



State of Indiana
Indiana Department of Correction

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12/01/05

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00-01-104

**POLICY AND ADMINISTRATIVE
PROCEDURES**
Manual of Policies and Procedures

Title

TORT CLAIMS FOR PROPERTY LOSS

Legal References (includes but is not limited to)	Related Policies/Procedures (includes but is not limited to)	Other References (includes but is not limited to)
IC 11-8-2-5(a)(8) IC 34-13-3-1 <i>et seq.</i>	00-01-102 00-02-301 02-01-101 02-01-103	

I. PURPOSE:

The purpose of this policy and its administrative procedures is to provide a mechanism in accordance with Indiana statutes for offenders to file claims for monetary reimbursement for personal property which they believe was wrongly disposed of, damaged or destroyed by staff of the Department of Correction.

II. POLICY:

It is the intent of the Department of Correction that staff treats an offender's property with respect and courtesy. Staff shall not confiscate, damage, dispose of, lose or destroy an offender's property unless authorized by and in accordance with Department policies and administrative procedures.

It is recognized that situations may occur in which an offender's property is lost, damaged, disposed of, or destroyed by staff. A mechanism whereby an offender 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 shall serve as this mechanism.

Staff shall advise all offenders that in cases where an offender attempts to obtain reimbursement for personal property, the offender is not to use the administrative procedures for Policy 00-02-301, "Offender Grievance Process."

III. DEFINITIONS:

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

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- A. CLAIM: A request for reimbursement for or replacement of an offender's personal property which has been lost, damaged or destroyed allegedly by staff of the Department.
- B. PERSONAL PROPERTY: Any personally-owned property item, not including state-issued property, that the Department permits an offender to possess in accordance with the administrative procedures for Policy 02-01-101, "Offender Personal Property."
- C. STAFF: Any full or part time employee of the Department, including contractors with the Department.
- D. TORT CLAIM: The legal mechanism provided by the Indiana Code which allows a person to seek a remedy for the loss of personal property from the State of Indiana or an agency of state government.

IV. TYPES OF CLAIMS:

These procedures cover only those claims filed by offenders either currently committed to the Department or who were committed to the Department and who have alleged a loss of personal property due to actions or omissions by Department staff.

Such claims are those in which an offender is attempting to recover compensation, either monetary or replacement of property, for the loss of personal property. This loss must be alleged to have occurred during the offender's confinement or supervision and as a result of an act or omission of the Department or any of its agents, former officers, employees or contractors.

V. TIME FRAME IN WHICH TO FILE CLAIM:

An offender must file the 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 returned to the offender.

VI. FILING OF CLAIM:

In those cases where an offender alleges that the Department or its agents have lost, damaged or destroyed personal property belonging to the offender, the offender may file a claim for compensation. The offender shall not be required to file a grievance under Policy 00-02-301, "Offender Grievance Process." Relief in the form of monetary reimbursement or replacement of property is not a type of relief available through the offender grievance process.

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The offender shall complete a State Form 46808, NOTICE OF LOSS OF PROPERTY - TORT CLAIM. (See Attachment I) Each facility shall ensure that copies of this form are made available in the Offender Law Library and offender housing units or in any other suitable location(s).

The offender shall be required to complete this form and provide as much information as possible when describing the item that was lost, damaged or destroyed and the manner in which it was lost, damaged or destroyed. The offender shall attach any supporting documents or information to this form. When the form is completed, the offender shall submit the form to the Facility Head or designee. The offender shall send a copy of the claim, including all supporting documents, to the Department's 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 Commissioner or the Tort Claim Administrator shall be considered legal mail in accordance with the administrative procedures for Policy 02-01-103, "Offender Correspondence."

VII. TORT CLAIM INVESTIGATOR:

The Facility Head shall designate a staff person to act as the facility's Tort Claim Investigator. When the Facility Head or designee receives a State Form 46808 from an offender, it shall be forwarded to the Tort Claim Investigator for processing.

The facility Tort Claim Investigator shall be a staff person who has access to all areas of the facility. The Tort Claim Investigator shall be a staff person with the authority and background to investigate claims and make recommendations in regards to their settlement.

The duties of the facility Tort Claim Investigator shall include:

- A. Receive all State Form 46808, NOTICE OF LOSS OF PROPERTY - TORT CLAIM, from the Facility Head or designee;
- B. Review these forms and any supporting documentation;
- C. Investigate the claim made by the offender by:
 1. Interviewing staff and the offender, 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.

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- 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 (See Attachment II);
- E. Submit State Form 46810 to the Department's Tort Claim Administrator;
- F. Meet with the offender to discuss proposed settlement of claim, as appropriate;
- G. Meet with the offender to advise as to settlement of claim and have all necessary paperwork completed; and,
- H. Maintain a file of all property loss Tort Claims filed by offenders at the facility.

VIII. TORT CLAIM ADMINISTRATOR:

The Commissioner of the Department shall appoint a staff person within the Division of Legal Services to act as the Tort Claim Administrator for all offender claims for loss, damage or destruction of personal property. This staff person shall report to the Director of the Division of Legal Services.

The duties of the Tort Claim Administrator shall include:

- A. Receive copies of State Form 46808 submitted by offenders;
- B. Assign a sequential case number to each claim received;
- C. Advise the facility Tort Claim Investigator and the offender as to 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 offender and the facility Tort Claim Investigator;
- F. Request additional information from the facility or the offender, as necessary;
- G. Make a recommendation concerning the disposition of the claim:

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1. Complete State Form 46809, AMENDMENT TO TORT CLAIM (Attachment III) in cases where the claim appears appropriate but the amount requested is not correct;
2. Forward State Form 46809 to the facility Tort Claim Investigator, as necessary;
3. Receive the completed State Form 46809 from the facility Tort Claim Investigator; and,
4. Complete the Tort Claim Administrator section of the State Form 46810.

H. Submit all documentation to the Office of the Attorney General for final review and disposition;

I. Maintain a file on all property loss Tort Claims filed in the Department; and,

J. Serve as the Department liaison with the Office of the Attorney General for property loss Tort Claims.

IX. 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. The Department of Correction shall make a recommendation to approve or deny a claim to the Office of the Attorney General. However, the Department of Correction lacks the authority to settle a Tort Claim.

The Tort Claim Administrator shall send to the Office of the Attorney General the recommendation and documentation on each offender property Tort Claim received. In acting upon the claim, staff assigned by the Attorney General shall consider the recommendation of the Department. The Office of the Attorney General shall 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 34-4-16.5-22.

X. RECEIPT OF PAYMENTS IN SETTLEMENT OF CLAIM:

The Attorney General shall submit all checks for payment of property loss claims to the Tort Claim Administrator. The Tort Claim Administrator shall record the check amount and make a copy of the check. The Tort Claim Administrator then shall send the check to the Tort Claim Investigator of the facility housing the offender.

The Tort Claim Investigator shall meet with the offender and advise the offender that the claim has been disposed. The Investigator shall advise the offender as to the

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amount of the settlement. The Investigator shall have the offender sign all necessary documents indicating acceptance and receipt of the settlement. Following the acceptance of the settlement by the offender, the Tort Claim Investigator shall give the check to the designated staff in the facility's Business Office to be placed in the offender's Inmate Trust Fund. In all cases where the offender is still incarcerated in the Department, the settlement check shall be deposited in the offender's Inmate Trust Fund account.

In those cases where the offender has been released from the Department prior to the settlement of the claim, the Tort Claim Administrator shall mail the check to the offender at the address provided with the State Form 46808 or to the last known address provided by the offender. The Tort Claim Administrator may mail the check to the address given on the claim. In such cases, the Tort Claim Administrator shall indicate that the check was mailed, the address to which the check was mailed and the date. The Tort Claim Administrator shall make a record that the payment was received, including a copy of the check. The Tort Claim Administrator shall request that the claimant return the signed receipt form. 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.

XI. APPLICABILITY:

This policy and its administrative procedures are applicable to all Department of Correction facilities.

 Signature on File
 J. David Donahue
 Commissioner

 10/16/05
 Date