

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS



ASSESSMENT OF THE
OFFENDER GRIEVANCE PROGRAM

JANUARY 1982 THROUGH DECEMBER 1989

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OFFENDER GRIEVANCE PROGRAM**

JANUARY 1982 THROUGH DECEMBER 1989

BY

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INTRODUCTION

Grievance processes nationwide have now had several years of experience since passage of the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) and the subsequent publishing of the Federal Standards for Inmate Grievance Procedures in October of 1981. Such procedures vary substantially in structure and sophistication among the many jurisdictions implementing or revising existing grievance processes since 1981. All, however, have the same basic goals: (1) to establish an orderly process through which inmate complaints can be dealt with in a fair and timely manner; and (2) to reduce costly litigation.

The following report, in the form of commentary and statistical analysis, is the first comprehensive assessment of Washington's Offender Grievance Program and its ability to deal effectively with offender-reported problems. It has been developed to inform administrators of the Program's history, successes, and problems. The contents will serve as a base for administrators as they develop a blueprint for Program operations in the 1990s.

A review of the Program and development of an action plan is necessary if it is to remain effective in the next decade.

ASSESSMENT OF THE OFFENDER GRIEVANCE PROGRAM JANUARY 1982 THROUGH DECEMBER 1989

EXECUTIVE SUMMARY

This report is submitted to inform correctional managers of the history of the Offender Grievance Program. Administrators need to know what has worked well for the Program in the past, as well as what has not, as they develop a blueprint for its operations in the 1990s. As with most other programs in the department, the Grievance Program and its finite resources will be severely affected by the projected doubling of the offender population by 1996. It is time to evaluate the Program's current structure and operations and plan to meet the challenges which lie ahead.

The Grievance Program began in August of 1980 as a one-year pilot project at the Washington State Penitentiary. Learning from the Penitentiary's experience, a standardized grievance procedure was implemented at all institutions within the Division of Prisons in January, 1982. Community residential facilities implemented the grievance procedure in April of 1982 and, in October of 1984, it was established in community supervision offices. Currently, all offenders under the department's jurisdiction have access to the grievance procedure.

The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) encourages all correctional facilities to establish an effective grievance mechanism. The statute also mandated that the U.S. Attorney General establish and publish minimum standards for these programs. Those standards were published in the Federal Register on October 1, 1981, as the Standards for Inmate Grievance Procedures. The U.S. District Court, Eastern District of Washington, found that the Penitentiary's grievance procedure was in substantial compliance with those standards and certified it as such by General Order dated May 25, 1984. The department applied to the U.S. Attorney General on August 1, 1984, for certification of its remaining institutions. No formal response has been received.

Offenders departmentwide initiated 51,148 formal grievances between January 1, 1982, and December 31, 1989. Of those, 21,151 (41%) resulted in positive action being taken on behalf of grievants. A purpose of CRIPA is to reduce the volume of lawsuits filed by inmates in federal courts by providing administrative remedies through grievance mechanisms. Although it cannot be proven statistically, surely some of the grievants receiving positive action to their complaints during the past eight years did not file or subsequently withdrew litigation. CRIPA also provides for courts to require mandatory exhaustion of administrative remedies by inmates prior to filing litigation and for courts to stay litigation for up to 90 days while inmates pursue administrative remedies. These provisions apply only to grievance systems found to be in substantial compliance with the minimum standards by either the U.S. Attorney General or a U.S. District Court.

Following certification of the Penitentiary's grievance procedure, the Eastern District Court began requiring inmates to exhaust administrative remedies before proceeding in federal court. It also stayed 43 cases previously filed while the plaintiffs pursued administrative remedies. Of the 43 cases stayed, 27 (or 63%) were subsequently not pursued or withdrawn by inmates. Forty-three cases, however, do not provide sufficient data to predict the success of the remand process in the long-term. The Eastern District Court has not stayed cases since early 1986, although the process was evidently working as designed.

The Offender Grievance Program has proven to be an effective tool for dealing with offender-reported problems. It is also a time-consuming process for staff actively involved in the resolution of grievances, a problem directly attributable to a small number of inmates in the Division of Prisons who abuse it. For example, 49 identified inmates submitted 8,676 complaints during 1986 - 1989, accounting for 15 percent of that Division's total of 58,479. They and others like them do file some grievances in goodfaith efforts to resolve real problems. Many others, however, are filed with the intent of clogging the grievance mechanism, fighting the prison system, and harrasing staff. Coping

with this abuse without compromising basic principles or Program quality is a key challenge for the future.

An addendum to this report reflects projected populations and grievance activity from 1990 through 1996. It also details several areas within the Program that are of concern, each followed by a series of questions which administrators must address. The grievance mechanism in Washington State works well, but it can be even more effective.

HISTORY OF THE OFFENDER GRIEVANCE PROGRAM

A grievance procedure was implemented at the Washington State Penitentiary in August of 1980 as a one-year pilot project following a riot at that institution the previous year. A six-tiered process, it made provisions for review of grievances by persons not under the jurisdiction of the department and established the Secretary of the department as the final appellate authority in the process. Provisions were also made for inmate grievance investigators and clerks, and for inmate participation on committees which heard inmate grievances. The process proved too cumbersome, costly in respect to staff time dedicated to it, and subject to abuse by inmate investigators, inmate clerks, and inmate committee members.

Learning from the Penitentiary's experience, a modified version was implemented at the other DOC institutions on August 9, 1981, and a standardized DOC Grievance Manual was published in November of that year. The Penitentiary modified its procedure in December, 1981, to become consistent with the other institutions. By January, 1982, all institutions within the Division of Prisons (DOP) were operating under standardized grievance policies and procedures. The U.S. District Court, Eastern District of Washington, certified¹ the Penitentiary's grievance procedure and the department's Grievance Manual on May 25, 1984. The department applied to the U.S. Attorney General on August 1, 1984, for certification of its remaining eleven institutions. No formal response has been received regarding that application.

Work/training release and pre-release facilities (community residential facilities) within the department's Division of Community Corrections (DCC) implemented the grievance procedure in April of 1982, adopting the same structure and processes used in the institutions. When DCC community supervision offices adopted a modified version of the procedure (three formal levels instead of four) in October, 1984, all offenders under the department's jurisdiction became eligible to use the Offender Grievance Program. Offenders under the jurisdiction of the Division of Community Corrections have for the past eight years submitted less than one percent of all complaints received annually. Only one offender under its jurisdiction was infracted for submitting a malicious complaint and none were deemed quantitative abusers of the Grievance Program during the eight years under study.

The Grievance Program implemented a new, sophisticated management information system (MIS) on September 9, 1985, which is used to record all written complaints received as well as track formal grievances and appeals. Designed by the Grievance Program Manager and implemented by the department's Information Systems staff, Division of Management and Budget, the programming permits: remote data entry by local grievance coordinators; monitoring and auditing capability at Headquarters; indexing of complaints and grievances by individual offenders; on-line summary of individual complaints/grievances and their status within the grievance system; and on-site generation of statistical reports. This management information system allows analysis of offender-reported problems departmentwide, by division within the department, by facility or office within a division, or by program or living unit within a facility. The database also offers an excellent tool for analyzing the Grievance Program as a whole.

¹ Splitting hairs, both CRIPA and the federal grievance standards say that the U.S. Attorney General may certify a grievance procedure, while U.S. District Courts may find them in "substantial compliance." For the purpose of this report, "certified," when used in connection with the Washington State Penitentiary's grievance procedure, means that the U.S. District Court, Eastern District of Washington, has found that procedure to be in substantial compliance.

DEFINITIONS AND PROGRAM STRUCTURE

A knowledge of certain grievance terms and of the Program's structure (Levels) will assist the reader to better understand the contents of this report. They are presented below.

DEFINITIONS

1. **Complaint:** Written notification from a grievant to a grievance coordinator which details a specific issue or action affecting the grievant personally and about which the grievant desires to file a formal grievance.
2. **Grievance:** A typed, formalized version of a complaint which has been reviewed, signed, and dated by the grievant and the grievance coordinator.
3. **Appeal:** Submission of the formal grievance to a higher level of review when the grievant is dissatisfied with a response at a lower level.

STRUCTURE - INSTITUTIONS AND COMMUNITY RESIDENTIAL FACILITIES

Level 0 - also called the Complaint or Informal Level. All hand-written complaints are submitted to local grievance coordinators who determine grievability, attempt informal resolution, or determine which TYPE of grievance (Routine, Emergency, Staff Conduct or Reprisal) it is and initiate formal grievances.

Level I - Routine grievances against policy, procedure, practice, or another offender.

AND

Emergency grievances regarding life or health threatening situations. The grievance coordinator investigates and responds to all formal grievances initiated at Level I.

Level II - Grievance Committee composed of staff members. Reviews Routine grievances appealed from Level I. The offender may request an in-person interview with the Committee. When a grievance is against a policy or practice which affects all offenders locally, it is presented in edited form to an advisory committee comprised of both staff and offenders for review and recommendations prior to its being heard at Level II.

Level III - Superintendent or community residential facility administrator. Reviews Emergency grievances appealed directly from Level I and Routine grievances appealed from Level II. Formal grievances regarding Staff Conduct or Reprisal are initiated and investigated at this level.

Level IV - Division Director. Reviews appeals to Routine, Staff Conduct, and Reprisal grievances and is the final appellate authority in the grievance process.

STRUCTURE - COMMUNITY SUPERVISION OFFICES

Levels 0 and I - Same as above

Level II - DCC Area Assistant Director. Reviews Routine and Emergency grievances appealed from Level I. Formal grievances regarding Staff Conduct and Reprisal are initiated at this level.

Level III - Division Director. Reviews appeals to Routine, Staff Conduct, and Reprisal grievances and is the final appellate authority in the grievance process.

OVERVIEW
OFFENDER GRIEVANCE PROGRAM
1982-1989

Table 1, below, is an overview of grievance activity for calendar years 1982 through 1989. Because information regarding the total number of complaints submitted and how they were processed was not kept prior to September, 1985, the data below reflects only formal grievances initiated and the numbers resulting in positive action for grievants at any formal level (I through IV) of the process. "Positive action" is a measurement of how well the Program does in resolving a problem or meeting a grievant's suggested remedy. It occurs when a grievance is resolved in:

1. **Offender Favor** - The grievant receives exactly what he/she wants and in the manner requested;
2. **Compromise** - The grievant receives part of what was requested or all of it but not in the manner requested; and
3. **Offender Withdrawal** - The grievant voluntarily requests that the grievance be withdrawn for whatever reason.

The analysis of the 1986-1989 data later in this report will also include **Informal Resolution** at the complaint stage as a positive action. It means that a complaint was resolved informally by the grievance coordinator and did not become a formal grievance.

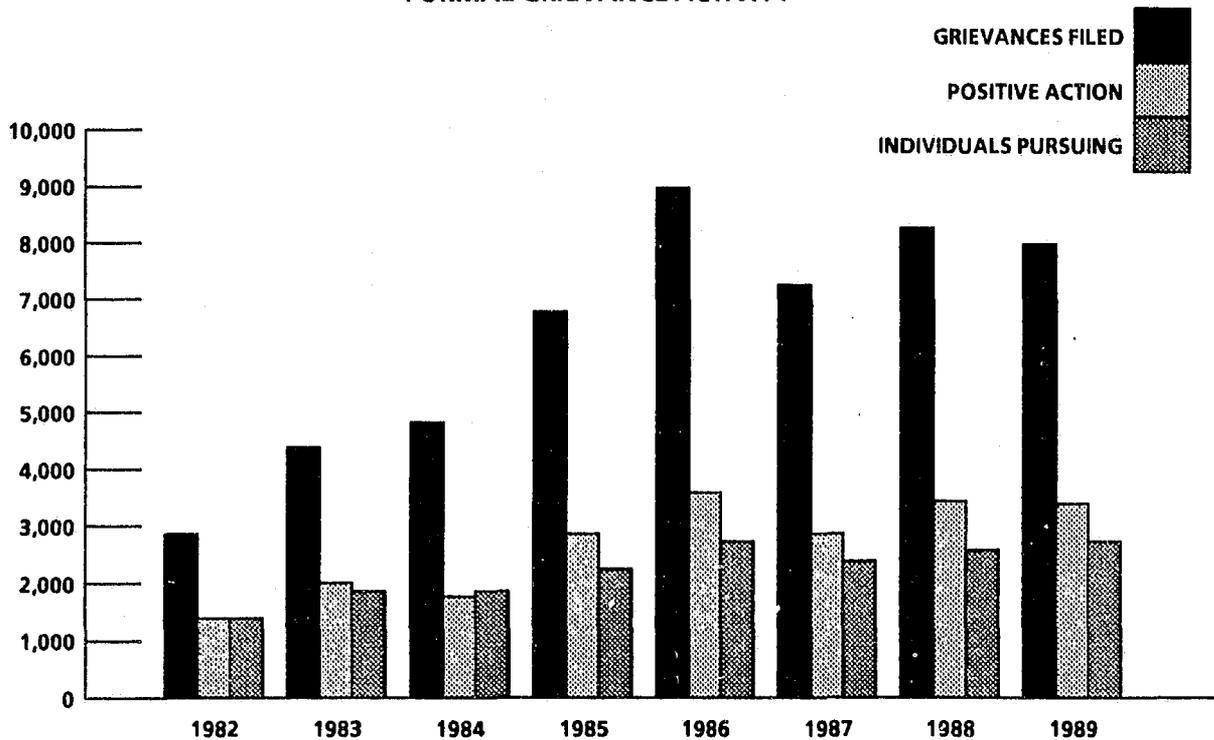
TABLE 1
FORMAL GRIEVANCE ACTIVITY

| <u>Year</u> | <u>Grievances Filed</u> | <u>Individuals² Pursuing</u> | <u>Griev. Per Individual</u> | <u>Positive Action</u> | <u>Positive Resolution</u> |
|---------------|-------------------------|-----------------------------------------|------------------------------|------------------------|----------------------------|
| 1982 | 2,834 | 1,381 | 2.05 | 1,361 | 48% |
| 1983 | 4,391 | 1,865 | 2.35 | 1,993 | 45% |
| 1984 | 4,794 | 1,844 | 2.60 | 1,753 | 37% |
| 1985 | 6,771 | 2,253 | 3.01 | 2,835 | 42% |
| 1986 | 8,933 | 2,731 | 3.27 | 3,568 | 40% |
| 1987 | 7,238 | 2,381 | 3.04 | 2,843 | 39% |
| 1988 | 8,235 | 2,594 | 3.17 | 3,414 | 41% |
| 1989 | 7,952 | 2,722 | 2.92 | 3,384 | 43% |
| Totals | 51,148 | 8,961 | 5.71 | 21,151 | 41% |

² An individual is counted once in each calendar year, whether he/she has initiated one or multiple formal grievances. The column total of 8,961 individuals is not a matter of addition but simply means that an individual is counted only once for the entire 8-year period under study, regardless of whether he/she initiated only one or multiple grievances. The grand totals for the 8-year period indicate the impact on the Program by those offenders with lengthy sentences who access it year after year. This is also true for the column labeled Grievances Per Individual.

Selected statistics from Table 1 are presented here in graph form as a visual aid to the reader.

**GRAPH 2
FORMAL GRIEVANCE ACTIVITY**



Calendar year 1982 was one of experimentation with the grievance process by both staff and inmates. Many staff held reservations about or were outright resistive to inmates having the right to grieve them. This attitude was largely eliminated during subsequent years due to training efforts by administrators and Grievance Program staff and because staff became familiar with the process. Offenders, on the other hand, used 1982 to gain familiarity with the procedures, assess the Program's fairness, and gain assurance that filing a grievance was not followed by reprisals. Calendar 1983 saw a thirty five percent increase over 1982 in formal grievances being initiated and pursued by offenders. It also recorded the first indications of quantitative abuse of the Program by a few inmates at various institutions.

Compared to 1983, 1984 was a year of comparative stability. Abuse of the Program by a few inmates continued to be an irritating but not paralyzing affliction. Grievance coordinators statewide began attempts to develop a method by which an abuser's access to the grievance procedure might be restricted, short of petitioning the courts for restraining orders in each individual case. (Their efforts would finally bear fruit in 1986.) The U. S. District Court, Eastern District of Washington, certified the Washington State Penitentiary's grievance procedure on May 25, 1984, and soon thereafter began remanding inmate complaints to the Penitentiary for possible administrative resolution through the grievance procedure. Those remands will be addressed on page 15 of this study.

Completion of the Intensive Management Unit (IMU) at the Penitentiary in mid-1984 and a similar unit at the Washington Corrections Center in January of 1985, plus the opening of the new 500-bed Twin Rivers Corrections Center in 1985, sparked a twenty-nine percent increase in the number of formal grievances being initiated in 1985 versus 1984. Although 1985 saw the first significant increase in the number of individuals accessing the Program (from 1,844 in 1984 to 2,253 in 1985, an increase of 409 individuals), it was the organized abuse by a few self-serving inmates numbering less than twenty-five which accounted for a disproportionate number of formal grievances being

initiated. That abuse worsened over the course of 1985, culminating in March, 1986, when five inmates at the Washington State Penitentiary's Intensive Management Unit submitted 466 complaints. Those five inmates comprised only 0.7% of the inmates in the Division of Prisons submitting complaints during that month but accounted for twenty-eight percent of the 1,679 complaints submitted divisionwide. Coupled with the increase in complaint and grievance activity in 1985 was the Program's inability to systematically track individual grievances through the grievance levels or to determine the filing habits of individual offenders. That inability led to the design and September 9, 1985, implementation of the Program's new management information system, described previously.

The first four months of 1986 saw ever increasing abuse of the Program. Though grievance activity declined significantly during the last eight months, the year closed with a twenty-four percent increase in formal grievances over 1985 and nearly double the activity recorded in 1984. During April of 1986, DOC Grievance Program Office staff and a Senior Assistant Attorney General met with the judges of the U. S. District Court, Eastern District of Washington, to discuss a policy which would establish a threshold at which point an offender deemed a quantitative abuser of the grievance process could have his/her access to the Program restricted. Approving the policy, the Court included it in its certification of the Penitentiary's grievance procedure. (Interestingly enough, the Grievance Program Manager later received a letter from an inmate who admitted to organizing the abuse, claiming to have done it to "document" everything that happened in the IMU by way of grievances, and stating that the department had over-reacted by implementing an abuse policy.) The Abuse Policy was then implemented departmentwide and, though invoked only six times from April 1986 through 1989, its very existence serves to deter many would-be abusers.

Formal grievances initiated during 1987 totaled an almost manageable 7,238, down 1,695, or nineteen percent, from 1986. Individuals pursuing formal grievances also dropped from 2,731 to 2,381--a total of 350 less individuals, or thirteen percent. The number of grievances initiated began to rise again in October of 1987 and continued through 1988 with the department's implementation of its Rent-A-Cell Program, which saw inmates from the federal system, other states, and the District of Columbia housed in DOC institutions. The impact of the federal boarders on the Grievance Program will be discussed in more detail on page 30 of this report. Calendar year 1988 saw 8,235 formal grievances initiated, an increase of 997, or twelve percent, over 1987.

1989 was a year of contrasts. With the gaining of approval for retention of memory typewriters by inmates at the Washington State Penitentiary, a few inmates began again to abuse the Program. They would mass produce complaints, then pressure other inmates into signing them. The rationale was that abusers could thus continue to clog the grievance process and fight the prison system without being subject to the provisions of the Abuse Policy. To their credit, most inmates who were pressured into signing duplicate complaints either withdrew them later at Level 0 or Level I, or let their grievances lapse after receiving the Level I response. The two full-time grievance coordinators at the Penitentiary found it necessary to use word processors to deal with the increased volume of grievance activity. This abuse ended by mid-year when institution administrators made it known that inmates would lose their memory typewriters if the abuse continued. Complaint and formal grievance activity dropped sharply. It decreased divisionwide even more in the latter part of 1989 when the Rent-A-Cell Program was phased out and most boarders were returned to their parent jurisdictions. So, while the first half of the year was characterized by intense grievance activity, the latter half was marked with relatively low volume. Calendar year 1989 saw 7,952 formal grievances initiated by 2,722 offenders departmentwide.

POSITIVE RESOLUTION

The Grievance Program processed 51,148 formal grievances between January of 1982 and the end of 1989. Of those, 21,151, or forty-one percent, resulted in positive action for grievants. Actually, the statistics for positive action are low. The Grievance Program Manager during 1987 and 1988 reviewed every grievance and appeal filed in 1982, fifty percent of those filed in 1983, and updated all

information regarding those grievances on the computer. Prior to the updating, positive resolutions recorded for 1982 was forty-two percent and for 1983, forty percent. With the review and correcting of the database, they rose six percent and five percent respectively. The Program Manager and his staff have since spot-checked at least thirty percent of all grievances and appeals filed in subsequent years, comparing the documents to the information entered in the MIS. The following information was found.

1. Grievance coordinators tend to be conservative by five to six percent per year in coding grievances as NOT receiving positive action when positive action actually did occur. This conservatism is more likely to occur at Level I, the level at which the grievance coordinator is most actively involved in formal problem resolution.
2. Two hundred fifty (250) or two percent of Level II or Level III appeals were not in the database at the time of the Program Office review. They were subsequently entered.
3. Grievance coordinators tend to negate positive resolution reflected in the database if the grievance was appealed to a higher level. For example, the coordinator may have taken action at Level I, achieving a compromise resolution or even one totally in the offender's favor. The grievant, for whatever reason, appealed to Level II. The Grievance Committee at Level II then concurred with the action taken at Level I. When subsequently entering the Level II Remedy and Resolution codes in the database, the grievance coordinator codes them as "situation unchanged" and "state favor," because the Committee did not take any further action. When the computer generates reports, however, it reads only the remedy and resolution of the last level to review the grievance. In the example just cited, the report would reflect the No Action coding at Level II, instead of the positive action taken at Level I. The coordinator, by such coding, has in essence cheated himself or herself out of a "win" in a report that may be reviewed by administrators or used for studies such as this one.

This problem was most prevalent during 1982 through 1986, when approximately four in ten Level II or Level III appeals were so miscoded. The error rate began declining in 1987 to its current level of about one in ten. Coordinators are told that if positive action for the grievant occurs at a lower level of review, then remedy and resolution codes at the higher levels of review must also indicate positive action unless the action or decision from the lower level is reversed.

Based on the above findings, it is projected that an additional 1,449 positive resolutions remain miscoded for 1983-89. Add that figure to the known 21,151 positive resolutions and the Program achieved 22,600 positive resolutions from 1982 through 1989, or forty four percent of the 51,148 formal grievances pursued over eight years. Which ever overall positive resolution figure is chosen (41% or 44%) however, the consistency shown over the eight year period in achieving positive solutions to problems of offenders demonstrates the effectiveness of the Offender Grievance Program.

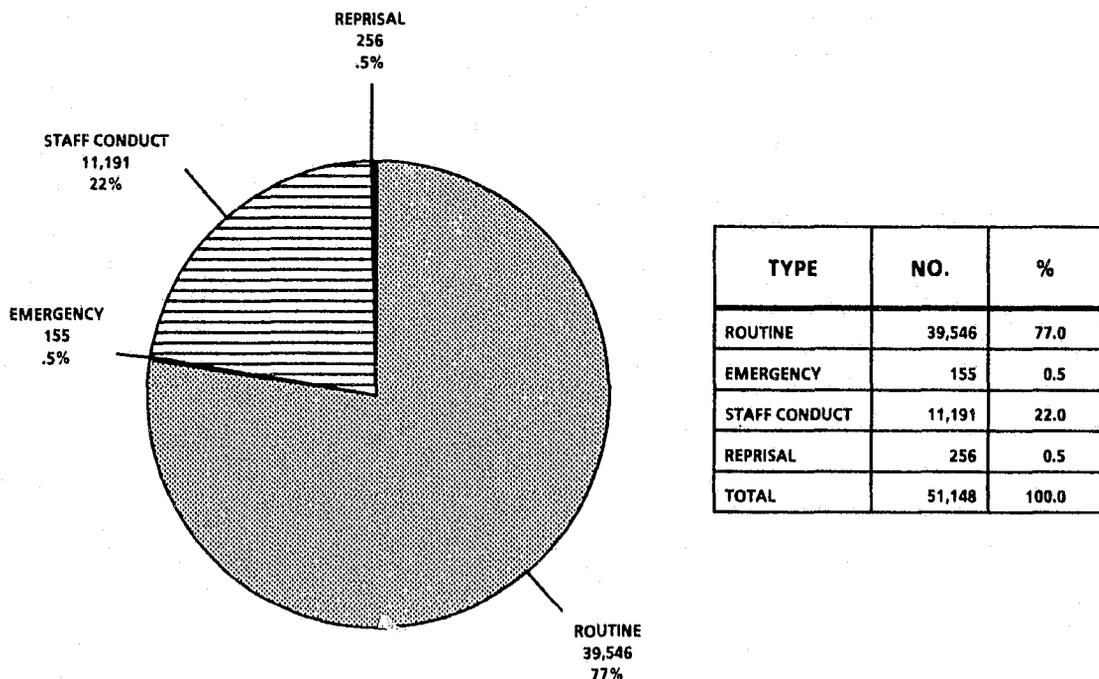
THE APPEAL PROCESS

Federal grievance standards state that a grievance procedure must include, at minimum, one level of review by an authority not under the jurisdiction of the local facility. Because it also states that an effective procedure is characterized by a higher number of resolutions at the lowest possible level, the Department of Corrections implemented two local levels of appeal in its institutions and community residential facilities. The Level II Grievance Committee is composed of at least three staff members and reviews Routine grievances appealed to it from the first level. The superintendent or facility administrator at Level III reviews Routine grievances appealed from Level II and Emergency grievances appealed directly from Level I. The final appellate authority (Level IV) in the grievance process for institutions is either the Director, Division of Prisons, or the Director, Division of Correctional Industries--whichever has jurisdiction in the matter. The Level IV authority for

community residential facilities is the Director, Division of Community Corrections. These directors also respond to appeals to Staff Conduct and Reprisal grievances, which are initiated at Level III.

The following chart indicates the number of grievances initiated during 1982-1989 by TYPE.

**CHART 3
TYPES OF GRIEVANCES FILED
1982-1989**



The following table indicates the number of formal grievances which were appealed to and resolved at the level of appeal indicated. Resolution in this case means that a decision was reached for or against the offender and the issue was not subsequently appealed higher.

**TABLE 4
APPEAL ACTIVITY
1982-1989**

| | <u>Level II</u> | <u>Level III</u> | <u>Level IV</u> | <u>Totals</u> |
|---------------|-----------------|------------------|-----------------|---------------|
| 1982 | 196 | 67 | 128 | 391 |
| 1983 | 476 | 235 | 321 | 1,032 |
| 1984 | 777 | 379 | 367 | 1,523 |
| 1985 | 1,336 | 631 | 539 | 2,506 |
| 1986 | 1,497 | 780 | 767 | 3,044 |
| 1987 | 1,198 | 678 | 664 | 2,540 |
| 1988 | 1,479 | 786 | 633 | 2,898 |
| 1989 | 1,265 | 731 | 777 | 2,773 |
| Totals | 8,224 | 4,287 | 4,196 | 16,707 |

As stated, Table 4 shows only the total number of appeals resolved at each level. No attempt is made here to analyze positive or negative action by TYPES of grievances processed at each level because of incomplete information for 1982-1985. Remedy and resolution by TYPE of grievance, and by level, will be discussed in the in-depth analysis of 1986-1989 data, later in this report. The table, however, does speak volumes in terms of workload at all three levels of appeal.

Except for 1986, which was a year of heavy use by inmates in the two Intensive Management Units, the most significant growth in the Program in terms of appeals came during 1985. A total of 1,523 appeals were processed at the various levels of appeal in 1984; 2,506 in 1985. The difference is an increase of 983 appeals, or sixty one percent, in 1985 versus 1984. The reasons are several.

1. Offenders in general were utilizing the appeal process in increasing numbers in the belief that they were required to exhaust administrative remedies before proceeding with litigation in either of the two U. S. District Courts in Washington State. This belief was fostered with the Eastern District Court remanding inmate complaints to the Penitentiary for review through the grievance procedure.
2. IMUs became fully operational, with their inmates using (and often-times abusing) all levels of the procedure.
3. The DOC Grievance Program Office became proactive in the process. Its once passive role of monitoring paperwork and review of local procedures became, in 1985, one in which it began reinvestigating grievances and drafting directors' responses to Level IV appeals, monitoring local coordinators' decisions of nongrievability and reversing those decisions where appropriate, designing and implementing an MIS capable of tracking complaints, grievances, appeals, and judicially remanded litigation, and initiating grievance "depth-training," i.e., training of all staff at a facility who would normally be expected to actively participate in the grievance process. The workload on the Grievance Program Office rose four hundred sixty percent between 1984 and 1988.

It is apparent that the Offender Grievance Program is generally functioning as intended when weighed against the purpose, cited below, for which it was created.

PURPOSE OF GRIEVANCE MECHANISM

Grievance mechanisms provide a means for every offender who feels aggrieved to have his/her grievance heard and dealt with in a formal manner. The Offender Grievance Program, however, does not supplant existing formal channels of communication and problem resolution. The Program does provide:

1. fair and prompt decisions and actions in response to individual offender complaints;
2. a regularly available channel for hearing and resolving concerns of offenders in ways that are generally acceptable to all parties;
3. a management tool for administrators to keep them informed of developing trends and specific problems so that they may be addressed in a timely manner;
4. a means to lessen conflict between offenders and the Department of Corrections;
5. administrative remedies to complaints that otherwise may cause an unnecessary burden on the courts; and
6. adherence to federal, national and state standards.

Yet the Program, both at Headquarters and locally, can not rest on what it has done. It must concentrate on the organizational and staffing problems facing it today, while simultaneously preparing for the 1990s when offender populations will double. Calendar 1989 saw 15,227 complaints submitted by 4,143 offenders departmentwide. Of those complaints, formal grievances were initiated in 7,952 cases. Offenders pursued 2,773 of those grievances through various levels of

the appeal process. Every one of those 25,952 transactions required review and a written response, stretching Program resources to the limit.

The number of institutions in the Division of Prisons is expected to increase by 1996. Meanwhile population levels at existing facilities are rising through double bunking of some cells. Although it is a temporary measure, the issue of overcrowding is already being addressed by inmates through the grievance procedure (and the courts). Sixteen complaints about overcrowding were received in 1988; 113 in 1989. Issues attendant to overcrowding, such as health care services, food services, and recreation and programming opportunities, are already being addressed by department administrators but will generate more complaints just the same. Historically, the opening of any new institution is immediately followed by an increase in grievance activity. The point is that while populations will double by 1996, the number of complaints and resultant formal grievances is projected to more than double. Staffing levels in and processes of the Offender Grievance Program need to be addressed by administrators before the Program becomes ineffective due to sheer volume.

Rather than scattering questions throughout this report about the Program's ability to handle the increased workload, they will be consolidated for ready reference in an addendum to the report. The grievance process has been an effective tool for the past eight years in dealing with offender-reported problems. Its greatest challenges lie ahead.

CERTIFICATION

The Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) provides for the U.S. Attorney General to promulgate minimum standards for the development and implementation of plain, speedy, and effective systems for the resolution of inmate complaints. The resultant Standards for Inmate Grievance Procedures was published on October 1, 1981. Grievance systems found to be in substantial compliance with those standards may be certified as such by the U.S. Attorney General. A U.S. District Court may also find a grievance system to be in substantial compliance with the minimum standards. When certified by the U.S. Attorney General, or found in substantial compliance by a court, a court may:

1. require exhaustion of administrative remedies through the grievance process before an inmate may file suit in federal court; and
2. continue a case already filed for up to ninety days while the issue is being addressed through the grievance process.

The department's Grievance Manual and the grievance procedure at the Washington State Penitentiary were found to be in substantial compliance by the U.S. District Court, Eastern District of Washington, on May 25, 1984. That institution's experience with the mandatory exhaustion requirement is reported in depth in the next section, JUDICIAL REMANDS. The department applied to the U.S. Attorney General on August 1, 1984, for certification of the remaining eleven institutions in the Division of Prisons. No formal response to that application has been received.

Mr. Donald H. Moore, Correctional Program Administrator, did receive a telephone call from a federal official in late 1984 or early 1985 concerning that application. That person had five concerns about the department's application, three of which were easily resolved. No agreement was reached regarding two substantive issues: (1) why the Washington State Penitentiary was not included in the request for certification; and (2) the level of inmate participation in the process. These two issues are discussed below.

1. The Washington State Penitentiary was not included in the request for certification because it was already under the jurisdiction of the U.S. District Court, Eastern District of Washington, as a result of Hoptowit v. Ray. The Court had ordered, among other things, that the Penitentiary establish an effective grievance procedure. DOC staff and a state Senior Assistant Attorney General worked closely with the Court to establish such a system and then have it "certified" by that Court. To have included the Penitentiary in the request to the U.S. Attorney General for certification of the department's other institutions may have resulted in a conflict of interest between the department and the Eastern District Court. In essence, Mr. Moore was told by the federal official that the application for certification would not be processed unless the Penitentiary was included.
2. Mr. Moore was also told that the level of inmate participation as reflected in the application was inadequate. Mr. Moore disagreed with that assessment, noting that both CRIPA and the federal minimum standards state that grievance processes shall provide for an "advisory role" in the formulation, implementation, and operation of the system. Neither document gives an explicit definition of what constitutes an "advisory role."

During its first year of operations, the Penitentiary's grievance procedure provided for inmate grievance investigators, inmate clerks in the grievance office, and for inmates to sit on committees which adjudicated grievances. This practice was stopped because of abuse of the process by some of those inmates and because they were also subject to pressure by others. The department's Assessment of the Inmate Grievance System, Second Annual Report, August 1981 Through July 1982, published in February of 1983, contains an in-depth analysis of these problems. In lieu of inmates actively investigating and adjudicating the grievances of other inmates, the department established a grievance advisory committee at each institution. Since 1981, those committees have had two functions: (1) review the operations of the local

grievance procedure quarterly and submit its findings and recommendations to the superintendent; and (2) review in edited form all grievances challenging local policy or practice which affect all inmates at an institution and submit its recommendations to the superintendent. Grievance advisory committees are composed of at least three inmates and three staff members.

The Eastern District Court evidently believed that the advisory committee concept met federal minimum standards when it certified the Penitentiary's grievance procedure. The department believes that it did and does meet those standards. But the official in the U.S. Department of Justice deemed the advisory committee concept inadequate, although a formal denial by the U.S. Attorney General of the department's application for certification has not been received.

To conclude this issue, providing for inmate participation and having inmates wanting to participate (outside of those few serving on advisory committees at any given time) are two separate and distinct matters. Some inmates over the years have protested in their grievances and other correspondence that the Program is not fair. Very few of them, however, relate why they believe this or provide suggestions for improving it. When the DOC Grievance Manual was being revised in mid-1989, for example, draft copies were placed in the libraries at all facilities. Notices were posted in all living units stating that: (1) the revision project was underway; (2) copies of the draft policies and procedures were available in their library; and (3) the Grievance Program Manager (GPM) was soliciting comments and suggestions from inmates. In addition, the project was announced on the Penitentiary's closed-circuit television station. Not one letter was received by the GPM in response to those advertisements, not even from those who, through previous correspondence with the GPM, saw their suggestions reflected in the new draft manual.

Whether the department will continue to pursue certification through the U.S. Attorney General, have its procedures found in substantial compliance by the two U.S. District Courts in Washington state, or whether it will seek further certification at all, is not known at this time. The positive aspects of certification (such as the requirement for mandatory exhaustion and the remand process) as well as its drawbacks (labor intensive and time-consuming) are currently being discussed by department staff.

JUDICIAL REMANDS

The U. S. District Court, Eastern District of Washington, certified the grievance procedure at the Washington State Penitentiary on May 25, 1984. Soon thereafter, the Court initiated the process in which selected civil rights complaints filed by inmates at that institution were remanded to the Penitentiary for exhaustion of possible administrative remedies through the grievance process. Forty three cases were remanded between 1984 and 1986.

**TABLE 5
REMANDS RECEIVED BY YEAR**

| | |
|-------------|------------|
| 1984 | 31 |
| 1985 | 11 |
| <u>1986</u> | <u>1</u> |
| Total | 43 Remands |

The department's Assistant Attorney General Division requested in January of 1990 to know how many lawsuits were NOT pursued by inmates subsequent to their complaints being remanded to the WSP grievance procedure. The following information was compiled in response to that request.

**TABLE 6
DISPOSITION OF REMANDS**

| | |
|----------------------------------------------|-----------------------------|
| Dismissed for failure to prosecute | 20 (48% of 43 cases) |
| Inmate withdrew litigation | 6 (14% of 43 cases) |
| Dismissed - Inmate refused to file grievance | <u>1</u> (2% of 43 cases) |
| TOTAL CASES NOT PURSUED | 27 (63% of 43 cases) |
| Of those cases that are/were pursued: | |
| Still pending in trial status | 8 (18% of 43 cases) |
| Decision for plaintiff | 1 (2% of 43 cases) |
| Decision for defendant (DOC) | <u>7</u> (16% of 43 cases) |
| TOTAL CASES PURSUED | 16 (37% of 43 cases) |
| TOTAL REMAND CASES | 43 |

The remand procedure appears to have been successful, as 27 cases (63%) were not pursued after having been remanded. Forty three cases, however, do not provide sufficient data to project its success in the long term. DOC administrators do not know why the Court discontinued remanding inmate complaints, although the Grievance Program Manager has been informed that the process was forgotten due to turnover in the Court's staff.

The current Grievance Program Manager was, in 1984, the grievance coordinator at the Washington State Penitentiary. He wrote the local remand procedures, established a system to monitor the progress of remand-generated grievances through the system, and interviewed the plaintiffs (grievants). Most of the thirty-one remands received in 1984 were processed by him. It was labor intensive. A manual search of grievance files had to be made for any previous grievances filed by the plaintiff concerning the issue(s) contained in the remand (an MIS capable of indexing all grievances filed by an individual did not exist at that time). Interviews with plaintiffs were then conducted, in-person for those remaining at the Penitentiary and by telephone for those who had transferred to community residential facilities or had been transferred out-of-state. New grievances were initiated

or, in some cases, ones filed previously were reinstated. The ninety-day timeframe in which a remand-generated grievance must be completed through all levels began on the day that the grievant and grievance coordinator signed the formal grievance. Through personal experience with remands and contacts with the plaintiffs, the Grievance Program Manager believes that the remand process was working as intended.

Many of the remands received in 1984 were not preceded with attempts by plaintiffs to resolve their issues administratively. By early 1985, inmates at the Penitentiary "knew" that they had to access the grievance procedure prior to filing litigation. Many did so. Though it can not be proven statistically, administrators believe that some number of potential lawsuits were not filed because the issues of inmates were addressed through the grievance process. A result of the discontinuation of judicial remands is that some inmates are again proceeding in the courts without first attempting to resolve their complaints administratively. Some inmates believe even today that the Penitentiary's grievance procedure has been decertified because the Court no longer emphasizes the use of the procedure through remands.

Reinstatement of the remand process, along with other factors previously noted, would also serve to drive upward the numbers of complaints submitted and formal grievances pursued. The increased volume would be disproportionate to the actual number of cases remanded as offenders realize that they should exhaust administrative remedies prior to initiating litigation.

ACTIVITY
OFFENDER GRIEVANCE PROGRAM
January 1, 1986 - December 31, 1989

As previously noted, an MIS was implemented on September 9, 1985, to track the processing of complaints, in addition to formal grievance and appeal activity. Calendar year 1986 is the first for which full Program information is available. This analysis is for the four year period beginning January 1, 1986 and ending December 31, 1989.

The following population figures are for the department's Division of Prisons (DOP) only. While similar figures are available for the Division of Community Corrections (DCC), that division is not included in this portion of the analysis due to the low volume of grievance activity by offenders under its jurisdiction (41 complaints submitted by 36 offenders on community supervision and 1,037 complaints by 607 offenders in community residential facilities in four years). Of the 59,557 complaints submitted by offenders departmentwide during 1986-1989, only 1,078 (or less than two percent) were originated by DCC offenders. Inmates confined in DOP institutions obviously generate the bulk of complaints. The purpose of Table 7 is to show how many inmates in DOP had access to the Grievance Program during the four years, whether they chose to use it or not. It does not indicate how many inmates left the division during this timeframe.

TABLE 7
POPULATION STATISTICS - DIVISION OF PRISONS
1986-1989

- Column 1 - Inmate population on January 1 of the given year.
- Column 2 - Number of inmates newly received during the given year.
- Column 3 - Total number of individuals having access to the Program at some time during the given year (Column 1 plus Column 2).
- Column 4 - Number of individuals actually submitting complaints.
- Column 5 - Percentage of individuals submitting complaints (Column 4) compared to the number having access to the Program (Column 3).

| Year | Column 1 | Column 2 | Column 3 | Column ³ 4 | Column 5 |
|---------------|---------------|---------------|---------------|-----------------------|------------|
| 1986 | 6,468 | 2,429 | 8,897 | 3,634 | 41% |
| 1987 | 6,550 | 2,809 | 9,359 | 3,606 | 39% |
| 1988 | 6,430 | 3,956 | 10,386 | 3,775 | 36% |
| <u>1989</u> | <u>7,089</u> | <u>4,597</u> | <u>11,686</u> | <u>4,020</u> | <u>34%</u> |
| Totals | 26,537 | 13,791 | 40,328 | 9,330 | 23% |

³ An individual is counted once in each calendar year in which he/she has submitted at least one complaint. To arrive at the grand total of 9,330 individuals is not a matter of addition but of counting grievants only once for the entire four-year period, regardless of how often they accessed the program. Adding the figures in Column 4 gives a total of 15,035 but, because some individuals use the procedures year after year, that total is misrepresentative of the actual number of individuals using it during the entire four-year period under study

Column 4 is deceptive. Many long-termers access the Program, so many of the same individuals are counted year after year. Although the total number of inmates having access to the Program has increased, the actual number of individuals submitting complaints varied by only 386 between 1986 and 1989. It is interesting that the 9,330 individuals (Column 4) submitted a total of 58,479 complaints, or an average of six apiece, during the four years. Knowing that most individuals submit fewer than six complaints during a given year, it is apparent that a relatively small number of individuals generate the most activity. For example, forty-nine identified inmates submitted 8,676 complaints during the four years, accounting for fifteen percent (15%) of the Division's total of 58,479. They are not the only abusers. Amazingly, 30,998 inmates (77%) having access to the Program did not use it even once. It would be enlightening to develop and compare profiles of those who abuse the Program versus those that use it infrequently or don't use it at all.

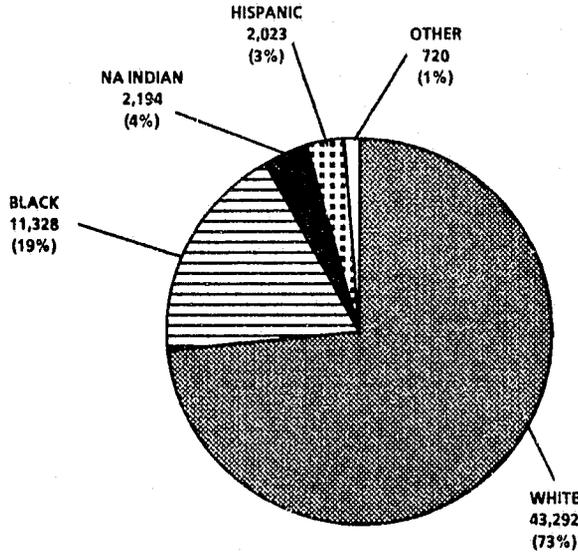
While complaint and grievance activity remained high, superintendents remained conservative in their use of sanctions against abusers of the Program. Only ten offenders were referred to Headquarters as quantitative abusers, of which six cases were upheld and access to the Program restricted. Forty inmates in the Division of Prisons were also infracted and found guilty of submitting malicious or threatening complaints. Clearly, superintendents prefer to protect the "open forum" concept of the Program rather to use needless (and sometimes useless) sanctions.

While department administrators are addressing future staffing levels and processes of the Grievance Program, Program administrators should be: (1) increasing the awareness of all offenders in how and when to use the Program (8,775 complaints regarding nongrievable issues were received during 1986-1989, all requiring written responses); and (2) develop more effective means of dealing with those few offenders who consistently jam the process with frivolous and repetitive complaints, grievances, and needless appeals. Those few offenders lessen the effectiveness of the Program to deal fairly with the complaints submitted in goodfaith by the majority of offenders accessing it.

The following charts indicate complaint/grievance activity departmentwide during 1986-1989.

TOTAL COMPLAINTS RECEIVED DEPARTMENTWIDE - 59,557

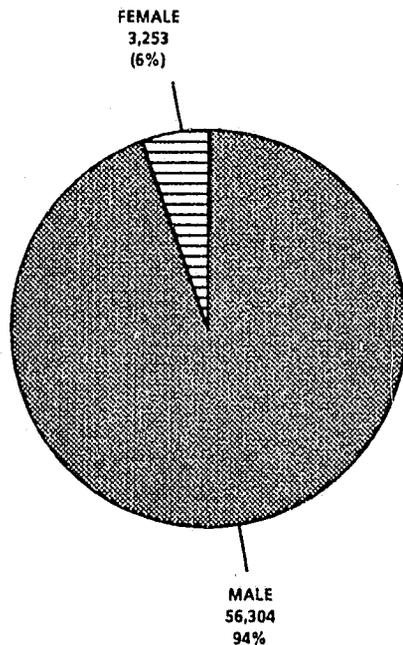
**CHART 8
COMPLAINTS SUBMITTED BY RACE/ETHNIC GROUP**



| GROUP | NO. | % |
|-----------|--------|----|
| WHITE | 43,292 | 73 |
| BLACK | 11,328 | 19 |
| NA INDIAN | 2,194 | 4 |
| HISPANIC | 2,023 | 3 |
| OTHER | 720 | 1 |

**TOTAL COMPLAINTS
59,557**

**CHART 9
COMPLAINTS SUBMITTED BY SEX**



| GROUP | NO. | % |
|--------|--------|----|
| MALE | 56,304 | 94 |
| FEMALE | 3,253 | 6 |

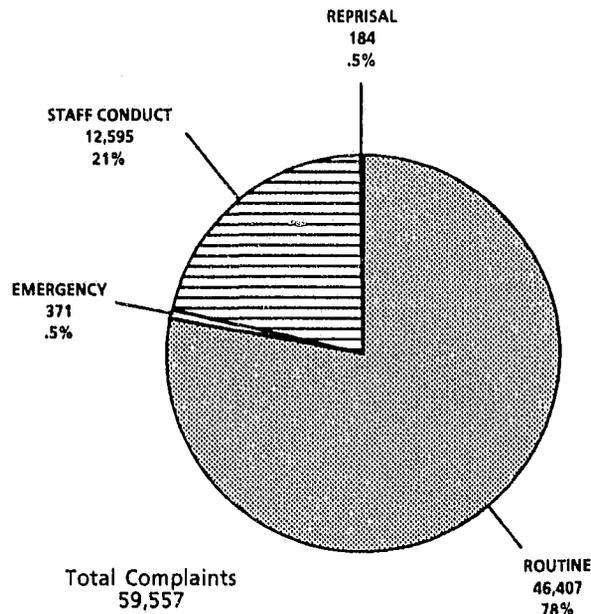
**TOTAL COMPLAINTS
59,557**

PROCESSING OF COMPLAINTS

Complaints are categorized by TYPE upon receipt. The types are:

- a. *Routine* - against policy, procedure or local practice, or other offenders;
- b. *Emergency* - life or health threatening situations;
- c. *Staff Conduct* - alleged inappropriate actions or language by a staff member; and
- d. *Reprisal* - alleged retaliation for participation in the grievance process.

CHART 10
TYPES OF COMPLAINTS SUBMITTED
DEPARTMENTWIDE



When received, a complaint is dated, coded, and assigned a unique log number. Resolution is then achieved at Level 0 (the complaint stage) or a formal grievance is prepared for investigation at Level I (routine and emergency grievances) or Level III (staff conduct and reprisal grievances).

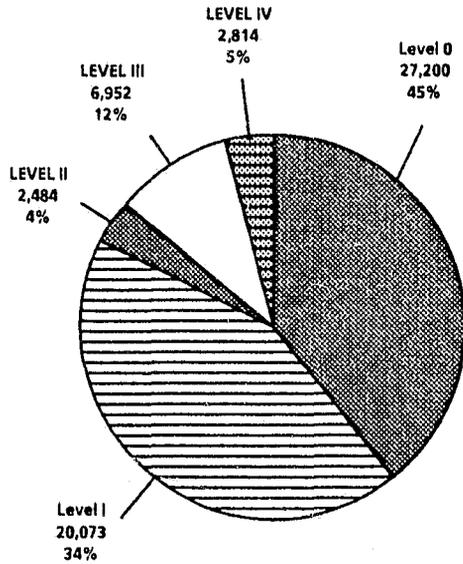
The following chart indicates the level at which resolution was achieved for the 59,557 complaints submitted between January 1, 1986, and December 31, 1989. RESOLUTION means that a decision was reached, for or against the grievant, and that the complaint/grievance was not pursued past the Level indicated. The resolution authority at each Level is:

- Level 0 = Grievance Coordinator
- Level I = Grievance Coordinator
- Level II = Grievance Committee (staff)
- Level III = Facility Administrator
- Level IV = Division Director

(Please note that Community Supervision offices operate with a complaint stage and three formal levels, instead of four. As they receive fifteen or less complaints annually, their statistics have no impact on this study.)

**CHART 11
RESOLUTION OF COMPLAINTS ACHIEVED BY LEVEL***

Total complaints submitted - 59,557
Total formal grievances initiated - 32,358



Total Resolutions
59,523 **

*The following indicates which *TYPES* of complaints/grievances are processed at each level:

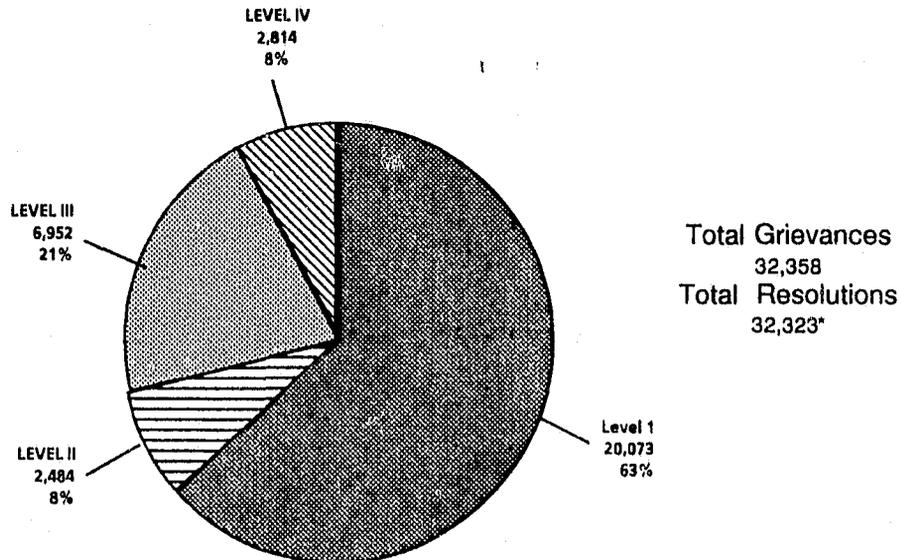
- a. Level 0 All types prior to a formal grievance being initiated.
- b. Level I Routine and emergency grievances.
- c. Level II Routine grievance appeals only.
- d. Level III Routine and emergency grievance appeals plus initial staff conduct and reprisal grievances.
- e. Level IV Routine, conduct, and reprisal grievance appeals.

** Thirty-four (34) appeals were still pending resolution at the time data was collected for this study.

Chart 11 indicates two things: (1) fifty-four percent of all complaints became formal grievances; and (2) grievance coordinators are the single most effective entity in the process as seventy-nine percent (79%) of all complaints are resolved at the two levels (0 and I) in which they are most active. Federal standards state that an effective grievance process is characterized by most grievances being resolved at the lowest possible level of the process.

Total formal grievances initiated between January 1, 1986, and December 31, 1989, was 32,358. The chart below indicates overall grievance resolution at the four formal grievance levels.

CHART 12
OVERALL FORMAL GRIEVANCE RESOLUTION



*Thirty-four appeals were still pending resolution and one case at Level I was awaiting a decision of grievability by the Grievance Program Manager at the time data was collected for this study.

Resolution in the chart above means that the grievance/appeal was processed at the Level stated, a response was given for or against the offender, and the grievant did not appeal to a higher level. The Level II versus Level III figures are misleading, as are those at Level IV. Level II handles only those routine grievances appealed to it from Level I. The resolution rate at Level III, however, includes routine and emergency appeals plus the resolution of staff conduct and reprisal grievances, which are initiated at this level. Level IV adjudicates appeals to routine, staff conduct, and reprisal grievances.

REMEDIES AND RESOLUTIONS - KINDS

The following *REMEDIES* are available for use in the resolution of offender complaints, grievances and appeals.

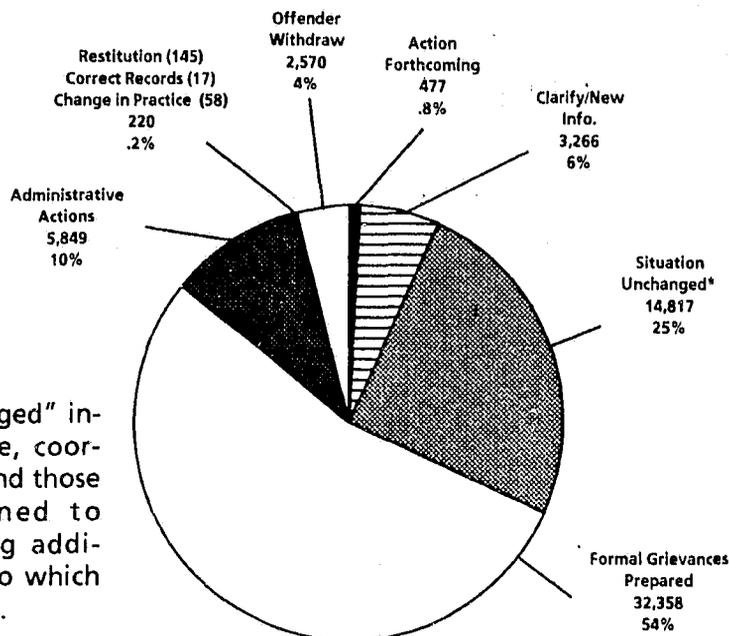
- a. Restitution of property or funds.
- b. Correction of records.
- c. Administrative actions.
- d. Action forthcoming (agreement to remedy an objectionable condition within a reasonable timeframe).
- e. Change in a facility, office or department practice or policy.
- f. Clarification, explanation or providing new information (used when the complaint is based on lack of information or misunderstanding of a policy/procedure and the providing of such information satisfies the grievant's complaint/grievance).
- g. Offender withdrawal of a complaint/grievance.
- h. Tort action recommended.
- i. Situation/condition unchanged.

Items a through g constitute positive action for the grievant.

The following charts depict the remedies used at each level of the grievance process from January 1, 1986 through December 31, 1989. Data included at any level indicates that the complaint/grievance did not go past that level and that the information is not reflected at prior levels.

CHART 13
REMEDIES - LEVEL 0
ALL TYPES OF COMPLAINTS

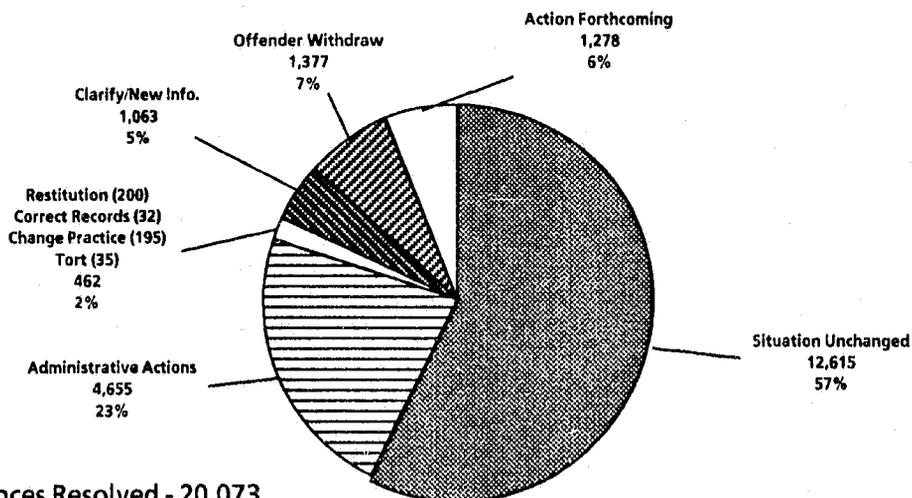
Total Complaints
59,557



* "Situation unchanged" includes not grievable, coordinator withdraw, and those complaints returned to grievants requesting additional information to which they did not respond.

In addition to initiating 32,358 formal grievances, coordinators also resolved 12,382 (21%) of the total complaints in favor of the grievants.

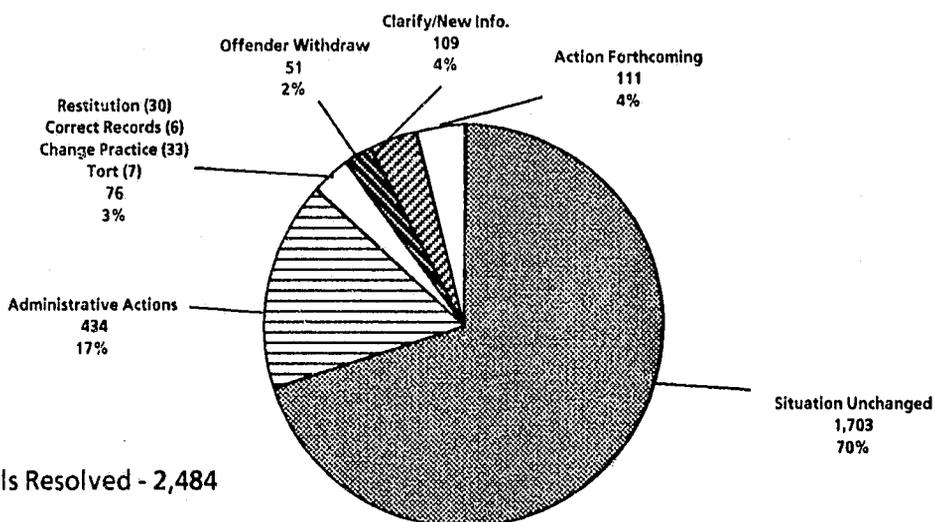
**CHART 14
REMEDIES - LEVEL I
ROUTINE/EMERGENCY GRIEVANCES ONLY**



Total Grievances Resolved - 20,073

As shown in Chart 14 above, Level I grievance coordinators achieved forty-three percent positive resolution out of 20,073 routine and emergency grievances. Including the 12,382 complaints receiving positive action at Level 0, coordinators took positive action for grievants in 21,217 cases, or 36% of all complaints/grievances that they investigated.

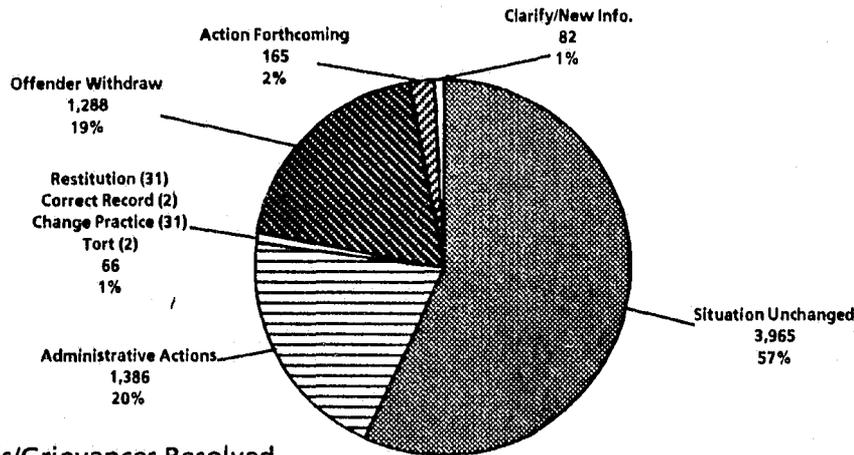
**CHART 15
REMEDIES - LEVEL II
ROUTINE GRIEVANCE APPEALS ONLY**



Total Appeals Resolved - 2,484

Level II took positive action or affirmed positive action taken at Level I in 781 (30%) of the cases that it reviewed. Although 1,703 appeals (70%) resulted in no change, this level is important because it is before the Level II Grievance Committee that a grievant may appear to plead his/her case personally. Many appeals are sent to this level merely to confirm a previous denial of a suggested remedy at Level I. Others are not appealed to Level III because, through interaction with the Committee, grievants come to understand why certain suggested remedies can not and will not be honored.

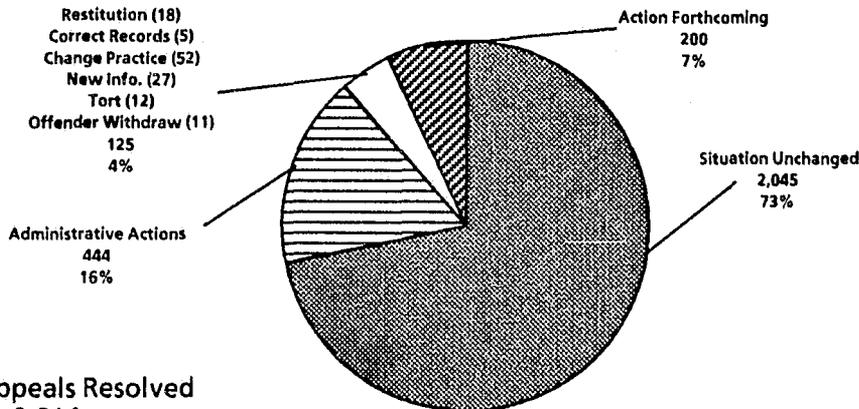
**CHART 16
REMEDIES - LEVEL III
ROUTINE / EMERGENCY GRIEVANCE APPEALS
AND
STAFF CONDUCT / REPRISAL INITIAL GRIEVANCES**



**Total Appeals/Grievances Resolved
6,952**

Level III processes all four TYPES of complaints/grievances, whether appeals to routine or emergency grievances or initial grievances alleging staff misconduct or reprisal. The MIS currently does not distinguish REMEDIES (or resolutions) by TYPE of grievance or appeal submitted, giving instead the gross numbers by Level. DOC Information Systems staff are currently working on this deficiency in the program. For this study, however, it's sufficient to say that Level III (superintendents/facility administrators) either granted positive action in 2,987 (43%) of the 6,952 cases presented to them or concurred with positive action taken at previous levels.

**CHART 17
REMEDIES - LEVEL IV
ROUTINE, STAFF CONDUCT AND REPRISAL APPEALS**

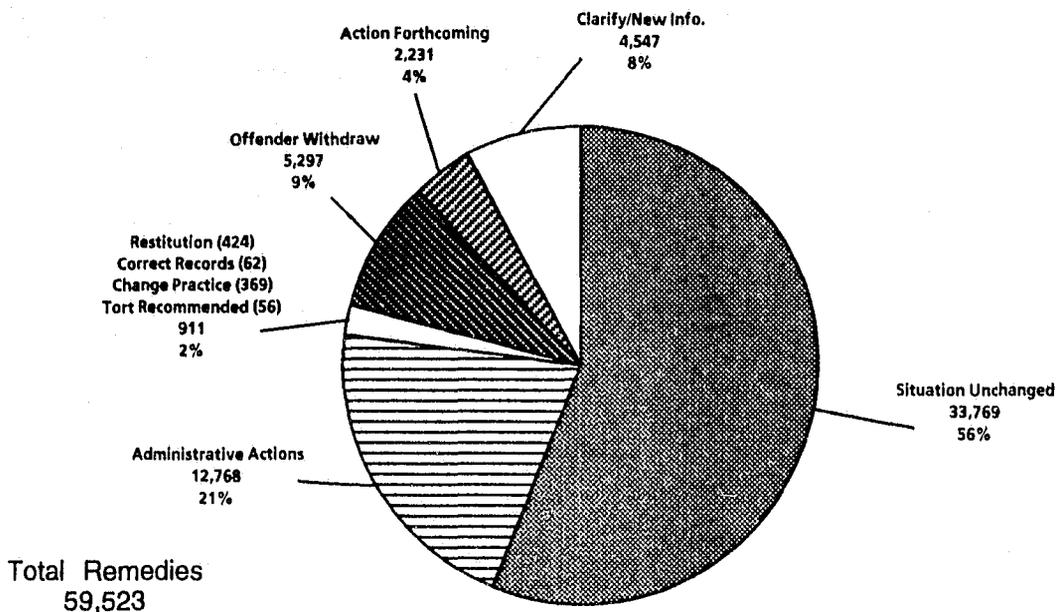


**Total Appeals Resolved
2,814**

The division directors (Level IV) receive only appeals to routine, staff conduct and reprisal grievances. This level, the final appellate authority in the grievance process, reviewed 2,814 appeals during 1986-1989, of which 769 (27%) received positive action. Approximately two-thirds of the cases were appeals to routine grievances; the remainder were appeals to staff conduct and reprisal grievances.

A director's response may often simply concur with actions taken or decisions reached at previous levels. At other times, however, a director reverses the decisions of lower levels and causes some action to occur to the benefit of the grievant. The latter usually happens after a reinvestigation into an issue by Headquarters Grievance Office staff working in conjunction with appropriate division program managers.

**CHART 18
REMEDIES - ALL LEVELS**



Of the original 59,557 complaints submitted between January 1, 1986 and December 31, 1989, thirty-four were still pending resolution in the appeal process when the data was collected for this study. However, of the 59,523 remedies (decisions) already rendered, 25,754 (43%) resulted in positive action for offenders.

RESOLUTIONS

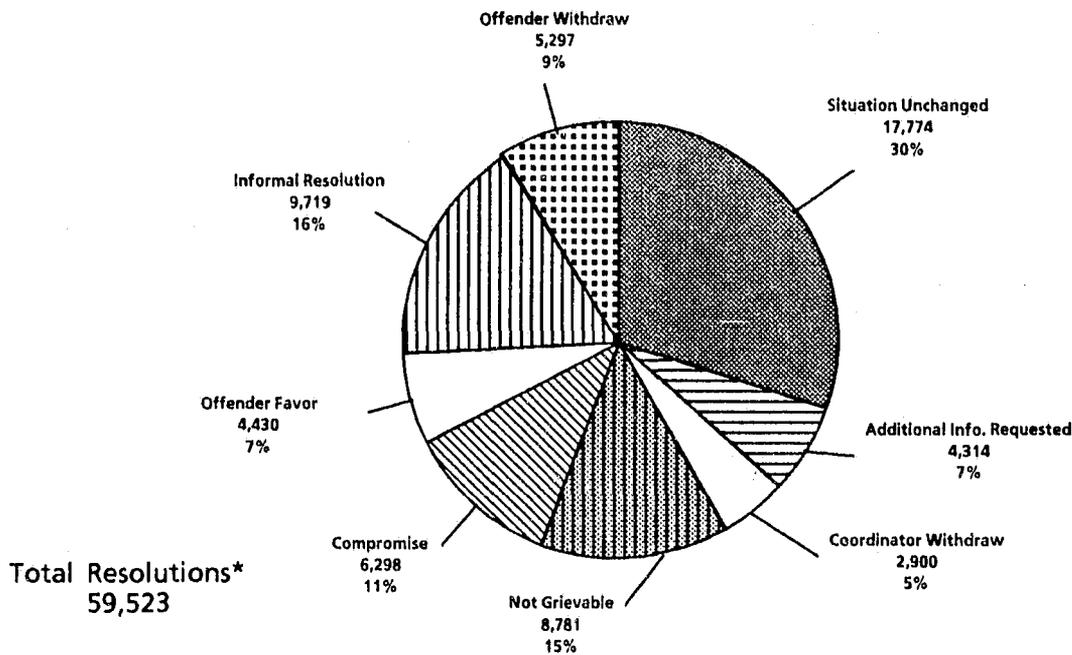
Just as remedy codes indicate what actions are taken or not taken on complaints, grievances and appeals, the RESOLUTION codes indicate "who won" and how much. The following are the resolutions available:

- a. Informal Resolution - complaint resolved to the offender's satisfaction prior to initiating a formal grievance.
- b. Offender Favor - formal grievance or appeal is resolved in the offender's favor using the grievant's suggested remedy.
- c. Compromise - formal grievance or appeal partially resolved in the offender's favor or in full but not adhering to the grievant's suggested remedy.
- d. Offender Withdraw - a complaint is voluntarily withdrawn by the grievant at any level of the process. Reasons do not have to be given.
- e. State Favor (Situation unchanged) - the issue or condition remains unchanged.
- f. Returned for Additional Information - the complaint was returned to the grievant requesting additional information and the grievant did not respond to the request.

- g. **Coordinator Withdraw** - a coordinator may withdraw a complaint or grievance when:
1. The grievant refuses to sign the formal grievance;
 2. The grievant fails to attend scheduled interviews to discuss the complaint or to sign the formal grievance; or
 3. The grievance was initiated in error by the coordinator.
- h. **Not Grievable** - the issue is not grievable per grievance policy.

Items a through d constitute positive action for grievants. Although **RESOLUTIONS** by level is available, they are not included in this report for the sake of brevity. Because remedy codes indicating positive actions for grievants must be accompanied by a similar positive resolution code (a through d above), the reader is referred back to the analysis of **REMEDIES** for information regarding positive actions by level. The following chart reflects resolutions achieved at all levels of the process.

**CHART 19
RESOLUTIONS - ALL LEVELS**



*Thirty-four appeals were still pending

| Positive Action | % |
|---------------------|-----------|
| Informal Resolution | 16 |
| Offender Favor | 7 |
| Compromise | 11 |
| Offender Withdraw | 9 |
| TOTAL | 43 |

| No Action | % |
|----------------------|-----------|
| Situation Unchanged | 30 |
| Info. Requested | 7 |
| Coordinator Withdraw | 5 |
| Not Grievable | 15 |
| TOTAL | 57 |

The chart above indicates that 25,754 complaints, grievances, and appeals resulted in positive resolution for grievants out of the 59,523 cases resolved during 1986-1989. That figure, as with **REMEDIES**, equals forty-three percent positive action for offenders. Again, it is evident that the Offender Grievance Program is fulfilling the purpose for which it was created.

TRENDS

A few notes on trends within the Program is appropriate. The most conspicuous is that the number of voluntarily withdrawn complaints declined from 1,741 in 1986 to 1,190 in 1989, or forty-two percent. This, with a slight drop (10%) in the number of staff conduct/reprisal grievances, indicates that offenders are tending to pursue their complaints, and that more are pursuing complaints against department or local policy. Examples of practices under fire are the smoking policy, contents of quarterly packages, assignment/unassignment practices, and censorship practices. Complaints regarding overcrowding, particularly at the Washington Corrections Center (Reception Center), rose from ten submitted in 1986 to 113 in 1989. Complaints involving personal property, mail, health care, and food services have continued unabated since 1982.

How many of the complaints were submitted and pursued by offenders in goodfaith efforts to resolve real problems can not be known without a document-by-document review of the almost one million grievance documents on file at DOC Headquarters. It will suffice to say that many were not submitted in goodfaith but with a conscious intent to overburden the grievance mechanism and to harass staff. A favorite target of a few inmates at the Penitentiary's Intensive Management Unit in 1986, for example, was food services. Each of them found many things about each meal to complain about--and did. The small group of inmates also shared their complaints among themselves. Then each individual submitted between six and ten complaints about each meal. The meal was: too hot or too cold (or both); not enough sugar for the coffee; the gravy on the potatoes ran over onto the green beans; no butter for the potatoes (which already had gravy on them), and so forth. As a second course, the inmates also generated multiple complaints regarding the personal attributes of the correctional officers serving them each meal tray. It was not uncommon to receive 30 to 50 complaints about each meal served in the IMU during early 1986.

Because of this and similar abuse, the database is not a reliable source on which to solely base an evaluation of a local service or program. Local and Headquarters administrators are provided regular statistical reports so that they maintain an awareness of what issues are currently topical. They are also routinely provided with copies of actual grievance documents concerning issues which they need to know about. Department specialists, such as those overseeing religious, education, health care, and food services programs, are also provided copies of documents pertaining to their field of expertise.

Besides providing an indicator of workload on the Program, the reason every complaint is entered in the database (whether it is frivolous or submitted in goodfaith) is that each must be retrievable in the event of litigation being initiated. The MIS provides a chronological index to every complaint/grievance submitted and/or pursued by individual offenders. Whether the litigation concerns issues such as involuntary medication, pat searches of female inmates by male staff, cavity probe searches, and so forth, grievance documents must be readily available for DOC administrators and for the department's Assistant Attorney General Division. In addition to providing an on-line index to the complaints/grievances of each offender, the MIS is also programmed to generate various types of reports by subject matter so that the extent of a given issue can be analyzed by administrators, counsel, and the courts. Although one purpose of the Program is to reduce the burden on the courts, it is increasingly being used to assist in the department's defense when litigation is initiated.

SUMMARY

What will the impact on the Offender Grievance Program and the department be as the offender population doubles in the next six years? The number of complaints submitted by 1996 will more than double the 15,227 recorded in 1989. Offenders will increasingly initiate formal grievances and tax resources at all levels of the appeal process. Issues current today such as adequate access to legal libraries, overcrowding, and lack of jobs or programs, will become increasingly difficult to resolve to the satisfaction of offenders. Those issues will require additional research/investigative time and will generate more requests for client advice of the Assistant Attorney General Division. Local grievance coordinators at current staffing levels will not be able to cope with increased workloads.

Division directors will see increased workload at Level IV as offenders generate more grievances regarding issues impacting on the department's basic philosophy. An increase in litigation is also projected, which will not only impact on the resources of the Courts, but on the department and the Assistant Attorney General Division as well. To reiterate, these trends and impacts are and will be generated mostly by a very small number of individuals in the Division of Prisons. In support of this, the names of the Program's most prolific writers at the Washington State Penitentiary were compared in mid-1989 to a list of lawsuits pending in the U. S. District Court, Eastern District of Washington. Not surprisingly, the same inmates also generated a disproportionate amount of those suits.

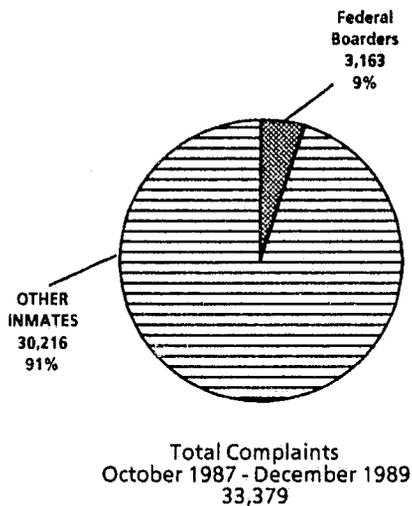
Despite the increased volume of complaints, formal grievances, and appeals at all levels, and in spite of the heavy use and frequent abuse by a small minority of offenders, the Grievance Program is working as designed. The Courts may look upon their workloads and ask if the Program does indeed deflect potential litigation. We can only emphasize that since January 1, 1982, the Program has produced positive results for offenders in forty-one percent of all grievances filed. The inference is that with such a high rate of positive administrative remedies, some number of offenders must have been pleased with the results and did not initiate litigation. That, however, can not be proven statistically. Perhaps it would be more to the point for the Courts, Program staff, DOC administrators, and the Office of the Attorney General to meet and devise some method to reduce the numbers of grievances and litigation initiated by that small group of inmates who misuse both processes.

FEDERAL BOARDERS

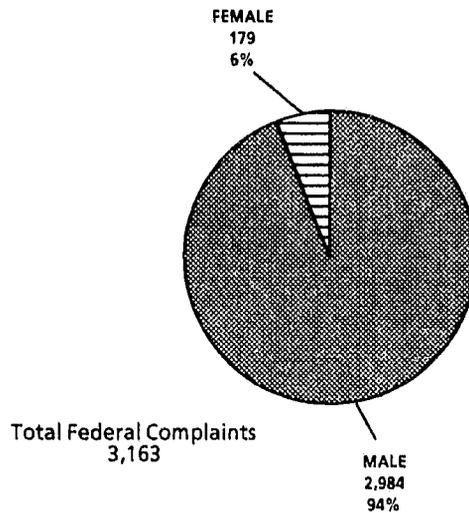
The Department of Corrections contracted with the U. S. Bureau of Prisons in 1987 to house federal inmates in Washington State's Rent-A-Cell Program. The first of what would total 848 federal inmates began arriving in the major institutions of the Division of Prisons in October of 1987. Between then and closure of the Rent-A-Cell Program in December of 1989, 557 federal inmates (66%) would access the Grievance Program, generating 3,163 complaints and initiating 1,794 formal grievances (pursued by 438 individuals).

Complaint information regarding federal boarders for October 1987 through December 1989 is as follows and applies only to the Division of Prisons.

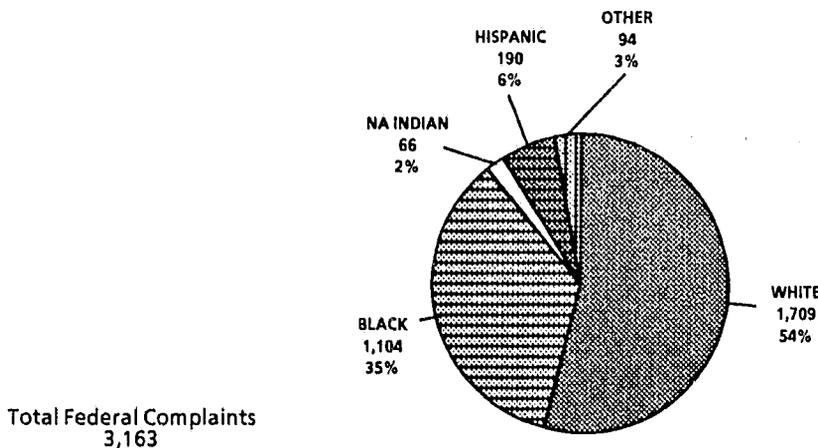
**CHART 20
COMPLAINTS SUBMITTED
BOARDERS VS. OTHER INMATES**



**CHART 21
COMPLAINTS SUBMITTED BY SEX
(BOARDERS ONLY)**



**CHART 22
COMPLAINTS SUBMITTED BY RACE/ETHNIC GROUP
(BOARDERS ONLY)**



The challenge which federal grievants presented to local grievance coordinators and the Offender Grievance Program at all levels cannot be overstated. Besides the usual complaints against food services, inadequate health care, and so forth, their grievances ranged from classification matters (involuntary transfer, custody level, etc.) to denial of personal property to religious freedom to kosher

diets. The complexity of many of the issues reported by these inmates was more time consuming than statistics can ever indicate.

A complicating factor for the grievance process (and facility administrators) was the fact that the department also contracted to house inmates from other jurisdictions during the same period of time. The following is a list of the jurisdictions sending inmates to Washington State and the number of boarders housed under the Rent-A-Cell Program.

TABLE 23
BOARDERS - ALL JURISDICTIONS

| | |
|---------------------------|------------|
| Federal Boarders | 848 |
| Oregon Boarders | 178 |
| Washington, D.C. Boarders | 236 |
| Colorado Boarders | <u>115</u> |
| Total Boarders | 1,377* |

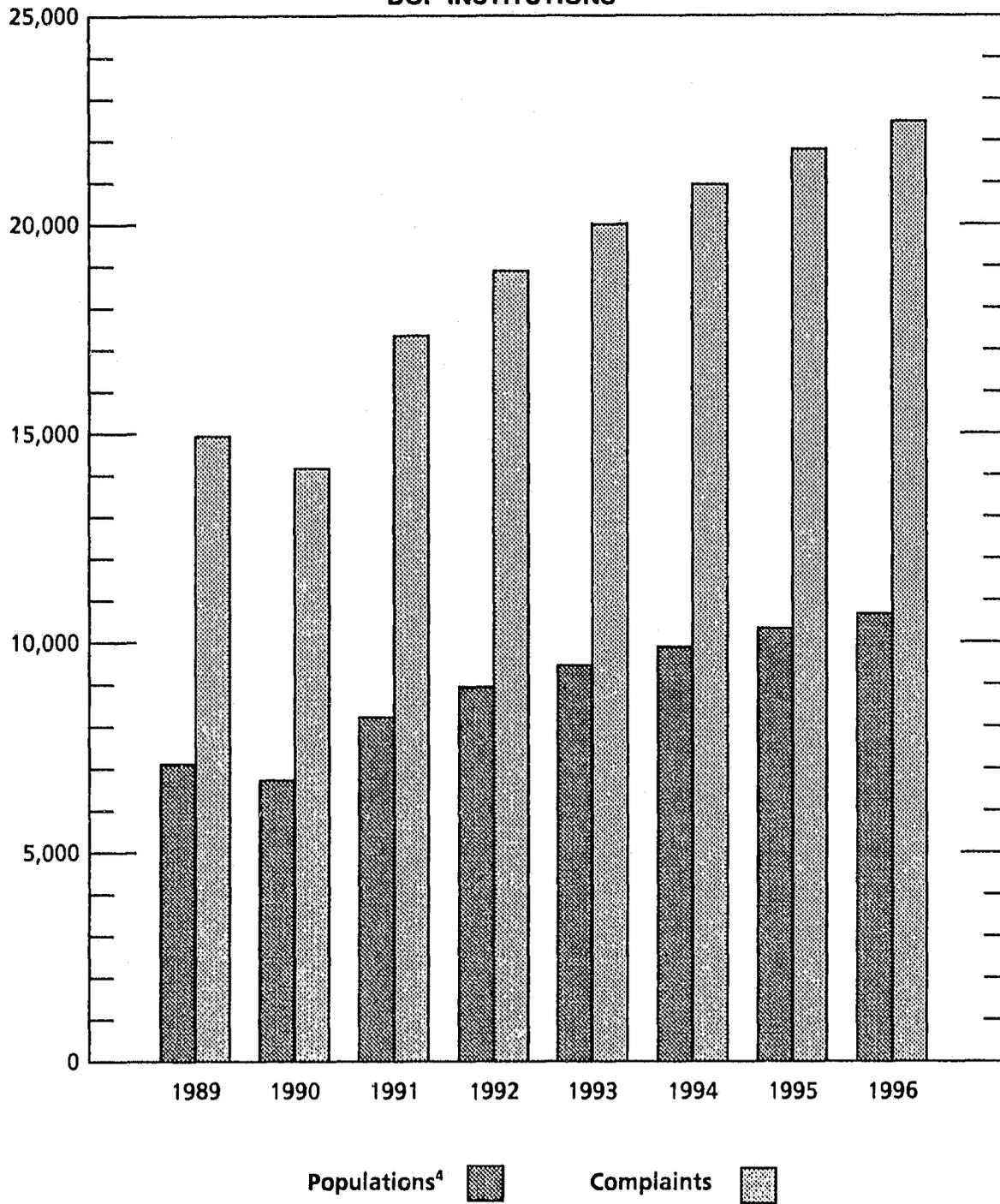
* Fourteen federal boarders and one from Colorado remained in DOP institutions as of December 31, 1989. (Statistics made available by the Planning and Research Section, DOC Division of Management and Budget.)

As shown earlier, the Grievance Program's MIS was programmed to track complaints and grievances of federal boarders. It was not modified to track specific complaints submitted by boarders from the other jurisdictions. The issues presented by federal boarders, however, were echoed by all boarders. The most prominent issues were: (1) legal library collections were inadequate to pursue litigation filed in their own jurisdictions; (2) involuntary transfer; (3) lack of programs and jobs; (4) being denied personal property which they were allowed to possess in their parent jurisdictions; and (5) access to their own parole boards. The litigious impact by boarders on the department is not yet fully known.

ADDENDUM

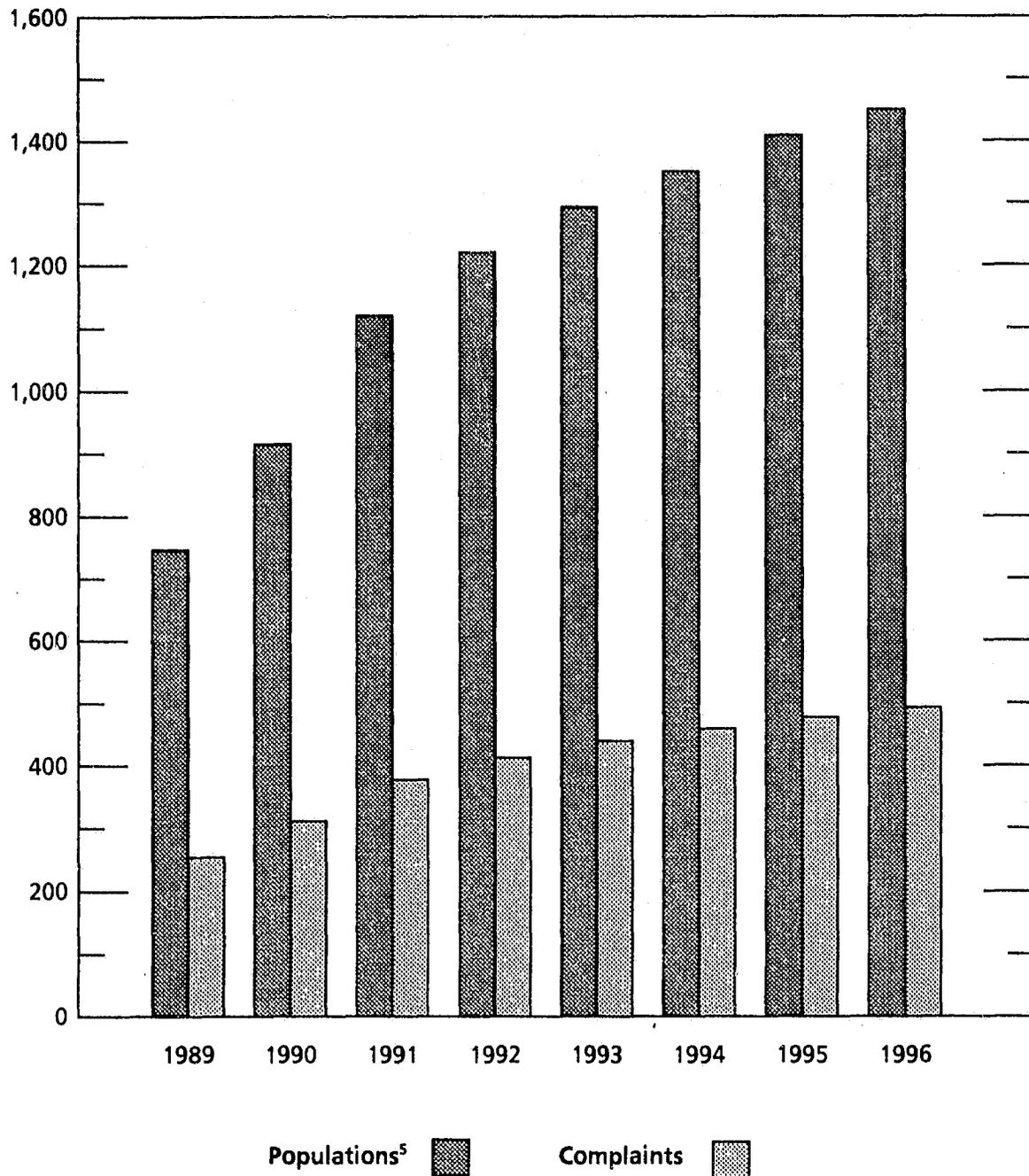
The preceding study depicts the positive side of the Offender Grievance Program as well as some of its problems. It is, however, the current status of the Program and its anticipated growth in the 1990s as the result of burgeoning populations which now need to be addressed. The following graphs and table are projections of offender populations and grievance activity through 1996. Calendar year 1989 statistics serve as the base for the projections. Population and complaint figures for 1990 through 1996 are those being used by a private consulting firm currently conducting an infrastructure analysis of department Headquarters. Following the projections is a series of questions and/or observations which need to be considered as a blueprint for the Grievance Program is developed for the 1990s.

**GRAPH 24
PROJECTIONS
DOP INSTITUTIONS**



⁴ Population Projections--State Office of Financial Management, October, 1989.
Complaint Projections--Brightbill & Co., April 1990.

**GRAPH 25
PROJECTIONS
DCC COMMUNITY RESIDENTIAL FACILITIES**



⁵ Population Projections--State Office of Financial Management, October, 1989.
Complaint Projections--Brightbill & Co., April 1990.

TABLE 26
PROJECTIONS
DCC COMMUNITY SUPERVISION OFFICES

| <u>Year</u> | <u>Population⁶</u> | <u>Complaints</u> |
|-------------|-------------------------------|-------------------|
| 1989 | 29,078 | 6 |
| 1990 | 32,524 | 7 |
| 1991 | 36,651 | 8 |
| 1992 | 38,824 | 8 |
| 1993 | 42,326 | 9 |
| 1994 | 46,422 | 10 |
| 1995 | 51,218 | 11 |
| 1996 | N/A | ---- |

Due to the low volume of grievance activity generated by offenders under Community Supervision, developing a projection in graph form was not feasible.

The number of complaints projected to be submitted yearly in 1990 through 1996 is based on a projected population on a given date in time. It is a combination of factors, however, that drive the volume of complaints, formal grievances, and appeals. That combination cannot be accurately projected when using only population figures as a base. Some of the factors influencing grievance activity are as follows.

1. Total of number of offenders under DOC jurisdiction during a given year, not just those projected for a given date.
2. Changes in state law (such as the recent Community Protection Act).
3. Changes in department policy or practice (such as Earned Time Policy, Transition Program, Community Placement Program, and standardizing hiring and firing practices).
4. Abusers of the Offender Grievance Program.
5. Inmate idleness (lack of programs/jobs).
6. Length of sentence.
7. New facilities (a new site historically generates a disproportionate number of complaints for a time as inmates become acquainted with their surroundings, staff, administrators, and as "bugs" in the physical plant are identified and corrected).
8. Overcrowding and attendant issues (double bunking, shortened visiting schedules, increased idleness, untimely access to counselors and health care services, etc.).
9. Custody level (inmates on maximum or close custody historically submit more complaints).

⁶ Population Projections--State Office of Financial Management, October, 1989.
Complaint Projections--Brightbill & Co., April 1990.

Based on overcrowding and inmate idleness alone, the Grievance Program Manager believes that the projection for complaints submitted in the Division of Prisons in 1991 is too low by one to two thousand complaints and that at least 25,000 to 28,000 complaints a year will be submitted by 1996. Complaint activity will increase above the projections for Community Supervision Offices due, in part, to increased workloads on community supervision officers and changes in state laws. Grievance activity in community residential facilities also will increase above the projected numbers, particularly in its two pre-release facilities, due to changes in state law, DOC practices, and the addition of new facilities.

QUESTIONS ABOUT THE PROGRAM

The following are identified areas of concern within the Grievance Program. Each is followed by a list of questions which are intended only to promote discussions among department administrators and other affected parties. They are NOT recommendations, or even suggestions. The grievance process has worked relatively well since 1982. Should its structure remain unmodified or should some fundamental changes be made in its organization and/or processes which would increase its effectiveness in the 1990s?

1. Nongrievable Issues

Complaints regarding nongrievable issues totaled 8,781 during 1986-1989, or 15 percent of the 59,557 complaints received departmentwide. Such complaints, as with all others, require review and written responses by grievance coordinators. Local decisions of nongrievability may be appealed to the Grievance Program Manager, also generating written responses. The issue is to reduce the volume of complaints regarding nongrievable subjects, thereby reducing workloads and enabling coordinators to spend increased time investigating and responding to grievable issues.

- a. Should a Headquarters-developed handout be written for inmates in the Division of Prisons which would outline Program functions and detail grievable and nongrievable issues? If yes, should the handout be issued to every inmate currently in the Division in addition to future new arrivals? Each institution currently develops its own handouts while the Division of Community Corrections already uses handouts developed by the Grievance Program Office.
- b. Should the Grievance Program Office develop a standardized audio/video orientation to the Program for presentation to newly committed inmates received at Division of Prisons reception centers? Should similar presentations be developed for new arrivals at community residential facilities?

2. DOC Grievance Manual

- a. Should the Grievance Manual be more policy-oriented and less step-by-step procedures (institutions only)?
- b. Should grievance policies be more generalized, giving increased latitude to local authorities in the resolution of complaints/grievances?
- c. Should institutions adopt the DOC grievance policies and procedures regarding them, eliminating the need for each to write lengthy local policies? DOC-developed grievance policies/procedures currently serve only as standards for the Division of Prisons, while the Division of Community Corrections accepts them in toto and does not develop local written policies and procedures.

3. Grievance Coordinators

Grievance coordinators, in general, are the single most effective entities in the grievance process. One or more full-time grievance coordinators are currently assigned in institutions with a capacity of 500 beds or more (there are two such coordinators at the Penitentiary). Designated staff in smaller institutions, community residential facilities, and community supervision offices are appointed as part-time coordinators, in addition to their other duties. Part-time grievance

coordinators in smaller institutions and the two DCC pre-release facilities are already reporting that their other duties are being adversely impacted by increasing grievance activity.

- a. Should collocated facilities of different divisions, such as Pine Lodge Corrections Center (DOP) and Eastern Washington Pre-Release (DCC) employ and share the services of one full-time grievance coordinator? Which administrator would be the appointing authority and, thereby, responsible for the grievance process for both facilities?
- b. Should full-time grievance coordinators remain responsible to and supervised by local administrators?
- c. Should the department request that the Department of Personnel establish a classification series called Grievance Program Specialist for full-time coordinators, thereby establishing a professional corps of grievance specialists?
- d. Should Grievance Program Specialists (see c, above) be directly responsible to the DOC Grievance Program Manager?
- e. Should the grievance coordinator serve as a member of the facility's Executive Management Team, ensuring that offender-reported problems, trends and unique issues are brought to the attention of decision makers?
- f. Should Grievance Program Office staff be routinely consulted by supervisors of grievance coordinators when annual evaluations of coordinators are being prepared?
- g. Should the Grievance Program Office staff design and implement a "school" for grievance coordinators? Such a school might be based on the concept of the Criminal Justice Training Commission's Correctional Services Academy but with emphasis on grievance philosophy, policies, procedures, and MIS data entry.

4. Program Audit

Should the department contract with an outside authority to conduct an independent audit of the Offender Grievance Program? Such a study should encompass the perceptions of, and relationships with, the following affected parties.

- a. Offenders (randomly selected).
- b. DOC staff (randomly selected).
- c. DOC administrators.
- d. Office of the Attorney General, including but not limited to the department's Assistant Attorney General Division.
- e. Program administrators and grievance coordinators.
- f. U. S. District Courts, with emphasis on the Eastern District Court.
- g. Other.

5. The Courts

- a. Should Grievance Program Office staff pursue with the U. S. District Court a review of its Abuse Policy with the objective being to lower the criteria by which offenders may be deemed abusers?
- b. Should Grievance Program Office staff pursue with the Assistant Attorney General Division and the two U. S. District Courts the possibility of requesting Temporary Restraining Orders against those offenders who continue to abuse the Program in spite of the Abuse Policy?
- c. Should a coordinated study be initiated to determine the volume and types of offender litigation being pursued in the state and/or federal courts in Washington State?
- d. Should a process be developed by which state courts may remand certain types of lawsuits to facilities within their jurisdictions, seeking administrative remedies through the grievance procedure?

- e. Should an entity be designated to record and track all offender litigation and tort claims, and whether the grievance process was utilized by offenders prior to filing litigation?

6. **Grievance Certification**

The Civil Rights of Institutionalized Persons Act of 1980, and the resulting federal grievance standards, authorize the certification of local and/or statewide grievance processes which are found in substantial compliance with the federal grievance standards. Certification may be granted by the U. S. Attorney General or a U. S. District Court having jurisdiction. The grievance procedure at the Washington State Penitentiary was certified by the U. S. District Court, Eastern District of Washington, on May 25, 1984. No response was received from the U. S. Attorney General regarding the August 1, 1984, request by the department to have the remainder of institutions within the Division of Prisons certified.

Most, but not all, DOC facilities currently qualify for certification. Ineffectiveness of local coordinators or insufficient grievance staff are the primary reasons why some facilities don't presently qualify. Those issues are being addressed. The fact remains, however, that certification can be a win-win situation for both the federal Courts and the department. The Courts can reduce their workloads through the effects of remands. The department can gain national recognition (relatively few jurisdictions are currently certified nationally) and the department can reduce its expenditure of resources (at least in part) by providing administrative remedies to remand-generated grievances.

- a. Should the department seek selective certification for those facilities currently in substantial compliance with federal grievance standards rather than wait until all facilities are in compliance?
- b. Should the Grievance Program Manager establish a dialogue with the U. S. District Court, Western District of Washington, regarding possible selective certification of facilities within its jurisdiction?

This report and the questions above are meant to generate discussions about the operations of the Offender Grievance Program as it enters into its second decade. Individuals, including grievance practitioners in other jurisdictions, are encouraged to share their comments, ideas, and personal experiences with grievance mechanisms by contacting:

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