

 State of Indiana Indiana Department of Correction	Effective Date	Page 1 of	Number
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POLICY AND ADMINISTRATIVE PROCEDURE Manual of Policies and Procedures			

Title TORT CLAIMS

Legal References (includes but is not limited to) IC 11-8-2-5(a)(8) IC 34-13-3-1 <i>et seq.</i>	Related Policies/Procedures (includes but is not limited to) 00-01-102 00-02-301 02-01-101 02-01-103	Replaces: 00-01-104 (Eff. Date 2-1-2013 / ED # 13-01)
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I. PURPOSE:

The purpose of this policy and its administrative procedures is to provide a mechanism in accordance with Indiana statutes for incarcerated individuals and other persons to file claims for monetary reimbursement for lost or damaged personal property, or personal injury caused by Department staff.

II. POLICY:

It is the intent of the Department of Correction that Department staff treat all persons and their property with respect. Department staff shall not confiscate, damage, dispose of, lose, or destroy an incarcerated individual's personal property unless authorized by and in accordance with Department policies and administrative procedures.

Situations may occur in which an incarcerated individual's property is lost, damaged, disposed of, or destroyed by Department staff. A mechanism whereby an incarcerated individual may file a claim against the Department for the loss, damage, or destruction of personal property shall be established. The Tort Claim process established by the Indiana General Assembly serves as this mechanism.

Situations may occur in which an incarcerated individual suffers an injury that they believe was caused by Department staff. A mechanism whereby an incarcerated individual may file a claim against the Department for causing the personal injury shall be established. The Tort Claim process established by the Indiana General Assembly serves as this mechanism.

Department staff shall advise the incarcerated population that when an incarcerated individual attempts to obtain reimbursement for personal property or personal injury,

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they are not to use policy and administrative procedure 00-02-301, “Grievance Process.”

III. DEFINITIONS:

For the purpose of this policy and administrative procedure, the following definitions are presented:

- A. DEPARTMENT: The Indiana Department of Correction.
- B. DEPARTMENT STAFF: Any employee of the Department, including former employees, contractors, or agents.
- C. PERSONAL PROPERTY: Any personally owned property item, not including State-issued property, that the Department permits an incarcerated individual to possess in accordance with Policy and Administrative Procedure 02-01-101, "Personal Property."
- D. PROPERTY CLAIM: A request for reimbursement for or replacement of an incarcerated individual’s personal property which has been lost, damaged, or destroyed allegedly by Department staff.
- E. PERSONAL INJURY: Injury to a person’s body, mind, or emotional well-being that is caused by negligence or an intentional act.
- F. PERSONAL INJURY CLAIM: A request for reimbursement for personal injury allegedly caused by Department staff.
- G. TORT CLAIM: The legal mechanism provided by Indiana Code which allows a person to seek a remedy for the loss of personal property or personal injury.

IV. TYPES OF CLAIMS:

This administrative procedure covers those claims filed by incarcerated individuals either currently committed to the Department or who were committed to the Department and who have alleged loss of personal property or suffered personal injury due to actions or omissions by Department staff.

Such claims are those in which an incarcerated individual or other individual is attempting to recover compensation, either monetary or replacement of property, for the loss of personal property or suffered personal injury. This loss or injury must be alleged to have occurred during an incarcerated individual's confinement or supervision and as a result of an act or omission of the Department staff.

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V. TIME FRAME IN WHICH TO FILE AN INCARCERATED INDIVIDUAL PERSONAL PROPERTY CLAIM:

An incarcerated individual must file a personal property claim no later than 180 days after the date of the alleged loss. Claims filed after this time frame has elapsed shall not be considered and shall be processed as a denial (Indiana Code 34-13-3-7).

VI. TIMEFRAME IN WHICH TO FILE A PERSONAL INJURY LOSS CLAIM:

A person must file a personal injury claim no later than 270 days after the date of the alleged loss. Claims filed after this timeframe has elapsed shall not be considered and shall be processed as a denial (Indiana Code 34-13-3-6).

VII. FILING OF CLAIM:

In those cases where an incarcerated individual alleges that Department staff have caused personal injury, or have lost, damaged or destroyed personal property belonging to the incarcerated individual, they may file a claim for compensation. An incarcerated individual shall not be required to file a grievance under Policy and Administrative Procedure 00-02-301, "Grievance Process." Relief in the form of monetary reimbursement for personal injury or replacement of property are not types of relief available through the grievance process.

The incarcerated individual shall complete a State Form 46808," Notice of Tort Claim." Each facility shall ensure that copies of this form are made available in the Law Library and housing units or in any other suitable location(s).

The incarcerated individual shall be required to complete this form and provide as much information as possible when describing the personal injury or personal property that was lost, damaged or destroyed and the manner in which the loss, damage, or destruction occurred. The incarcerated individual shall attach any supporting documents or information to this form. When the form is completed, the incarcerated individual shall submit the claim and all supporting documents to:

Tort Claim Administrator
Division of Legal Services, E334
Indiana Government Center-South
302 W. Washington Street
Indianapolis, IN 46204

Copies of Tort Claims mailed to the Tort Claim Administrator, shall be considered legal mail in accordance with Policy and Administrative Procedure 02-01-103, "Correspondence."

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VIII. TORT CLAIM INVESTIGATOR

The Warden shall designate an employee to act as the facility's Tort Claim Investigator. When the Warden or designee receives a State Form 46808, it shall be forwarded to the Tort Claim Investigator for processing.

The facility Tort Claim Investigator shall be an employee with access to all areas of the facility. The Tort Claim Investigator shall be an employee with the authority and background to investigate claims and make recommendations regarding settlement.

The duties of the facility Tort Claim Investigator shall include:

- A. Receive all State Form 46808, "Notice of Loss-Tort Claim," from the Tort Claim Administrator or designee;
- B. Review these forms and any supporting documentation;
- C. Investigate the claim made by the individual by:
 - 1. Interviewing Department staff and the individual, as necessary,
 - 2. Reviewing all pertinent documents, including personal property inventories, commissary requests, etc.; and,
 - 3. Completing any other actions necessary to make a recommendation on the claim.
- D. Make a recommendation concerning the disposition of the claim and complete the Tort Claim Investigator's section of State Form 46810, "Recommendation on Tort Claim;"
- E. Submit State Form 46810 to the Department's Tort Claim Administrator;
- F. Maintain a file of all Tort Claims filed at the facility.

IX. TORT CLAIM ADMINISTRATOR:

The Chief Legal Officer shall appoint an employee within the Division of Legal Services to act as the Tort Claim Administrator for all claims for loss, damage, or destruction of personal property and personal injury. This employee should be a licensed attorney.

The duties of the Tort Claim Administrator shall include:

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- A. Receive copies of State Form 46808;
 - B. Assign a sequential case number to each claim received;
 - C. Send a copy of State Form 46808 to the facility Tort Claim Investigator and notify them of the case number assigned to the claim;
 - D. Receive copies of State Form 46810 from the facility Tort Claim Investigator;
 - E. Review all documents and forms received from the individual and the facility Tort Claim Investigator;
 - F. Request additional information from the facility or individual, as necessary;
 - G. Make a recommendation concerning the disposition of the claim;
 - H. Submit all documentation to the Office of the Attorney General for final review and disposition;
 - I. Maintain a file on all Tort Claims filed in the Department; and,
 - J. Serve as the Department liaison with the Office of the Attorney General for Tort Claims.
- X. OFFICE OF THE ATTORNEY GENERAL:

It is the responsibility of the Office of the Attorney General to determine the appropriate disposition for a Tort Claim in accordance with Indiana Code 34-13-3 et al. The Tort Claim Administrator will make a recommendation to approve or deny a claim to the Office of the Attorney General. However, the Department lacks the authority to settle a Tort Claim.

In acting upon the claim, staff assigned by the Attorney General will consider the recommendation of the Tort Claim Administrator. The Office of the Attorney General will determine the disposition of the claim. If a decision is made to make a settlement for the claim, all payments of claims shall be made in accordance with IC 34-13 et al.

The Office of the Attorney General shall issue a written decision on all Tort Claims.

XI. RECEIPT OF PAYMENTS IN SETTLEMENT OF CLAIM:

The Attorney General will submit all checks for payment of claims to the Tort Claim Investigator of the facility housing the incarcerated individual.

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The Tort Claim Investigator shall notify the incarcerated individual that the claim has been disposed by providing a copy of the written decision from the Attorney General’s Office. The Tort Claim Investigator shall advise the incarcerated individual as to the amount of the settlement and shall have the incarcerated individual sign all necessary documents indicating acceptance and receipt of the settlement or denial. Following the acceptance of the settlement by the incarcerated individual, the Tort Claim Investigator shall give the check to the designated Department staff in the facility's Business Office to be placed in the incarcerated individual's Inmate Trust Fund. In all cases where the individual is still incarcerated in the Department, the settlement check shall be deposited in the Inmate Trust Fund account.

In those cases where the individual has been released from the Department prior to the settlement of the claim, or is a non-incarcerated individual, the Tort Claim Administrator shall mail the check to the individual at the address provided with the State Form 46808 or to the last known address provided by the individual. In such cases, the Tort Claim Administrator shall provide a document for the individual to sign as a receipt of payment, including a copy of the check, and request that the individual return the signed receipt. When the receipt is received, the Tort Claim Administrator shall forward it to the Office of the Attorney General and retain a copy for the Department’s files, in accordance with State record retention schedules.

XII. APPLICABILITY:

This policy and administrative procedure is applicable to all Department of Correction facilities.

 (signature on file)
 Christina Reagle
 Commissioner

 11/26/24
 Date