing people about beard permits (facial hair), when we shouldn't need a permit (pdf 10)
- I just so happen to have every complaint I've filed here at Eastern. Most of which "clearly show" how prejudicial they are here!!! Would you like my file? (pdf 11, 59)
- I'm too afraid to explain (pdf 13, 51)
- Can't think of them at the moment (pdf 15, 19)
- Upstate is not following rules
- In attached letter (pdf 22, 315)

**No response: 211**

**No issues: 2**

### **D16: Alternative methods to submitting grievance reports**

**Give grievance report to another I/I to drop off: 49**

**Submit to Superintendent / Governor: 3**

**Give grievance report to officers: 6**

**Give to grievance clerk: 3**

**Sent it home for family to file: 9**

**Send to Albany: 5**

**Mailbox: 17**

#### **QUOTES**

- The US postal mailbox located inside the block
- Write on regular paper through mail (pdf 16, 44)

**Miscellaneous/Other Methods: 22**

#### **QUOTES**

- You have to go to law library to receive a grievance form
- I tried giving it to medical and my (-) officer and was denied (pdf 14, 12)

**Lawyer/counselor: 2**

**No response count: 372**

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### **D18: Reasons for not filing a grievance, despite having reasons to Categorize and Count reasons... .E.g. Fear, time, system unjust, etc.**

#### **Harassment and Retaliation count: 194**

##### **QUOTES**

- Because the retaliation is not always worth it
- Threatened with violence by facility staff if grievance is filed
- It's in my best interest not to. They will beat you (pdf 15, 4)
- They will retaliate against me (pdf 15, 36)
- I felt it didn't warrant the retaliation that I'd get (pdf 21, 196)

#### **Retaliation from other Incarcerated people: 1**

#### **Ineffective system count: 137**

##### **QUOTES**

- I knew nothing would come of it
- Because the IGP supervisor cannot be trusted. He is for the staff and security, well the administrations at Eastern and DOCCS, which is totally wrong alright (pdf 14, 28)
- The grievance never reaches its destination (pdf 15,44)
- They brush our valid issues under the rug. Most of the time, we never hear anything back (pdf 16, 4)
- The program does not work (pdf 17, 4)
- If it's a serious grievance like something such as abuse or harassment by a C.O. they just throw the grievance out, then tell the C.O about it then the CO retaliates against you. (pdf 19, 36)
- Because its worthless and takes a long time (pdf 21, 172)
- Because it is a farce, an attempt to make the system look humane but is corrupt (pdf 21, 324)
- Because if you're not willing to go to court, it would make no sense since most if not all grievances are shot down and it takes years to appeal to Albany (pdf 22, 92)
- Lost faith in the process (pdf 23, 20)

#### **Has access to supervisors: 6**

#### **Fear count: 10**

##### **QUOTES**

- I was in honor block and feared I would lose my housing (pdf 9, page 20)

#### **Pending Criminal Appeals: 1**

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### Miscellaneous/Other: 15

#### QUOTES

- I'm not too sure why honestly
- What the point
- Because rules oppose my past troubles (pdf 13, 28)
- Cause the police keeps playing with food (pdf 16, 44)
- Mistake is terrible (pdf 19, 60)

### No Knowledge how: 5

#### QUOTES

- Because I don't understand program (pdf 22, 308)
- Because I can't write and understand English (pdf 25, 284)

### No response count: 121

## D20: Do you think incarcerated individuals are afraid of filing grievances, if yes, why?

### Retaliation count: 360

#### QUOTES

- Cos once you do, they fuck with you shit, mail, commissary, pks, etc. And sometimes beat you up (pdf 9, page 4)
- The CO's will kick your ass and set you up not to go home like they did me (pdf 14, 12)

### Violence/Threat of violence: 12

#### QUOTES

- It puts a target on your back some COs are worse than inmates (pdf 14, 76) (x2)
- Because they will get beat up (pdf 15, 12)
- Cos of beat up squad (pdf 16, 44)

### Ineffective system: 25

#### QUOTES

- Because nothing happens over it
- Not afraid, just find the process not helpful and a waste of time (pdf 22, 220)

### Lack of education: 5

#### QUOTES

- Some I/I's cannot read or write a grievance (pdf 8, page 68)

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### Miscellaneous/Other: 7

#### QUOTES

- Well be went filing a grievance like anything in prison. Everyone knows about it (pdf 13, 20)

### Fear: 2

### No response: 81

## D22: Retaliation from filing a grievance? If yes, from whom? And what kind of retaliation?

### Violence count: 46

#### QUOTES

- CO's beat me up, took me off the cams, lie and said, "we need to talk about your grievance" (pdf 9, page 4)
- I grieved a CO in Gowanda in XXXX. The sgt has me brought to his office and made the officers beat me until I signed off on the grievance. Then they out me in the box for fake charges on Christmas eve (pdf 11, pg 12)
- The officers beat me many times and destroyed all my property (pdf 12, pg 4)
- I grieved a man for not letting me outside at loss of rec time he told me he was going to break my jaw and repeatedly kicked me out of the yard (pdf 15,36)
- Officers in Gowanda C.F beat me up while cuffed in a elevator (pdf 17, 68)
- I was assaulted by Gouverneur CF on XX/XX/XXXX in draft room by 3 officers. I grieved the issue then all of my food in property became missing (pdf 19, 76)
- The COs fucked up someone who filed a grievance (pdf 21, 4)
- From C.Os and their supervisors. I've been shown knives legit knives that I was threatened if I didn't sign off it would be said the (illegible) was in my cell (pdf 21, 44).
- Many times, I have been beat up, targeted, property thrown away, the staff have conspired to get gang members to stab me. Threats (pdf 21, 252)
- A SGT in Sing Sing, SGT Alvarato, beat my ass badly and planted weapon in my cell on XX/XX/XXXX (pdf 25, 84)
- But something similar – I contact PLS for some assistant and am facing retaliation. I urgently need someone to talk to (pdf 25, 180)
- I have been assaulted by officers, illegally confined in my cell, sent to SHU on trumped up charges (pdf 26, 108)

### Transfer count: 26

#### QUOTES

- I was threatened and harassed until I accepted a transfer (pdf 17, 4)
- I was removed to another facility before they can even call me down for the

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grievance (pdf 21, 100)

- And I was told by one if I do not remove my grievance, they will keep me in I.C.P
- More SHU time (pdf 22, 156)

### **Denied Basic amenities (Food, phone, shower, phone, tablet, etc): 46**

#### **QUOTES**

- I was denied chow, recreation, kiosk, written false behavior reports, been threatened to sign off on the grievance (pdf 12, 44)
- Staff – they would cut my power off and set up fights between inmates (pdf 12, 68)
- Commissary sheet not given (pdf 14, 42)
- Denied notary, law library services, recreation for 352 days. Personal information disclosed to the general population. Denied opportunity to run for IGRC rep, transfer from facility, threatened. (pdf 15, 76)
- Officers not letting me out for chow because I filled a grievance and mentioned their names (pdf 17, 29)
- I was not fed in SHU for days at a time (pdf 21, 68)
- C.O's spit inside food...(pdf 21, 124)
- Gallery officer in regard to shower consideration. Afterward, the same officer continued to not follow procedure when it was my time for showers (pdf 21, 268)
- When I filed a grievance about being assaulted by CO's they started putting chemicals in my food, I know this because I've ate my food plenty of times and I throw up blood and urinated blood from this and I have complaints on this (pdf 21, 340)
- I was stored in my cell for 3 days. My water was turned off (pdf 22, 108)
- C.Os assault. No food trays for 9 days (pdf 22, 132)
- I was denied food and held in the SHU for longer than my release date and day (pdf 23, 116)
- On numerous occasions, I was not able to go to callouts or meals. Because of my grievance in the past, some staff take it personal and not let people out of cells (pdf 23, 268)
- Was taken off special diet for complaining about two bread (pdf 25, 4)

### **Denied access to programs/work assignments: 17**

#### **QUOTES**

- Got me fired from mess hall when I won my ticket (pdf 11, pg 28)
- Removed from job post (pdf 19, 21)
- Removed from honor dorm. Filed grievance on officer using the N word (pdf 21, 276)
- The IGP Sgt. blocked me from certain programs (pdf 23, 20)
- CO Kelly. I was removed from school for a semester (pdf 24, 140)



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### Confiscated items /cell search count: 51

#### QUOTES

- From Correction Officers who were constantly searching my cell for no legal reason (pdf 14, 68)
- Attica – cell searches, harassment, property discarded, etc (pdf 22, 340)

### Threats/Intimidation: 31

#### QUOTES

- Even if you win the grievance, they do whatever they can to ensure you're miserable following (pdf 20, 12)
- Officer Lamika, he pat frisked me everyday while taunting me about the grievance I wrote (pdf 23, 52)

### Package room count: 21

### Verbal Abuse: 10

#### QUOTES

- Verbal threats by C.O, example GH-XXXXX-XX, C.O Lazerson – stated I would die in prison if I filed grievance (pdf 21, 316)
- Verbal abuse from officers saying stop writing grievance it wont help you. No one will (pdf 23, 92)

### Sexual Assault: 3

#### QUOTES

- The CO's have tried to rape me when I had my radio/hotpot taken out of my cell when I went to the SHU (pdf 27, 108)

### Medical access count: 5

### Falsified misbehavior reports: 24

#### QUOTES

- I received a tier 3 misbehavior report (pdf 17, 44)
- I was sexually assaulted by C.O Connie Rigoli. I notify O.S.I. whom informed Rigoli. I was falsely writing misbehavior report ranging from lewd conduct, threat, direct order (pdf 21, 348)

### Weapons/Evidence planted on I/I by CO: 14

#### QUOTES

- From officers who see it as snitching on them. I was set up with a weapon I never owned (pdf 15, 60)
- From State officials, they planted a weapon on me just like I reported that would happen...(pdf 22, 212)

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### Miscellaneous/Other: 32

#### QUOTES

- From the staff, made me on pressure
- COs with name tag hidden
- Officers
- COs (pdf 14)
- No, but I've witnessed it (pdf 14,52)
- Not getting the partial (pdf 18, 28)

### Refused to answer: 4

#### QUOTES

- That's a long story
- Now you're asking me to put myself at risk, but for what (pdf 22, 148)

### No response: 200

## D24: Withdrawn a grievance before a hearing? If yes, why?

### Resolved count: 71

#### QUOTES

- I grieved a missing property bag here at Upstate CF and then a week later it showed up with all its belongings inside (pdf 19, 77)

### Fear: 5

#### QUOTES

- Did not want to go to the SHU
- Fear for my life (pdf 26, 165)

### Intimidation/retaliation: 63

#### QUOTES

- The way they come at you as it is a threat or else then the way your spoken to by security staff is another story like your damned from the start period (pdf 14, 29)
- Fear of retaliation. I just did so this very day for this exact reason – XX/XX/XXXX (pdf 19, 20)
- IGRC inmate workers persuade you to because police pressure them to (pdf 19, 37)
- I was threatened by C.O's (pdf 21, 60)
- Pressure by correctional officers and Sergeant and staff (pdf 21)
- Fear of retaliation or issue was resolved (pdf 21, 148)
- Because they told me if I keep going with it, I will have a lot of problem. Th CO's use inmate to beat on others if we keep up with the procedure (pdf 21, 301)
- Other C.Os come in their colleagues' places and try getting you to sign off (pdf 21, 373)
- Because they told me they were going to kill me (pdf 22, 293)

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### Ineffective system: 24

#### QUOTES

- They are not going to help (pdf 23, 29)

### Personal reason: 4

#### QUOTES

- Just because I changed my mind
- felt it was in my best interest (pdf 16, 21)

### No response: 321

## E4: what are your thoughts on the informal resolution of grievances? Is it an effective process?

#### WHY, OR WHY NOT?

- Yes, when the facility adheres to the resolution. This allows the facility to ‘correct’ problems without admitting fault
- Grievance don’t work most of the time
- Not fair to prisoner. Always geared toward saving the career of a staff member
- I never heard back for it to be effective
- It can be but it is not. The inside look out for each other
- Nothing is ever resolved unless you challenge DOCCS in outside court by civil suit or Article 78
- Depends on the matter. Medical, police brutality, systemic denial of prison services are very hard to resolve informally. Simpler matters such as getting a common supply item, or a broken phone fixed appear to be the only matters effectively addressed. (Pdf 7, page 65).
- It can be but it is not. IGP supervisors are more biased against the I/I population (pdf 8, page 23)
- No, this shit is bullshit. These KKK CO’s gotta go I’m not playing. These CO’s hate Black people or City People (pdf 9, page 5)
- Really depends on the issue. For minor problems, yes, it is effective (pdf 9, page 21)
- He basically told me that I could not win, that I might as well drop the issue (pdf 9, page 45)
- No, it is not effective because most grievance against employees of the state don’t get processed (pdf 9, page 61)
- I’m not even sure what an informal resolution consists of (pdf 10, page 53)
- Yes, I feel that if it can be solved at the lowest level possible, then that’s what’s best. We are all humans, and all make mistakes
- It’s not an effective process because no resolution was ever met or agreed upon to begin with (pdf 11)

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- No its not an effective process. Cos you can win and nothing happens, nothing changes. Its like you never put it in in the first place (pdf 11, 29)
- No...you barely get results (pdf 11, 45)
- No they side with the system regardless to them a criminal is a criminal (pdf 14)
- I have not experienced any efforts of informal resolution. The process has always been file, receive grievance number, an official investigates the complaint, and then hearing is held (pdf 15, 29)
- The top supervisor never fully advice you of your options (pdf 15,45)
- Its bot effective, due to no help from the helper (pdf 20, 5)
- No because nothing is done besides on there time. Research is done, just we will get back to you and never do (pdf 21, 141)
- The IGP supervisor is one sided and does everything possible to encourage you to sign off on complaints (pdf 24, 77)

### **E28: Can you describe how the grievance program impacted your litigation, if at all?**

- Grievance program never helped me at all.
- I was fairly helped
- Prolonged it
- Its (grievance program) basically just a formality and something prisoners must do in order to go to court but doesn't help that they don't properly investigate grievances and lie about them.
- All I showed was I used the whole process before I sued.
- It did not impact my litigation (pdf 8, page 23)
- It impacted how correction officers treat me (pdf 10, page 7)
- They don't want to investigate code 49 grievances and 100% of the time agree with officers
- I let it go instead of following through. I would've won in court
- Officers threaten to send me to SHU
- It was ineffective. But the CO never submitted the grievance or appeals. The officer throw them away in the trash. (pdf 16, 31)
- It takes years for IGRC/CORC to send final report/ruling (pdf 18, 39)
- The IGP allowed me to prove there was knowledge of faulty recreation equipment (pdf 21, 271).
- They beat me up badly (pdf 21, 295).
- It compelled me to learn about and how to submit an ARTICLE 78 (pdf 24, 63)
- The grievance program is being used to deny inmates the opportunity to pursue further litigation (pdf 24, 183)

## APPENDIX E | Note On Margin Of Error And Responsiveness

For survey questions that applied to all respondents who had filed at least one grievance, the margin of error at the 95 percent confidence level ranged from 3 to 6 percent, which is well within accepted standards for surveying populations. For survey questions that applied only to a given subset of the surveyed population (e.g. those who have filed a Code 49 or those who have had a grievance dismissed or denied), the margin of error was at times slightly higher due to the smaller number of respondents. The margin of error for these questions fell between 3 and 14 percent, and only five questions (E9, E10, E11, E12, E25) had a margin of error above 8 percent.

Representativeness is crucial in a survey with random sampling because it ensures that the sample accurately reflects the diversity of the overall population, allowing for valid and generalizable conclusions to be drawn from the data. The respondents in our sample closely mirrored the demographic characteristics of the broader population, differing only in median age, which was 30-39 for the broader population and 40-49 in the sample respondents. There are slight variations by race, but the differences are generally smaller than our margin of error, which suggests that the observed variations are likely due to random sampling variation rather than true disparities in the population.

## APPENDIX F | DOCCS Response

This responds to the Correctional Association of New York's (CANY) report on the findings from a systemwide survey of the Department of Corrections and Community Supervision population regarding the Incarcerated Grievance Program (IGP).

While this is a systemwide survey, it is important to note that each of the determinations found in the CANY report are based on survey responses of approximately 1.7% (540 ÷ 30,968) of the entire population under custody in correctional facilities in September 2022. This is a very minute sample, and the findings appear to be mostly based on incarcerated individuals' beliefs and perceptions of what they *think* is happening.

Unfortunately, if an incarcerated individual chooses not to utilize the IGP for its intended purpose (i.e., complaint resolution) and is only utilizing it to exhaust administrative remedies under Prison Litigation Reform Act, as CANY indicates that 47.3% are solely utilizing the IGP for exhaustion, it would appear that no matter the outcome or findings found through the grievance mechanism, the individuals utilizing the program for this sole purpose would find the results to be immaterial or unacceptable to the grievant.

The remainder of our responses, for the purpose of this preliminary report, will focus on the conclusions portion of the report rather than the body of the report, as follows:

- ***“There are misunderstandings about which issues are viable, leading to dismissals at the first stage.”***

The IGP Supervisors are made aware of the appropriate reasons that the IGRC can vote by majority to dismiss and close a grievance. These reasons are outlined in Directive #4040, § 701.5, (b), (4), (i), which the IGP Supervisors and IGRC representatives have access to, and all incarcerated individuals can review through the Law Library. If an incarcerated individual feels that their grievance was improperly dismissed and closed by the IGRC, they may apply to the IGP Supervisor for review within seven (7) calendar days following receipt of the IGRC's response. If the grievance is found to have been improperly dismissed, the grievance will be returned to the IGRC for a new hearing and recommendation. If the IGP Supervisor finds that it was properly dismissed, the incarcerated individual retains their right to file a separate grievance that the IGP Supervisor failed to reinstate an improperly dismissed grievance in accordance with Directive #4040, § 701.5, (b), (4), (iii).

- ***“Most people did not vote for the IGRC reps and don't trust them to represent their issues.”***

Many facilities follow a very similar format when it comes to the election process, with minor modifications based on local facility operations. The IGP Supervisors conspicuously posts the nomination and election procedures in multiple areas of the facility (ex. housing units, mess hall, libraries, programs areas, etc.) at least five (5) days prior to nominations

## APPENDIX F | DOCCS Response

being accepted and elections being held. Participation is voluntary and elections are held at a minimum of every six (6) months and all incarcerated individuals who meet the minimum qualifications outlined in Directive #4040, § 701.4, (b), (1), are provided the opportunity to express their interest in running. The completed ballots are routinely counted by ILC incarcerated individuals under the supervision of the IGP Supervisor to ensure a fair election.

If there are only two interested candidates who qualify for the position, then those two are automatically appointed as the IGRC representatives by default and no election is held because they would be the only two candidates on the ballot (write-ins are not allowed).

Similar to society, the decision to vote in any election is that of the populous.

- ***“The IGP supervisor’s role is unclear to most incarcerated people.”***

The IGP Supervisor supervises and coordinates the activities of the facility IGRC, and ensures that every incarcerated individual has full, appropriate access and use of the IGP. In addition, they are responsible for: ensuring the facility IGP is operating in accordance with all applicable Departmental Directives and regulations; reviewing complaints received in the IGRC office to determine if they are timely; designating the grievance codes and titles; determining whether a complaint should be directly forwarded to the Superintendent for review for processing under the expedited procedures outlined in Directive #4040, §§ 701.8 – 701.10; reviewing IGRC dismissals for appropriateness when an incarcerated individual applies for such; granting timeframe extensions for filing grievances and/or appeals when mitigating circumstances exist; preparing and forwarding appeals to CORC; and conducting weekly IGP rounds in areas of the facility where incarcerated individuals are unable to obtain physical access to the IGRC office.

- ***“Medical grievances are routinely dismissed at facility level because the IGRC lacks expertise.”***

There are very few circumstances where it would be appropriate to dismiss a medical grievance and facility IGP Supervisors and IGRC members are aware of this. “Dismissals” of medical grievances are very rare, not routine. DOCCS believes CANY is confusing a “dismissal” with a “denial”. Any “denials” can be appealed by the grievant to the facility Superintendent in accordance with the established procedures for any other complaint types. It is important to note that IGRC responses are written in the form of a recommendation, regardless of the grievance code/subject matter, and the IGRC has the ability to pass any grievance, including medical grievances, through to the Superintendent in order for the grievant

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to receive an expeditious and appropriate response if they feel it is warranted.

- ***“Explanations for denial or dismissal rarely address points raised in grievances.”***

While there is no requirement to address the points raised in a grievance that have been appropriately dismissed and closed by the IGRC, the IGRC response must include the appropriate reason for the dismissal in accordance with Directive #4040. Facility IGRC's also try to advise the incarcerated individual of the appropriate avenue to address their particular concerns so that they can attempt to resolve these and similar issues in the future. Denials routinely address the issues at hand in order to explain the reasoning behind the action requested being denied. It should be noted that if an incarcerated individual does not feel that a facility response adequately addresses the issues in their grievance, they have the right to appeal that grievance to the next level of review.

- ***“It is unclear when the grievance process is exhausted when time limits are not met.”***

DOCCS' position has always been that the IGP process is considered exhausted once the matter has been heard and decided by CORC and a formal CORC disposition has been rendered. This assertion has been included several times in affidavits, declarations, and court hearing testimony.

- ***“Decisions in favor of incarcerated people are not always implemented.”***

If a facility decision is not implemented or subsequently adhered to within 45 days, the incarcerated individual can appeal to CORC citing lack of implementation as a mitigating circumstance as outlined in Directive #4040, §701.5, (c), (4). In addition, for CORC decisions, verification of compliance regarding any action required by the facility is obtained prior to CORC issuing a disposition. If such verification cannot be obtained prior to a CORC disposition being issued because the action is ongoing, the facility is notified by the IGP Director that the appropriate action must be completed, and verification of such action provided to CORC. This is accomplished via an action letter, which is routinely monitored by Central Office until verification is obtained from the facility.



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- ***“Staff harassment grievances (Code 49) are often misfiled as something else.”***

In accordance with Directive #4040, “Incarcerated Grievance Program,” facility Superintendents determine if a grievance complaint rises to the level of needing to be designated and investigated as a Code 49 – Staff Conduct complaint based on if the allegations, if true, would represent a bona fide case of harassment or unlawful discrimination. Nonetheless, regardless of the code or title of a grievance, all of the allegations contained therein are investigated and addressed. The mere inclusion of the word “harassment” or “discrimination” in a grievance complaint does not solely necessitate it being filed as a Code 49.

- ***“The IGP does not apply to all aspects of incarceration.”***

Correct, and it should not apply to all aspects of incarceration as there are many areas which have their own established, written appeal mechanisms to address incarcerated individual concerns and allow for a proper investigation to be conducted and the issue to be addressed. This allows DOCCS to utilize its staff and resources more efficiently and effectively. In addition, grievances concerning the actions or policies of outside agencies or service providers is considered non-grievable as DOCCS does not have the authority to investigate such entities or require them to take a specific action. As such, the IGP has no jurisdiction as outlined in Directive #4040, § 701.3, (f).

- ***“Many incarcerated people cite inaccessibility of the drop box or cannot access forms.”***

Grievances are not required to be submitted on a Grievance Complaint Form. Grievances can be written on a plain piece of paper, placed in a sealed envelope, and submitted to the IGRC office through regular correspondence. This is applicable to every incarcerated individual regardless of which area in the facility they are housed (i.e., SHU, RRU, GP, Infirmary, etc.).

- ***“There is uncertainty over whether grievances arrive at the IGRC after being filed.”***

Effective January 2, 2023, a new statewide procedure was implemented which requires for a written notification of receipt to be provided to an incarcerated individual when their grievance complaint is filed. An announcement of this new procedure, see attached, was distributed to facility Superintendents on December 20, 2022, to be posted conspicuously on all housing units, and in the General and Law Libraries. The procedure directed incarcerated individuals to contact the IGP Supervisor if they did not receive written notification of receipt within seven (7) calendar days of a

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grievance being submitted to verify that it was received and/or to allow sufficient time for the incarcerated individual to resubmit it in the event it was not received. This should alleviate any concerns over whether a grievance has been received and filed or not.

- ***“Only a small minority of grievances were resolved within time limits specified by the department.”***

Every effort is made to address and/or resolve grievances within the specified timeframes at each level of the grievance process, however, multiple factors, including, but not limited to the complexity of the issues raised; length of the grievance; number of issues raised in the grievance; availability of staff necessary to respond to the allegations; and coordination with other facilities and/or Central Office to conduct investigations and reviews, may affect the amount of time necessary to ensure all issues are completely and accurately addressed. If a grievance is not answered within the specified timeframes at the facility level, the incarcerated individual has the right to appeal to the next level of review, in accordance with Directive #4040, § 701.6, (g), (2).

- ***“There is widespread retaliation and corresponding fear from filing grievances.”***

The IGP is non-adversarial, and reprisals are prohibited. An incarcerated individual may pursue a complaint that retaliation has occurred through the grievance process, as outlined in Directive #4040, § 701.6, (b). The incarcerated individual is also encouraged to bring retaliation claims to the attention of supervisory staff at the facility, at the time of incident, for any remedial action warranted. If they feel uncomfortable reporting to facility supervisory staff, an incarcerated individual may also address their concerns to the Office of Special Investigations (OSI).

- ***“Most people do not perceive the IGRC, IGP, Superintendent, or CORC as fair.”***

The purpose of the grievance program is to promote mediation and conflict resolution, and to clarify local and Departmental policy and procedure. The IGP makes every effort at all levels of the grievance process to fulfill its intent and to provide incarcerated individuals with everything to which they are entitled to by law and/or in accordance with Departmental policy.

- ***“There are very low rates of grievances being found in incarcerated peoples’ favor.”***

The ultimate outcome determination of a grievance is based upon the action requested by the incarcerated individual. If the incarcerated individual requests a service or item to which they are entitled, the grievance will be

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found favorable in relation to the action requested. Conversely, if an incarcerated individual solely requests adversarial actions to be taken or requests a service or item they are not entitled, the grievance may be found unfavorable in relation to the action requested irrespective of the allegations raised in the instant complaint. Currently, the facility IGRC and Superintendent do not have the ability to “Accept In Part”, this option is only available at the CORC level. Grievances at the facility level can only be found favorable or unfavorable.

The Department remains committed to ensuring that incarcerated individuals are provided with an orderly, fair, simple, expeditious, and non-adversarial mechanism to resolving grievances and allegations of discriminatory treatment. The program is intended to supplement, not replace, existing formal or informal channels of problem resolution. To that end, we are continually reviewing our policies and procedures to ensure they are administered based on the intent of the policy and undergo a continuous process improvement.

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### Corrections and Community Supervision

KATHY HOCHUL  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

#### MEMORANDUM

**TO:** All Superintendents  
Facility IGP Supervisors

**FROM:** Anne Marie McGrath, Deputy Commissioner

**SUBJECT:** Notification of Receipt of Grievances

**DATE:** December 20, 2022

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In response to litigation matters and to ensure consistency statewide, effective Monday, January 2, 2023, each facility Incarcerated Grievance Program (IGP) office will be required to issue a written notification of receipt when a grievance complaint is filed and assigned a formal grievance number.

Notification shall be provided in the following manner and must be sent to the incarcerated individual within one (1) working day of the grievance filing date:

- 1.) Make a copy of the 1<sup>st</sup> page *only* of the grievance complaint.
- 2.) In the top right corner of the copy, write the grievance #, title, code, and date filed.

\*Please note that the above notification procedure does not apply to grievances designated a Code 49.1 – Sexual Abuse or 49.2 – Sexual Harassment. There is already an established statewide notification process in place for these types of grievances, which should continue to be followed.

Thank you for your continued cooperation and efforts as we strive to improve and standardize the IGP process. Please refer any questions or concerns regarding this matter to your facility's assigned IGP Regional Coordinator.

Cc: Daniel F. Martuscello III, Acting Executive Deputy Commissioner  
Cathy Y. Sheehan, Deputy Commissioner and Counsel  
Rachael Seguin, Director, IGP  
Chris VanBergen, Assistant Director, IGP  
Central Office IGP Coordinators and Supervisors

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### Corrections and Community Supervision

KATHY HOCHUL  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

#### **AVISO A LA POBLACION ENCARCELADA**

##### **Notificación de Recibo de Querellas**

A partir del lunes, 2 de enero de 2023, cada oficina institucional del Programa de Querellas del Encarcelado (IGP) empezará a entregar notificación escrita de recibo cuando se someta una querella y se le asigna un número formal de querellas.

Si usted no recibe notificación escrita dentro de siete (7) días calendario de someter una querella a la oficina institucional IGP y no ha firmado la querella, favor de escribirle directamente al Supervisor IGP en la institución donde se sometió la querella para averiguar acerca de su estado.

Como recordatorio, de acuerdo con la Directiva 4040, § 701.5 (a) (1), una querella tiene que someterse dentro de veintiún (21) días calendario de un suceso alegado. La querella sólo puede someterse en la institución donde está alojado, aunque tenga que ver con otra institución.

**FIJE EN TODAS LAS UNIDADES DE VIVIENDA, BIBLIOTECA GENERAL Y LA BIBLIOTECA LEGAL HASTA EL 10/02/2023**

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### Corrections and Community Supervision

KATHY HOCHUL  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

#### **NOTICE TO INCARCERATED POPULATION**

##### **Notification of Receipt of Grievances**

Effective, Monday, January 2, 2023, each facility Incarcerated Grievance Program (IGP) office will begin issuing a written notification of receipt when a grievance complaint is filed and assigned a formal grievance number.

If you do not receive written notification within seven (7) calendar days of submitting a grievance complaint to the facility IGP office and you have not signed-off on the complaint, please write directly to the IGP Supervisor at the facility where the grievance was submitted to inquire about its status.

As a reminder, in accordance with Directive #4040, § 701.5 (a) (1), a grievance complaint must be filed within twenty-one (21) calendar days of an alleged occurrence. The complaint may only be filed at the facility where you are housed even if it pertains to another facility.

**POST ON ALL HOUSING UNITS, GENERAL LIBRARY, AND LAW LIBRARY UNTIL 02/10/2023**

# “Smoke Screen”: Experiences with the Incarcerated Grievance Program in New York State Prisons

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