

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
- 97hr_JCR-AR_ES_pt12b
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-

February 19, 1998
Executive Session JCRAR

State of Wisconsin

Tommy G. Thompson
Governor

Jon E. Litscher
Secretary



137 East Wilson Street
P.O. Box 7855
Madison, WI 53707-7855

DEPARTMENT OF EMPLOYMENT RELATIONS

December 18, 1997

Senator Fred Risser, President
Wisconsin State Senate
Suite 102
119 Martin Luther King, Jr. Blvd.
Madison, WI 53702

Attention: Donna Doyle
1 East Main St.
Suite 402
Madison, WI 53701

Dear President Risser:

In accordance with s. 227.19 (2), Stats., I hereby submit three copies of the final draft form of Clearinghouse Rule 97-142, relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employes and catastrophic leave.

Sincerely,

A handwritten signature in black ink that reads "Jon E. Litscher".

JON E. LITSCHER
Secretary

JEL:BVH



AN EQUAL OPPORTUNITY EMPLOYER



State of Wisconsin

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137 East Wilson Street
P.O. Box 7855
Madison, WI 53707-7855

DEPARTMENT OF EMPLOYMENT RELATIONS

December 18, 1997

State Rep. Scott Jensen, Speaker
Wisconsin State Assembly
Room 211 West
State Capitol
Madison, WI 53702

Attention: Ken Stigler
1 East Main St.
Suite 402
Madison, WI 53701

Dear Speaker Jensen:

In accordance with s. 227.19 (2), Stats., I hereby submit three copies of the final draft form of Clearinghouse Rule 97-142, relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employes and catastrophic leave.

Sincerely,

A handwritten signature in cursive script that reads "Jon E. Litscher".

JON E. LITSCHER
Secretary

JEL:BVH



AN EQUAL OPPORTUNITY EMPLOYER



**PROPOSED ORDER OF THE SECRETARY
OF THE DEPARTMENT OF EMPLOYMENT RELATIONS
ADOPTING RULES**

To renumber ER 18.15 (2) (a) to (h) and 18.15 (3) (a) and (b); to amend ER 18.02 (2)(b) 6., (3)(c) 3., and (5)(c), 18.03 (2)(a), 18.04 (4)(c), 18.15 (1)(c), (2) (intro.), (3) (intro.) and (4)(a) 3., and to create ER 18.02 (5)(bm) and (6)(b) 6., 18.03 (6) and (7), 18.15 (2) (a) and (b) (intro.), 18.15 (3) (a) and (b) (intro.) and 18.15 (4m), relating to annual leave, sick leave credits, the adjustment of sick leave balances for state employes and catastrophic leave.

ANALYSIS PREPARED BY DEPARTMENT OF EMPLOYMENT RELATIONS

S. 230.35 (2), Wis. Stats., provides that sick leave for state employes shall be regulated by the administrative rules of the Secretary of the Department of Employment Relations. Rules governing sick leave are located in s. ER 18.03, Wisconsin Administrative Code.

S. ER 18.03 (2) provides that sick leave credits accrue at the rate of .05 hour for each hour in pay status, not to exceed 4 hours in any biweekly pay period. An employe working full time (i.e. 80 hours in a biweekly pay period) would thus earn 104 hours of sick leave in one year, or 13 days.

This rule increases the accrual rate for sick leave from .05 hour to .0625 hour for each hour in pay status, not to exceed 5 hours in any biweekly pay period. The annual earning rate for a full-time employe would increase to 16.25 days per year.

On the effective date of the rule, the sick leave balances of active state employes would be adjusted to apply the higher accrual rate to hours worked between July 6, 1997 and the effective date of the rule change. Similar adjustments would be made to the sick leave balances of employes who retired or were laid off during that time period. Employes who began an unpaid leave of absence during that time period would have their sick leave balance adjusted when they returned to work. Adjustments will also be made to the sick leave balances of employes who move from a represented position to a position covered by the rules on sick leave, if the employe's balance had not been previously adjusted under a collective bargaining agreement.

The Department's authority to promulgate the rules regarding catastrophic leave is found in s. 230.04 (5) and 230.35 (2r), Stats. The rules implement the powers and duties of the Secretary under s. 230.04 (1) and 230.35 (2r), Stats.

Current rules regarding catastrophic leave are found in ER 18.15, Wis. Admin. Code. Current rules allow a donor to donate leave credits only to

nonrepresented employees within the same employing unit, except that donations may be made to recipients in different employing units in the same agency with the approval of the appointing authority. Similarly, a recipient may receive credits only from other nonrepresented employees within the same employing unit. This rule would allow a donor to donate leave to, and allow a recipient to receive leave from, any eligible classified employee -- nonrepresented or represented -- within the same agency. Leave may also be exchanged with any eligible classified employee in another agency with the approval of each affected agency.

The rule makes several technical changes in chapter ER 18 to reflect the proper cross-references and newly added provisions to the statutes or rules.

TEXT OF PROPOSED RULE

SECTION 1. ER 18.02 (2)(b) 6. is amended to read:

ER 18.02 (2)(b) 6. Was a career executive employe or employed under s. 20.923 (4), (4m), (8) or (9), Stats., who left the service and returned to state employment as a career executive or in any such enumerated position regardless of the duration of absence as provided under s. 230.35 (1m) (f), Stats. This applies to all persons who are career executive employes or employes in positions enumerated in s. 20.923 (4), (4m), (8) or (9), Stats., on or after July 1, 1973.

SECTION 2. ER 18.02 (3)(c) 3. is amended to read:

ER 18.02 (3)(c) 3. Full-time, full year career executives and certain executive salary schedule employes. Annual leave for career executives, as provided under ch. ER-MRS 30, and persons included under s. 19.42 (10) (L) or 20.923 (4), (4m), (8) and (9), Stats., employes in positions authorized under s. 230.08 (2)(e), Stats., and employes appointed to a position designated as an attorney position in which the employe is employed and acts as an attorney, unless the attorney position is a limited term appointment under s. 230.26, Stats. shall be based upon accumulated continuous service and earned at the rate shown in the following table:

SECTION 3. ER 18.02 (5)(bm) is created to read:

ER 18.02 (5)(bm) Pursuant to s. 230.35 (1p)(c), Stats., employes who earn annual leave at less than the rate of 160 hours per year and who have accumulated, at any time during the employe's continuous state service, a minimum of 520 hours of sick leave may elect to receive up to 40 hours of earned annual leave as credit for termination leave or as accumulated sabbatical leave or both. An election under this paragraph shall be made in the year in which the annual leave is earned.

SECTION 4. ER 18.02 (5) (c) is amended to read:

ER 18.02 (5) (c) The number of hours available for use under pars. (a) and (b) and (bm) shall be prorated at the pertinent annual leave rate or rates for employes who work less than 2088 hours during the calendar year.

SECTION 5. ER 18.02(6)(b) 6 is created to read:

ER 18.02 (6)(b) 6. Employes may use annual leave as provided in ER 18.15 (4) (f) and (g).

SECTION 6. ER 18.03 (2) (a) is amended to read:

ER 18.03 (2) ACCRUAL OF SICK LEAVE. (a) Sick leave credit shall accrue at the rate of ~~.05~~ .0625 hour for each hour in pay status, not to exceed 4 5 hours in any biweekly pay period.

SECTION 7. ER 18.03 (6) and (7) are created to read:

ER 18.03 (6) ADJUSTMENT TO SICK LEAVE BALANCE OF EMPLOYES ON UNPAID LEAVE OF ABSENCE. Employes who began an unpaid leave of absence on or after July 6, 1997 and before October 12, 1997 shall have their sick leave balances recomputed, upon their return to a position covered by this section, at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employe's sick leave balance and are available for prospective use only.

(7) ADJUSTMENT TO SICK LEAVE BALANCE. (a) The sick leave balances of all employes in pay status on October 12, 1997 and former employes who retired or were laid off from a position during the period from July 6, 1997 to October 12, 1997 shall be recomputed at the rate of .0625 for each hour in pay status, not to exceed 5 hours in any biweekly pay period, based on the number of hours in pay status in a position covered by this section during that time period. Any additional sick leave credits will be credited to the employe's sick leave balance and are available for prospective use only, except that former employes who retired or were laid off after July 6, 1997 and before the October 12, 1997 may use the additional sick leave credits for the payment of health insurance premiums in the same manner as any sick leave credits that were available to them for that purpose at the time of retirement or layoff.

(b) The sick leave balances of all employes who move after October 12, 1997 from a position covered by a collective bargaining agreement under subchapter V of Chapter 111, Wis. Stats., to a position covered by this section shall be recomputed at the rate of .0625 for each hour in pay status, not to exceed 5

hours in any biweekly pay period, based on the number of hours in pay status in a position or positions covered by a collective bargaining agreement between July 6, 1997 and the effective date of the employee's move to a position covered by this section. The sick leave balance of an employee may not be adjusted for any hours in pay status during that time period if the employee's sick leave balance previously has been adjusted for those hours under sub. (6) or par. (7)(a) or under terms of a collective bargaining agreement. Any additional sick leave credits will be credited to the employee's sick leave balance and are available for prospective use only. This paragraph does not apply after June 30, 1999.

SECTION 8. ER 18.04(4)(c) is amended to read:

ER 18.04 (4)(c) Personal holidays shall be used prior to the end of the calendar year except as provided under s. 230.35 (4)(d) 4., Stats., and ER 18.15 (4) (f) and (g).

SECTION 9. ER 18.15 (1) (c) is amended to read:

ER 18.15 (1) (c) "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship in the classified service, except limited term employees ~~and employees covered by a collective bargaining agreement under subch. V of ch. 111, Stats.~~

SECTION 10. ER 18.15 (2) (intro.) is amended to read:

ER 18.15 (2) (intro.) DETERMINING RECIPIENT ELIGIBILITY. To be an eligible recipient, an employee shall satisfy ~~all of the following conditions~~ under par. (a) or (b):

SECTION 11. ER 18.15 (2) (a) to (h) are renumbered 18.15 (2) (b) 1. to 8.

SECTION 12. ER 18.15 (2) (a) and (b) (intro.) are created to read:

ER 18.15 (2) (a) Be an eligible recipient under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or;

(b) (intro.) Satisfy all of the following conditions:

SECTION 13. ER 18.15 (3) (intro.) is amended to read:

ER 18.15 (3) (intro.) DETERMINING DONOR ELIGIBILITY. To be an eligible donor, an employee shall satisfy ~~all of the following conditions~~ under par. (a) or (b):

SECTION 14. ER 18.15 (3) (a) and (b) are renumbered ER 18.15 (3) (b) 1. and 2.

SECTION 15. ER 18.15 (3) (a) and (b) (intro.) are created to read:

ER 18.15 (3) (a) Be an eligible donor under a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., or;

(b) (intro.) Satisfy all of the following conditions:

SECTION 16. ER 18.15 (4)(a) 3. is amended to read:

ER 18.15 (4)(a) 3. A donor may donate leave credits only to recipients within the same ~~employing unit~~ agency, except that donations may be made to recipients in different ~~employing units in the same agency~~ agencies with the approval of the donor's appointing authority and the recipient's appointing authority.

SECTION 17. ER 18.15 (4m) is created to read:

ER 18.15 (4m) If an employe is covered by a catastrophic leave program under a collective bargaining agreement under subch. V of ch. 111, Stats., the provisions of the applicable collective bargaining agreement shall determine eligibility, limitations on the receipt, donation and usage of leave and other conditions of catastrophic leave as they apply to that employe.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE RECOMMENDATIONS

All recommendations were accepted.

LIST OF PERSONS APPEARING OR REGISTERING AT PUBLIC HEARING

No one appeared or registered at the public hearing and no written testimony was submitted to the Department.

MODIFICATIONS MADE AS A RESULT OF TESTIMONY AT PUBLIC HEARING

No modifications were made as a result of testimony at the public hearing. However, under s. 227.17 (4), Wis. Stats., the Department modified the proposed rule by amending existing rules on carryover of leave to reflect the specific carryover provisions of the catastrophic leave program under ER 18.15. In response to a question from a state agency, the Department also modified the rule to adjust the sick leave balances of employes who move from a represented position to a position covered by the rules on sick leave, if the employe's balance had not been previously adjusted under a collective bargaining agreement.

EFFECTIVE DATE

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)(intro), Stats.

FISCAL ESTIMATE

The fiscal impact of additional sick leave for employees can be expressed in several ways:

1. There is the "cost" to the state of providing leave with pay to employees for time during which no work is required to be performed. However, this would not be a direct or increased cost to the state.
2. In addition, when an employee is on sick leave, a state agency may incur increased costs if it must pay overtime or utilize replacement staff to perform the work of the absent employee. This cost can be calculated only if data is available regarding the number of employees taking leave, the duration of the leave and the job functions and pay level of the employees on leave. Insufficient data exists to calculate this cost.
3. Accumulated sick leave credits for eligible employees who are retiring or eligible to receive a retirement annuity may be converted at the employee's final hourly salary and used to purchase post-retirement health insurance. An increase in the sick leave accrual rate may lead to additional sick leave hours being converted under these programs. The costs of these programs are funded as percentages of payroll charges against state agency budgets. Until an actuarial study is conducted based on the higher accrual rate, it is impossible to determine the fiscal impact of any additional converted sick leave credits.

The fiscal effect of the changes in catastrophic leave is indeterminable because it is impossible to identify how many employees will actually apply for this benefit. However, since the rules are only allowing broader transfer of leave credits between employees, the cost of the rule is expected to be negligible.

AGENCY CONTACT

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(608) 267-1003

Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



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149 East Wilson Street
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State of Wisconsin Department of Corrections

December 23, 1997

Scott Jensen, Speaker
Wisconsin State Assembly
315 North, State Capitol
Madison, Wisconsin 53702

Fred Risser, President
Wisconsin State Senate
Room 102,
119 Martin Luther King Blvd.
Madison, Wisconsin 53702

Re: Clearinghouse Rule 97-106
An order to create DOC 310, Relating to the Inmate Complaint Review System

Gentlemen:

As provided in s. 227.19 (2), Stats., notice is given that the above-mentioned rule is in final draft form. This notice and the report required under s. 227.19 (2) and (3), Stats., are submitted in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Deborah Rychlowski at (608) 266-8426.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan".

Michael J. Sullivan
Secretary

Enclosures

cc: Gary Poulson, Deputy Revisor of Statutes
Senator Richard Grobschmidt, JCRAR
Representative Glenn S. Grothman, JCRAR

PROPOSED ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND RECREATING RULES

The Wisconsin department of corrections proposes an order to repeal DOC 310.125 (intro.), 310.025 (6), 310.125 (7), 310.03 (5), 310.04 (2) (a), 32 310.04 (3) (a), 310.04 (3) (b), 310.04 (3) (c), 310.04 (3) (d), 310.06 (3), 310.06 (4), 310.08 (title), 310.08 (1), 310.08 (2), 310.09 (6), 310.09 (7), 310.09 (8), 310.09 (9), 310.12 (1), 310.13 (7), and 310.14 (3); to renumber and amend 310.01 (2) (b), 310.01 (2) (c), 310.01 (2) (d), 310.01 (2) (e), 310.01 (2) (f), 310.01 (2) (g), 310.015, 310.02 (2), 310.02 (3), 310.02 (4), 310.02 (5), 310.02 (6), 310.02 (8), 310.02 (9), 310.02 (10), 310.025 (title), 310.025 (1), 310.025 (2), 310.025 (2) (a), 310.025 (2) (b), 310.025 (2) (c), 310.025 (3), 310.025 (4), 310.025 (5), 310.03 (title), 310.03 (1), 310.03 (2), 310.03 (3), 310.03 (4), 310.04 (title), 310.04 (1), 310.04 (2), 310.08 (2) (a), 310.04 (2) (c), 310.04 (2) (d), 310.04 (2) (e), 310.04 (3), 310.04 (5), 310.05 (1), 310.05 (2), 310.05 (3), 310.05 (4), 310.05 (5), 310.05 (6), 310.06 (2), 310.06 (5), 310.06 (6), 310.07 (1), 310.07 (2), 310.07 (3), 310.07 (4), 310.07 (5), 310.07 (6), 310.07 (7), 310.07 (8), 310.09 (title), 310.09 (1), 310.09 (2), 310.09 (4), 310.09 (10), 310.09 (11), 310.10 (1), 310.10 (2), 310.10 (2) (b), 310.10 (2) (c), 310.12 (2), 310.12 (3), 310.12 (4), 310.13 (1), 310.13 (2), 310.13 (5), 310.13 (6), 310.14 (1), and 310.14 (2); renumber 310.02 (intro.), 310.02 (1), 310.02 (7), 310.025 (title), 310.04 (2) (b), 310.05 (title), 310.06 (title), 310.06 (1), 310.07 (title), 310.09 (3), 310.09 (5), 310.10 (title), 310.10 (2) (a), 310.10 (3), 310.12 (title), 310.13 (3), 310.13 (4), 310.14 (title), 310.14 (a), 310.14 (b), 310.14 (c), and 310.14 (d); amend 310.01 (2), 310.01 (2) (a), and 310.02; and create 310.01 (2) (b), 310.03 (2), 310.03 (3), 310.03 (5), 310.03 (9), 310.03 (10), 310.03 (13), 310.03 (14), 310.03 (15), 310.03 (17), 310.06 (2) (b), 310.06 (2) (c), 310.06 (6), 310.08 (2) (a), 310.08 (2) (f), 310.08 (4), 310.08 (4) (a), 310.08 (4) (b), 310.08 (4) (c), 310.05, 310.10 (3), 310.11 (4), 310.11 (4) (a), 310.11 (4) (b), 310.11 (4) (c), 310.11 (5), 310.11 (11), 310.12 (title), 310.12 (1), 310.12 (2), 310.12 (2) (a), 310.12 (2) (b), 310.12 (2) (c), 310.12 (2) (d), 310.12 (2) (e), 310.12 (3), 310.13 (4), 310.14 (2) (d), 310.15 (1), 310.15 (2), 310.18, and 310.19, relating to the inmate complaint review system.

Statutory authority: ss. 301.02, 301.03(2), and 227.11(2), Stats.
Statutes interpreted: ss. 301.02 and 301.03, Stats.

Analysis Prepared by the Department of Corrections

This rule is substantively similar to the emergency rule now in effect for DOC 310, which became effective August 4, 1997.

The department provides an administrative process by which inmates may raise grievances concerning rules, living conditions, and staff actions affecting inmates' institution living. This rule updates the department's current rule.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions.

This proposed rule eliminates redundant and confusing language, simplifies and clarifies some language, and uses current terminology. The rule changes "inmate complaint investigator" or "ICI" to "institution complaint examiner" or "ICE". The rule changes "superintendent" to "warden".

This proposed rule applies to all inmates of an adult correctional institution.

This rule reflects the statutory requirement that requires inmates to exhaust their administrative remedies before commencing a civil action. A new section "Exhaustion of Administrative Remedies" has been created at the proposed DOC 310.04.

This rule allows the Corrections Complaint Examiner to be employed by the department, but not within the Division of Adult Institutions. This is a change from the current rule which provides that the Corrections Complaint Examiner must be employed outside of the Department. This revision is required to reflect the change in the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. Prior to the promulgation of the emergency rule for DOC 310 on August 4, 1997, there was a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions had been in effect for years. At the time the emergency rule was promulgated, there was a substantial backlog of over 3,000 inmate complaints which needed to be reviewed by the Corrections Complaint Examiner. When the Department of Justice decided that it would no longer handle the Corrections Complaint Examiner function, DOC needed to change the administrative rule regarding inmate complaints to make the system more efficient and prevent future backlogs. Since the emergency rule has been in effect, DOC has eliminated the backlog in part by utilizing the efficiencies contained in the emergency rule and proposed in this permanent rule.

One method the department proposes in this rule to make the system

more efficient is to require the institution complaint examiner to dismiss frivolous complaints. This rule permits inmates to appeal the dismissal of a frivolous complaint to the appropriate reviewing authority and prohibits the corrections complaint examiner from reviewing complaints dismissed as frivolous. The current permanent rule has no provision for the rejection of frivolous complaints.

Another method the department proposes to make the complaint review system more efficient is to limit the number of complaints that an inmate may file to 2 complaints in a calendar week, unless the institution complaint examiner finds good cause. Health and personal safety issues are excluded from this limitation. This rule provides that group complaints will count as one complaint filed under this section. The current permanent rule has no limit on the number of complaints which an inmate may file.

This rule provides that the warden rather than the ICI shall determine if a decision on a group complaint should be issued to all parties to the complaint or posted in a place accessible to the group.

This rule provides that the warden shall designate an acting ICE if the ICE is absent for more than two working days. The rule creates a provision that the acting ICE shall have all the job functions of the ICE, including collection of the complaints. This is added to clarify the job duties of an acting ICE.

This rule also creates a new section, "Communication of Procedures" in DOC 310.05. This section provides that the department shall make the written complaint procedures readily available to all inmates. This section also requires the department to make appropriate provisions to communicate these procedures to non-English speaking, impaired or handicapped inmates and to ensure they have full access to the complaint review system.

This rule permits the institution complaint examiner to accept late complaints for good cause. The current permanent rule provides that the ICI may accept a late complaint for cause.

This rule requires that an inmate must sign a complaint, if able to do so. This rule creates a provision that an ICE shall return an unsigned complaint to the complainant. This rule creates a provision that an inmate may not use language which is profane, obscene, abusive, or threatens others when filing a complaint, unless the language is necessary to describe factual matters which are the substance of the complaint. This rule provides that an ICE shall return complaints to the inmate if they contain this language. The current permanent rule does not address the issue of complaints which contain profane, obscene, abusive or threatening language.

This rule allows the ICE to attempt to informally resolve a complaint at the institution level. This rule creates a provision that the ICE may direct the inmate to discuss the issue with an appropriate institution staff member prior to the complaint investigation.

This rule permits persons other than the warden to review and make decisions regarding an inmate complaint. This rule creates a section that provides that health care and psychiatric complaints shall be directed to the director of the bureau of health services or designee, and that Badger state industries and farm complaints shall be directed to the director of the bureau of correctional enterprises. The rule provides that the reviewing authority for all other complaints shall be the warden, unless the secretary designates another authority. This section was changed so that the person deciding the complaint will be the person with expertise in the area of the complaint.

This rule expands some time lines by changing calendar days to working days. This rule requires the secretary to make a decision on the complaint within 10 working days instead of 5 calendar days. This rule permits the secretary to extend the time lines for cause and upon notice to the inmate and all interested parties involved. The rule changes the time for the ICE to review and acknowledge the complaint in writing from 3 calendar days to 5 working days. The rule changes the time period for the CCE to recommend a decision to the secretary from 37 calendar days to 35 working days. The rule changes the time period for the administrator to notify the affected parties of decisions that affect more than one institution from 30 calendar days to 30 working days. The rule changes the time for an inmate to appeal a decision to the CCE from 5 calendar days from receipt of the decision to 10 calendar days from the date of the decision.

This rule clarifies the current rule by providing that if an inmate makes a false statement to those outside the inmate complaint review system, the statement may constitute an offense under s. DOC 303.271.

This current permanent rule provides that the department may reveal the identity of the complainants and the nature of the complaints only to the extent necessary for thorough investigation of the complaint and implementation of the remedy. This rule changes that language and provides that the department may reveal the identity of the complainants and the nature of the complaints to the extent it is reasonable and appropriate for thorough investigation and implementation of the remedy. The current permanent rule provides that confidentiality may be waived only if the security of the institution, staff or inmates is involved. This rule also allows

the warden to waive confidentiality if safety or health of staff or inmates is involved. This rule adds a provision that an inmate may waive confidentiality in writing.

This rule permits a complaint to be filed directly with the reviewing authority if the institution complaint examiner determines that the normal processing of a complaint would subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm.

This rule removes language that permitted the corrections complaint examiner to order an evidentiary hearing.

This rule creates a provision which prohibits the department from any reprisal against an inmate for participation in the complaint procedure and creates a provision that an inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.

This rule creates a provision which requires all records of an inmate complaint to be kept for at least 3 years after disposition of the complaint.

This rule creates a provision which allows the secretary to suspend these rules in an emergency and defines an emergency.

The rule repeals the provision that the CCE file an annual report with the attorney general as the CCE function has been moved from the Department of Justice to the Department of Corrections.

Chapter DOC 310

COMPLAINT PROCEDURES

- DOC 310.01 Purpose
- DOC 310.02 Applicability
- DOC 310.03 Definitions
- DOC 310.04 Exhaustion of administrative remedies
- DOC 310.05 Communication of procedures
- DOC 310.06 Organization of inmate complaint review system
- DOC 310.07 Inmate complaint review system
- DOC 310.08 Scope of complaint review system
- DOC 310.09 Filing of complaints
- DOC 310.10 Group complaints
- DOC 310.11 Processing complaints at the institution level
- DOC 310.12 Appropriate reviewing authority
- DOC 310.13 Review by corrections complaint examiner
- DOC 310.14 Secretary's decision
- DOC 310.15 Implementation of affirmed complaint
- DOC 310.16 Confidentiality
- DOC 310.17 Reports
- DOC 310.18 Preservation of records
- DOC 310.19 Suspension of provisions of this chapter

SECTION 1. DOC 310.01 (2) (intro.) and (a) are amended to read:

DOC 310.01 (2) The department has the following objectives of for the inmate complaint review system are:

(a) To allow inmates to raise, in an orderly fashion, questions significant issues regarding rules, living conditions, and staff actions affecting institution living environment.

SECTION 2. DOC 310.01 (2) (b) is renumbered DOC 310.01 (2) (c), and as renumbered, is amended to read:

DOC 310.01 (2) (c) To encourage communication between inmates and staff.

SECTION 3. DOC 310.01 (2) (b) is created to read:

DOC 310.01 (2) (b) To provide the department an early opportunity to decide the issue before an inmate commences a civil action or special proceeding against a department officer, employe or agent in the officer's, employe's or agent's official or individual capacity.

SECTION 4. DOC 310.01 (2) (c) to (g) are renumbered DOC 310.01 (2) (d) to (h), and as renumbered, are amended to read:

DOC 310.01 (d) To develop inmates' sense of involvement in and respect for the correctional process~~+~~.

(e) To explain correctional policy to inmates and staff~~+~~.

(f) To afford inmates and staff the opportunity to review correctional policy and gain further insight into the correctional system~~+~~.

(g) To correct any errors and deficiencies in correctional policy through questioning and review~~+~~ and.

(h) To allow inmates to raise civil rights grievances.

SECTION 5. DOC 310.015 is renumbered 310.02, and as renumbered, is amended to read:

DOC 310.02 APPLICABILITY. Pursuant to authority vested in the department of corrections under ss. 301.02, 301.03 (2) and 227.11 (2), Stats., the department adopts this chapter which applies to the department and all adult inmates in its legal custody confined in a state adult correctional facility. ~~It~~ This section interprets ss. 301.02 and 301.03 (2), Stats.

SECTION 6. DOC 310.02 (intro.) and 310.02 (1) are renumbered DOC 310.03 (intro.) and 310.03 (1).

SECTION 7. DOC 310.02 (2) is renumbered DOC 310.03 (4), and as renumbered, is amended to read:

DOC 310.03 (4) "Calendar days" means all days including Saturdays, Sundays, and state legal holidays.

SECTION 8. DOC 310.02 (3) is renumbered DOC 310.03 (6), and as renumbered, is amended to read:

DOC 310.03 (6) "CCE" or "corrections complaint examiner" means the person outside employe of the department, who is assigned to a subunit that is not within the division of adult institutions, and

who is designated by the secretary to investigate complaints appealed to the secretary.

SECTION 9. DOC 310.02 (4) is renumbered DOC 310.03 (7), and as renumbered, is amended to read:

DOC 310.03 (7) "Civil rights grievance" means any inmate complaint relating to an incident affecting the delivery of services to ~~inmates~~ an inmate in which it appears an inmate has been discriminated against who alleges discrimination on the basis of race, creed, ethnicity, national origin, sex, handicap, age, religion, color, ancestry, sexual orientation or marital status.

SECTION 10. DOC 310.02 (5) is renumbered DOC 310.03 (8), and as renumbered, is amended to read:

DOC 310.03 (8) "Department" means the ~~Wisconsin~~ department of corrections.

SECTION 11. DOC 310.02 (6) is renumbered DOC 310.03 (11), and as renumbered, is amended to read:

DOC 310.03 (11) ~~"ICI"~~ "ICE" or ~~"inmate complaint investigator"~~ "institution complaint examiner" means the person or one of the persons at each adult correctional institution designated by the warden to investigate complaints filed by inmates, or designee.

SECTION 12. DOC 310.02 (7) is renumbered DOC 310.03 (12).

SECTION 13. DOC 310.02 (8), 310.02 (9), and 310.02 (10) are renumbered DOC 310.03 (16), 310.03 (18) and 310.03 (19), and as renumbered, are amended to read:

DOC 310.03 (16) "Secretary" means the ~~head~~ secretary of the department of corrections, or ~~that person's~~ designee.

(18) ~~"Superintendent"~~ "Warden" means the ~~superintendent~~ warden of the institution at which the complaint was filed, or designee.

(19) "Working days" means all days except Saturdays, Sundays, and state legal holidays.

SECTION 14. DOC 310.025 (title) is renumbered DOC 310.06 (title).

SECTION 15. DOC 310.025 (intro.) is repealed.

SECTION 16. DOC 310.025 (1), 310.025 (2) (intro.), and 310.025 (2) (a) are renumbered DOC 310.06 (1), 310.06 (2) (intro.), and 310.06 (2) (a), and as renumbered, are amended to read:

DOC 310.06 ORGANIZATION OF INMATE COMPLAINT REVIEW SYSTEM. (1) To use the complaint system, an inmate files a complaint with the inmate institution complaint investigator examiner (ICI) under ~~s. DOC 310.05~~ ss. DOC 310.09 or 310.10.

(2) The ~~ICI~~ ICE then may do any of the following:

(a) ~~Investigates~~ Investigate the complaint under s. DOC ~~310.07~~ 310.11;

SECTION 17. DOC 310.025 (2) (b) and (c) are renumbered 310.06 (2) (d) and (e), and as renumbered, are amended to read:

DOC 310.06 (2) (d) ~~Attempts~~ Attempt to resolve the complaint under s. DOC ~~310.07~~ (5) 310.11 (7);

(e) ~~Recommends~~ Recommend a decision to the superintendent appropriate reviewing authority under s. DOC ~~310.07~~ (3) 310.11(3).

SECTION 18. DOC 310.025 (3) to (5) are renumbered DOC 310.06 (3) to (5), and as renumbered, are amended to read:

DOC 310.06 (3) The ~~superintendent appropriate reviewing authority,~~ after studying the ICI's report, renders makes a decision under s. DOC ~~310.08~~ 310.12.

(4) An inmate may appeal an adverse decision to the corrections complaint examiner ~~(CCE)~~ under s. DOC ~~310.09~~ (1) 310.13.

(5) The ~~corrections complaint examiner~~ CCE then investigates and makes a recommendation to the secretary under s. DOC ~~310.09~~ (10) 310.13(8).

SECTION 19. DOC 310.025 (6) and (7) are repealed.

SECTION 20. DOC 310.03 (title), 310.03 (1), 310.03 (2), 310.03 (3), and 310.03 (4) are renumbered DOC 310.07 (title), 310.07 (1), 310.07 (2), 310.07 (3) and 310.07 (4), and as renumbered, are amended to read:

DOC 310.07 INMATE COMPLAINT REVIEW SYSTEM. (1) To effectuate achieve the purpose and objectives of s. DOC 310.01, the department shall maintain an inmate complaint review system ~~(ICRS)~~ in the adult correctional institutions.

(2) Each ~~superintendent~~ warden shall appoint an inmate institution complaint investigator (ICI) examiner to implement the complaint review system whose primary responsibility shall be complaint investigation. ~~In some institutions the superintendent~~ The warden

may designate ~~an any~~ employe to function as ~~ICF~~ ICE in addition to other duties. ~~Complaint investigation shall be the primary responsibility of this person.~~

(3) ~~The department shall provide the ICF ICE shall be provided~~ with office space and clerical support required to implement the ICRS.

(4) ~~In investigating a complaint, the~~ The ICE shall have access to institution staff, inmates, and any institution or department records pertaining pertinent to that investigation when investigating a complaint ~~not otherwise protected by rule or statute.~~

SECTION 21. DOC 310.03 (2) and 310.03 (3) are created to read:

DOC 310.03 (2) "Administrator" means an administrator, division of adult institutions, department of corrections, or designee.

(3) "Appropriate reviewing authority" means the warden, bureau director, administrator or designee who is authorized to review and decide an inmate complaint.

SECTION 22. DOC 310.03 (5) is repealed.

SECTION 23. DOC 310.03 (5), 310.03 (9), 310.03 (10), 310.03 (13) to 310.03 (15), and 310.03 (17) are created to read:

DOC 310.03 (5) "Calendar week" means Sunday through Saturday.

(9) "Director" means a director of a bureau, department of corrections, or designee.

(10) "Emergency" means any situation determined by the secretary to affect the security or orderly administration of the institution or the security, safety, or health of staff.

(13) "Malicious injury" means injury to the department or a person as the result of hatred, ill will, revenge, or as the result of intent to insult or injure.

(14) "Persons working in the inmate complaint review system or ICRS" means the secretary, deputy secretary, CCE, ICE, ICE support staff, staff who assist an inmate to reduce the complaint to writing, clerical staff who input ICRS data and other staff who by the nature of their jobs have contact with inmate complaints.

(15) "Reprisal" means any action or threat of action against anyone for their good faith participation in the complaint procedure.

(17) "Significant issue" means a serious or important defect or

omission.

SECTION 24. DOC 310.04 (title), 310.04 (1), and 310.04 (2) are renumbered DOC 310.08 (title), 310.08 (1), and 310.08 (2), and as renumbered, are amended to read:

DOC 310.08 SCOPE OF COMPLAINT REVIEW SYSTEM. (1) The An inmate may use the complaint review system (ICRS) may be used by an inmate acting individually or by with a group of inmates acting collectively.

(2) The ICRS An inmate may be used to seek a change of any institutional policy or practice use the ICRS to raise significant issues regarding rules, living conditions, and staff actions affecting institution environment, except any of the following:

SECTION 25. DOC 310.04 (2) (a) is repealed.

SECTION 26. DOC 310.04 (2) (b) is renumbered 310.08 (2) (b).

SECTION 27. DOC 310.04 (2) (c) to 310.04 (2) (e) are renumbered DOC 310.08 (2) (c) to 310.08 (2) (e), and as renumbered, are amended to read:

DOC 310.08 (2) (c) A decision of the parole commission ~~acting in any capacity;~~

(d) The denial of a request for an authorized leave as provided in ch. DOC 326; ~~or~~

(e) A decision on a challenge to an inmate record;;

SECTION 28. DOC 310.04 (3) (intro.) is renumbered DOC 310.08 (3), and as renumbered, is amended to read:

DOC 310.08 (3) The ICRS may be used After exhausting the appeal in DOC 302.19, 303.75 or 303.76, an inmate may use the ICRS to challenge the procedure used by the adjustment committee or hearing officer, by a program review committee, or by any decisionmaker acting on a request for authorized leave. If a complaint challenging the procedure used by the adjustment committee or hearing officer is affirmed, the decisionmaker shall:

SECTION 29. DOC 310.04 (3) (a) to (d) are repealed.

SECTION 30. DOC 310.04 (5) is renumbered DOC 310.08 (8), and as renumbered, is amended to read:

DOC 310.08 (8) ~~Civil~~ An inmate may file civil rights complaints may be filed in the ICRS in accordance with the procedures set forth in this chapter. The ICI-ICE at the institution level and CCE at the appeals level may request assistance from the department's affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

SECTION 31. DOC 310.04 is created to read:

DOC 310.04 EXHAUSTION OF ADMINISTRATIVE REMEDIES. Before an inmate may commence a civil action or special proceedings against any officer, employe or agent of the department in the officer's, employe's or agent's official or individual capacity for acts or omissions committed while carrying out that person's duties as an officer, employe or agent or while acting within the scope of the person's office, the inmate shall file a complaint under ss. DOC 310.09 or 310.10, receive a decision on the complaint under s. DOC 310.13, have an adverse decision reviewed under s. DOC 310.14, and be advised of the secretary's decision under s. DOC 310.14. With respect to procedures used by the adjustment committee or hearing officer in a prison disciplinary action under ch. 303, an inmate shall appeal to the warden under s. 303.76 and file an inmate complaint under s. 310.08 (3) in order to exhaust administrative remedies.

SECTION 32. DOC 310.05 (title) is renumbered DOC 310.09 (title).

SECTION 33. DOC 310.05 (1) is renumbered DOC 310.09 (1), and as renumbered, is amended to read:

DOC 310.09 FILING OF COMPLAINTS. (1) A An inmate or group of inmates who file a complaint shall file the complaint, whether filed by an individual or a group of inmates, shall be written in writing on forms supplied for that purpose and shall be signed by the inmate or by all members of the group filing the complaint shall sign the complaint. An inmate shall not file complaints which are unsigned or which contain language that is obscene, profane, abusive, or threatens others, unless such language is necessary to describe the factual basis of the substance of the complaint. The ICE shall return complaints which do not meet these standards to the inmate. An inmate shall only include one issue in each complaint.

SECTION 34. DOC 310.05 (2) is renumbered DOC 310.09 (3), and as renumbered, is amended to read:

DOC 310.09 (3) A ~~complaint~~ An inmate shall be filed file a complaint within 14 calendar days after the occurrence giving rise to the complaint, except that the inmate institution complaint investigator (ICI) examiner may accept a late complaint for good

cause.

SECTION 35. DOC 310.05 (3) is renumbered DOC 310.09 (4), and as renumbered, is amended to read:

DOC 310.09 (4) The department shall not exclude impaired, handicapped or illiterate inmates from full participation in the ICRS. If an inmate is unable to write a complaint, the ICI an ICRS staff member shall reduce the complaint to writing and shall read it to the inmate. When the inmate is satisfied with the complaint, the inmate should shall sign it if able, or mark it with the inmate's mark, if able. An inmate can may also receive provide assistance from to another inmate in preparing a complaint.

SECTION 36. DOC 310.05 (4) is renumbered DOC 310.09 (2), and as renumbered, is amended to read:

DOC 310.09 (2) The institution shall provide a supply of complaint forms and make the forms readily available to inmates.

SECTION 37. DOC 310.05 (5) and 310.05 (6) are renumbered DOC 310.09 (5) and (6), and as renumbered, are amended to read:

DOC 310.09 (5) A An inmate may file a signed complaint may be filed by depositing it in a locked box in the living unit designated for complaints or by placing it in a sealed envelope marked for delivery to the office of the ICI-ICE via institution mail.

(6) An inmate may file any number of no more than 2 complaints in any given calendar week, unless the ICE determines in the ICE's discretion that good cause exists to allow the inmate to file more than 2 complaints in the calendar week. However, the ICI ICE shall exercise discretion in determining the order in which subsequent complaints from an inmate will be processed within the time limits of this section and in keeping with priorities set by s. DOC 310.07 (3) whether to assign individual complaint numbers or to batch complaints of similar content filed by one inmate. Health and personal safety issues shall be excluded from this section and shall be dealt with in the manner provided by s. DOC 310.11 (3).

SECTION 38. DOC 310.05 is created to read:

DOC 310.05 COMMUNICATION OF PROCEDURES. The department shall make the written complaint procedure readily available to all inmates. The department shall provide each inmate written notification and an oral explanation of the complaint procedures upon arrival at an institution, including instructions on how to file a complaint at the institution. The department shall provide an inmate the opportunity to ask and have questions answered orally. The department shall make appropriate provisions for non-English

speaking, impaired or handicapped inmates.

SECTION 39. DOC 310.06 (title) is renumbered DOC 310.10 (title).

SECTION 40. DOC 310.06 (1) and (2) are renumbered DOC 310.10 (1) and (2), and as renumbered, are amended to read:

DOC 310.10 (1) Except as noted in this section, the department shall process group complaints are processed in the same way as individual complaints.

(2) Inmates ~~having~~ who have a complaint in common may file as a group by using one complaint form ~~and affixing the signatures of all complainants to the form.~~ All complainants shall sign the form. Alternatively, each may file individually but ask that the complaints be considered together. In either event, the ~~The~~ group shall designate a spokesperson or, if none is designated, the first name signed on the complaint ~~filed shall be deemed the~~ spokesperson for the group. A group complaint counts as a complaint under DOC 310.09 (6).

SECTION 41. DOC 310.06 (2) (b) and (c) are created to read:

DOC 310.06 (2) (b) Reject a complaint in accordance with provisions of this chapter;

(c) Dismiss a complaint in accordance with provisions of this chapter;

SECTION 42. DOC 310.06 (3) and (4) are repealed.

SECTION 43. DOC 310.06 (5) and DOC 310.06 (6) are renumbered DOC 310.10 (4) and DOC 310.10 (5), and as renumbered, are amended to read:

DOC 310.10 (4) The ~~ICI~~ warden shall determine if decisions ~~or~~ acknowledgments shall be ~~communicated individually~~ issued to all parties to a group complaint or, ~~if individual notice is administratively infeasible, may elect to post decisions or~~ acknowledgments of receipt of appeals posted in a place accessible to the group.

(5) ~~Group~~ The department shall not consider group complaints filed in accordance with this section ~~shall not be deemed a group~~ petition within the meaning of s. DOC 303.20 and shall not subject the complainants to discipline under that section.

SECTION 44. DOC 310.06 (6) is created to read:

DOC 310.06 (6) The secretary shall review the CCE's report, make a decision under s. DOC 310.14, and ensure implementation under DOC 310.15.

SECTION 45. DOC 310.07 (title) is renumbered DOC 310.11 (title).

SECTION 46. DOC 310.07 (1) to (3) are renumbered DOC 310.11 (1) to (3), and as renumbered, are amended to read:

DOC 310.11 PROCESSING COMPLAINTS AT THE INSTITUTION LEVEL. (1)
Unless the inmate institution complaint investigator (ICI) examiner is absent, at least once each working day the ICI ICE shall collect all complaints deposited in any complaint box in the institution. The superintendent warden shall designate a staff member to act as an ICE proceed under s. DOC 310.03 (5) in the event of an absence of the ICI ICE for longer than 2 working days. The acting ICE shall perform all of the functions of the ICE, including the collection of the complaints. Only Except as provided in this section, only the ICI ICE shall have access to the complaint boxes, which shall be provided with locks.

(2) Each The ICE shall assign each complaint shall be assigned a file number for purposes of identification, and classification code and the date of the receipt shall be noted date for purposes of identification. Each The ICE shall review and acknowledge each complaint shall be reviewed and acknowledged in writing by the ICI within 3 5 calendar working days of the date of receipt. Complaints dealing with health or personal safety shall be given priority.

(3) The ICI ICE shall employ use discretion in deciding the investigatory method best suited to determine the facts, including personal interviews, telephone calls, and document and correspondence review except that the investigation of complaints under 310.08(3) shall be limited to the record. This may include personal interviews, telephone calls, and document and correspondence review. The ICE shall give priority to complaints dealing with health or personal safety. The ICI shall forward a report and recommendation to the superintendent within 15 calendar days from the date of the acknowledgment for decision in accordance with s. DOC 310.08. The complainant may waive the time limits for up to an additional 30 calendar days to allow completion of an investigation. The report shall include those items required by subs. (5) and (6), when applicable. The inmate may waive time limits if the additional time will result in resolution of the complaint.

SECTION 47. DOC 310.07 (4) to (8) are renumbered DOC 310.11 (6) to (10), and as renumbered, are amended to read:

DOC 310.11 (6) Staff ~~must~~ shall respond in writing, if requested,

to an inquiry by an ~~ICF~~ ICE investigating a complaint.

(7) The ~~ICF~~ ICE ~~shall~~ may attempt to informally resolve the complaint at the institution level. The ICE may direct the inmate to discuss the issue with an appropriate institution staff member prior to the complaint investigation. If resolution attempts are successful, the ~~ICF~~ ICE shall record the results in writing and have the complainant sign the report indicating the complainant's acceptance of the resolution. The ICE shall then forward This this resolution shall then be forwarded to the superintendent for a decision under s. DOC 310.08 appropriate reviewing authority.

(8) If an inmate is transferred to another institution after a complaint is filed but before a ~~superintendent~~ the appropriate reviewing authority renders a decision, the ~~ICF~~ ICE shall determine if the complaint is moot because of the transfer and, if so, shall notify the inmate. If the issue still must be decided, the ~~ICF~~ ICE at the institution where the complaint originated shall investigate and make a recommendation to the ~~superintendent~~ appropriate reviewing authority.

(9) If an inmate is transferred after an incident but before filing a complaint, the inmate shall file the complaint at the ~~receiving~~ currently assigned institution. The ~~ICF-ICE~~ there shall send forward the complaint to the ICF ICE at the transferring appropriate institution for investigation and decision.

(10) ~~In any event, the~~ The ICF ICE shall note the persons interviewed and the documents or records used as basis to support the decision or which were relied on in reaching a decision.

SECTION 48. DOC 310.08 (title), 310.08 (1) and 310.08 (2) are repealed.

SECTION 49. DOC 310.08 (2) (a) and (f) are created to read:

DOC 310.08 (2) (a) The subject matter of a conduct report that has not been resolved through the disciplinary process in accordance with ch. DOC 303;

(f) A denial of an open records request.

SECTION 50. DOC 310.08 (4) to (6) are created to read:

DOC 310.08 (4) Health care and psychiatric complaints shall be directed to the director of the bureau of health services or designee.

(5) Badger state industries and farm complaints shall be directed

to the director of the bureau of correctional enterprises.

(6) The reviewing authority for all other complaints shall be the warden, unless the secretary designates another authority.

SECTION 51. DOC 310.09 (title), 310.09 (1) and 310.09 (2) are renumbered DOC 310.13 (title), 310.13 (1) and 310.13 (2), and as renumbered, are amended to read:

DOC 310.13 REVIEW BY CORRECTIONS COMPLAINT EXAMINER. (1) A complainant affected by a superintendent's dissatisfied with a decision may, within 5 10 calendar days after receipt the date of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner (CCE) on forms supplied for that purpose. The institution shall provide a supply of appeal forms and make the forms readily available to inmates.

(2) Appeals The complainant shall be sent send the appeal to the CCE in a sealed envelope that department employes only the CCE or CCE support staff may not open or inspect.

SECTION 52. DOC 310.09 (3) is renumbered DOC 310.13 (3).

SECTION 53. DOC 310.09 (4) is renumbered DOC 310.13 (5), and as renumbered, is amended to read:

DOC 310.13 (5) The CCE shall, within 5 calendar working days after receiving an appeal, review and issue a written acknowledge receipt of the appeal to the ICE and the inmate. Appeals dealing with health and personal safety shall be given priority attention. Within 5 calendar working days of a request by the CCE, the inmate institution complaint investigator examiner shall provide the CCE with copies of the complaint, the ICI's ICE's investigation report and associated documentation and the superintendent's appropriate reviewing authority's decision. The CCE shall give priority to appeals dealing with health or personal safety issues.

SECTION 54. DOC 310.09 (5) is renumbered DOC 310.13 (6).

SECTION 55. DOC 310.09 (6), to 310.09 (9) are repealed.

SECTION 56. DOC 310.09 (10) and 310.09 (11) are renumbered DOC 310.13 (7) and 310.13 (8), and as renumbered, are amended to read:

DOC 310.13 (7) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 37 calendar 35 working days of receipt of the complaint. Should the CCE fail to make a recommendation within the prescribed time, the superintendent's appropriate reviewing authority's decision shall

be affirmed. The department inmate shall be notified notify the inmate of all decisions in writing. If an inmate is unable to read the decision, the inmate may request institution staff or another inmate to read the decision to the inmate. If requested to do so, institution staff shall read the decision to the inmate.

~~(8) A complainant may waive time limits if doing so may result in a favorable decision by the secretary rather than an affirmation of the superintendent's decision under sub. (10).~~

SECTION 57. DOC 310.10 (title) is renumbered DOC 310.14 (title).

SECTION 58. DOC 310.10 (1) and 310.10 (2) are renumbered DOC 310.14 (1) and 310.14 (2), and as renumbered, are amended to read:

DOC 310.14 SECRETARY'S DECISION. (1) The corrections complaint examiner's examiner (CCE's) (CCE) shall send the written recommendation, along with a copy of the institution complaint file, shall be delivered to the secretary who shall make a decision based on the record within ~~5~~ 10 ~~calendar~~ working days following receipt of the recommendation. The secretary may ~~take an additional 5 calendar days to make that~~ extend the time for making a decision if there is for cause and the secretary notifies upon notice to all interested parties.

(2) The secretary may do any of the following:

SECTION 59. DOC 310.10 (2) (a) is renumbered DOC 310.14 (2) (a).

SECTION 60. DOC 310.10 (2) (b) and (c) are renumbered 310.14 (2) (b) and (c), and as renumbered, are amended to read:

DOC 310.14 (b) Adopt the recommendation of the CCE with modifications; ~~or~~

(c) Reject the recommendation of the CCE and ~~decide~~ make a decision;

SECTION 61. DOC 310.10 (3) is renumbered DOC 310.14 (3).

SECTION 62. DOC 310.10 (3) is created to read:

(3) The CCE shall issue a receipt to the spokesperson acknowledging the complaint.

SECTION 63. DOC 310.11 (4), 310.11 (5) and 310.11 (11) are created to read:

(4) The ICE may reject a complaint that the ICE determines to be frivolous. An inmate may appeal a complaint rejected because the ICE has determined it to be frivolous only to the appropriate reviewing authority. The ICE may determine the complaint frivolous if the ICE finds one of the following:

(a) The inmate submitted the complaint solely for the purpose of harassing or causing malicious injury to one or more of the department's employees, agents, independent contractors, or any other person.

(b) The complaint does not raise a significant issue regarding rules, living conditions, or staff actions affecting institution environment.

(c) The complaint does not allege sufficient facts upon which redress may be made.

(5) If an ICE determines that the procedure under these rules would subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm, the ICE shall refer the complaint to the appropriate reviewing authority.

(11) Unless extended for cause and upon notice to the complainant, the ICE shall send a report and recommendation to the appropriate reviewing authority within 15 working days from the date of acknowledgment for decision in accordance with s. DOC 310.12. The complainant may waive the time limits in writing to allow completion of an investigation or resolution of the complaint.

SECTION 64. DOC 310.12 (title) is renumbered DOC 310.15 (title).

SECTION 65. DOC 310.12 (1) is repealed.

SECTION 66. DOC 310.12 (2), 310.12 (3) and 310.12 (4) are renumbered DOC 310.15 (3), 310.15 (4), and 310.15 (5), and as renumbered, are amended to read:

(3) Within 30 ~~calendar~~ working days after ~~issuance of the secretary's~~ the secretary issues the decision, the administrator of the ~~department's division of adult institutions~~ shall notify all affected parties of decisions that affect more than one institution.

(4) If an affirmed complaint has not been implemented at any level within 30 ~~calendar~~ working days after ~~a decision the secretary~~ decides to affirm, the complainant may directly inform the secretary appointing authority by mail in writing of the failure to implement the decision. ~~The secretary shall investigate and take~~

~~all steps necessary to ensure implementation.~~

(5) If ~~a~~ the decision on a complaint requires a change in an administrative rule, the decision maker shall initiate making the change in the rule making.

SECTION 67. DOC 310.12 (title), 310.12 (1), 310.12 (2), and 310.12 (3) are created to read:

DOC 310.12 APPROPRIATE REVIEWING AUTHORITY DECISION. (1) The institution complaint examiner shall deliver the written recommendation, along with a copy of the institution complaint file, to the appropriate reviewing authority. The appropriate reviewing authority shall make a decision based on the record within 5 working days following receipt of the recommendation unless extended for cause and upon notice to all interested parties.

(2) The appropriate reviewing authority may do any of the following:

- (a) Dismiss the complaint.
- (b) Dismiss the complaint with modifications.
- (c) Affirm the complaint.
- (d) Affirm the complaint with modifications.
- (e) Return the recommendation to the ICE for further investigation.

(3) If the complainant does not receive the decision within 23 working days of the ICE's receipt of the complaint, the parties shall consider the complaint dismissed and the complainant may appeal immediately.

SECTION 68. DOC 310.13 (title) is renumbered DOC 310.16 (title).

SECTION 69. DOC 310.13 (1) and (2) are renumbered DOC 310.16 (1) and (2), and as renumbered, are amended to read:

DOC 310.16 CONFIDENTIALITY. (1) Except as otherwise provided in this section, the department shall ensure that complaints filed with the inmate complaint review system (ICRS) shall be are confidential. Persons working in the ICRS shall respect the confidential nature of the work. The department may reveal the identity of complainants and the nature of the complaint shall be revealed only to the extent-necessary reasonable and appropriate

for thorough investigation and implementation of the remedy.

(2) Confidentiality The warden may waive confidentiality of complaints ~~may be waived by the superintendent~~ if the security, safety, or health of the institution, staff or inmates is involved.

SECTION 70. DOC 310.13 (3) and (4) are renumbered DOC 310.16 (3) and (4).

SECTION 71. DOC 310.13 (4) is created to read:

DOC 310.13 (4) The CCE may not review a complaint rejected under s. DOC 310.11 (4).

SECTION 72. DOC 310.13 (5) and (6) are renumbered DOC 310.16 (5) and (6), and as renumbered, are amended to read:

DOC 310.16 (5) A At any time a complainant may waive confidentiality in writing or make public any aspect of a complaint at any time. If the complaint contains a false statement meeting the requirements of s. DOC 303.271, making that false statement public outside the inmate complaint review system constitutes the offense of lying about staff.

(6) No sanction may be applied against an inmate for filing a complaint. The department may not subject an inmate to reprisal for using or participating in the ICRS. An inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.

SECTION 73. DOC 310.13 (7) is repealed.

SECTION 74. DOC 3 32 10.14 (title) is renumbered DOC 310.17 (title).

SECTION 75. DOC 310.14 (1) and (2) are renumbered 310.17 (1) and (2), and as renumbered, are amended to read:

DOC 310.17 REPORTS. (1) The ~~inmate-institution~~ complaint investigator ~~(ICI)~~ examiner shall submit quarterly reports to the secretary ~~and CCE~~ to indicate the number and type of complaints processed and the disposition of the complaints.

(2) The CCE shall file an annual report with ~~the attorney general~~ and the secretary. This report shall include all of the following:

SECTION 76. DOC 310.14 (2) (a) to (d) are renumbered DOC 310.17 (2) (a) to (d).

SECTION 77. DOC 310.14 (2) (d) is created to read:

DOC 310.14 (2) (d) Return the recommendation to the CCE for further investigation.

SECTION 78. DOC 310.14 (3) is repealed.

SECTION 79. DOC 310.15 (1) and (2) are created to read:

DOC 310.15 IMPLEMENTATION OF AFFIRMED COMPLAINT. (1) The department shall implement an affirmed decision within 30 working days from date of decision.

(2) The department shall notify inmates in writing of affirmed decisions requiring change in institution programs of operations affecting the general inmate population.

SECTION 80. DOC 310.18 and DOC 310.19 are created to read:

DOC 310.18 PRESERVATION OF RECORDS. The department shall keep all records related to an inmate complaint according to its policies and procedures. The department shall keep all records for at least 3 years following disposition of the complaint.

DOC 310.19 SUSPENSION OF PROVISIONS OF THIS CHAPTER. The secretary may suspend any provision of this chapter in an emergency. The secretary may apply the suspension to one or more institutions.

Note: DOC 310.01 paragraph 2, sentence 3 is amended as follows:

Issues and policies that need to be reexamined periodically will be brought to the attention of the administration, and a forum is provided for resolution of ~~questions~~ issues without prolonged debate.

Paragraph 2, sentences 4 and 5 are created to read:

Paragraph (a) allows inmates to raise issues which are significant. Although the department encourages the use of the complaint system, the system can not function efficiently when large numbers of insignificant and frivolous complaints are filed.

Paragraphs 3 and 4 are deleted.

Paragraph 5, sentence 3 is deleted.

Paragraphs 6 to 9 are deleted.

Paragraph 4 is created to read:

Furthermore, a system encouraging involvement is likely to eliminate the use of unacceptable and destructive methods for raising grievances.

Note: DOC 310.02 is repealed.

Note: DOC 310.03 is renumbered DOC 310.07 and amended as follows:

Delete paragraphs 1 to 3.

Amend paragraph 4 as follows:

Because timeliness is important in handling complaints, the ~~superintendent~~ warden is authorized under DOC 310.07 (2) to designate an acting ~~ICI~~ ICE in the absence of the appointed ~~investigator~~ examiner.

Note: DOC 310.04 is renumbered DOC 310.08 and amended as follows:

Paragraph 3, sentence 4 is amended as follows:

Second, the nature of the issue may make investigation difficult or may require expertise that is beyond the ~~ICI~~-ICE and the CCE.

Delete paragraph 4, sentence 2.

Note: DOC 310.05 is renumbered DOC 310.09 and amended as follows:

Delete paragraph 2, sentence 1.

Amend paragraph 3, sentence 1 as follows:

Subsection ~~(2)~~ (3) underscores the importance of filing a complaint as soon as it is apparent that no other acceptable method of resolution is possible.

Amend paragraph 3, sentence 2 as follows:

The ~~ICI~~ ICE is given discretion, however, to accept old complaints if ~~he or she~~ the ICE believes it is still possible to adequately determine the facts needed to make a recommendation.

Amend paragraph 3, sentence 3 as follows:

Promptness in filing a complaint is required ~~to ensure~~ for a thorough investigation of the facts.

Amend paragraph 4, sentence 1 as follows:

The number of complaints one person can file ~~should not~~ may be limited, ~~except that the ICRS may become overburdened because of multiple complaints from one individual~~ distractions take away time from valid complaints.

Paragraph 4, sentence 2 is repealed and recreated to read:

The ICE may assign individual complaint numbers or batch complaints of similar content filed by one inmate.

Note: DOC 310.06 is renumbered 310.10.

Paragraph 1, sentence 1, is amended as follows:

Complaints arising from living and working conditions or the application of a rule ~~to a segment of the institution population~~ may be shared by a number of persons ~~in contrast to a complaint that affects only one inmate.~~

Paragraphs 2 and 3 are repealed.

Paragraph 4, sentence 1 is amended to read:

~~Since the~~ The department ~~is encouraging~~ encourages the use of the complaint system to deal with frustrations and irritations of institution life, so prohibiting group complaints would be inappropriate.

Note: DOC 310.07 is renumbered DOC 310.11 and is amended as follows:

Paragraph 1, sentence 1 is amended as follows:

DOC ~~310.07~~ 310.11 establishes the procedure for processing complaints and authorizes priority handling of complaints dealing with health or personal safety.

Paragraph 1, create sentences 3 through 6 as follows:

Experience has shown some inmate complaints to be frivolous. For example, a complaint which alleges that an inmate had creamy peanut butter rather than chunky peanut butter, which the inmate preferred. These complaints serve to distract attention away from the more important issues. DOC 310.11 (4) requires the ICE to reject frivolous complaints as defined in this section.

Delete paragraph 2.

Paragraph 3, sentence 1, amend as follows:

Informal resolution of a complaint is not only authorized, but also encouraged when possible.

Paragraph 3, sentences 2 and 3 are deleted.

Paragraph 3, sentences 4 and 5 are amended as follows:

This practice can do much to remove misunderstandings and relieve the tensions from which the complaint developed. Experience with the complaint procedure in Wisconsin has shown that ~~more than one third~~ many of the complaints filed are resolved informally.

Paragraph 5, sentence 1 is amended as follows:

Because inmates are frequently transferred within the Wisconsin correctional system, subs. ~~(6)~~ (8) and ~~(7)~~ (9) provide a method for dealing with complaints arising just before or at the time of the transfer.

Note: DOC 310.08 is renumbered DOC 310.12.

Paragraph 1, sentence 1 is amended as follows:

This section requires the superintendent's appropriate reviewing authority's written decision to be rendered within 23-calendar working days of the date the complaint is filed.

Paragraph 1, sentences 3 through 5 are deleted.

Paragraph 1, sentence 3 is created to read:

Experience in the ICRS has shown that timeliness is one of the most important factors in the process.

Note: DOC 310.09 is renumbered DOC 310.13.

Paragraph 1, sentence 1 is amended to read:

~~DOC 310.09~~ 310.13 ~~sets out~~ defines the procedure for appealing a superintendent's an adverse decision to the CCE.

Paragraph 1, sentences 3 and 4 are deleted.

Paragraph 2, sentence 1 is amended to read:

Appeal to the CCE provides another element deemed essential to a ~~valid~~ credible complaint system; namely, a review by someone outside the correctional agency division of adult institutions chain of command.

Paragraph 2, sentences 2 and 3 are deleted.

Paragraph 2, sentence 2 is created to read:

Appeals dealing with health or personal safety are to be given priority over other complaints.

Note: DOC 310.12 is renumbered DOC 310.15.

Paragraph 3, sentence 1 is deleted.

Paragraph 3, sentence 2 is amended to read:

Subsection ~~(3)~~ (4) ~~modifies this to state~~ states that the complainant may notify the secretary of failure to implement a decision.

Paragraph 3, sentence 3 is amended to read:

~~This is proper because the~~ The secretary, rather than the CCE, appointing authority is in a position to ensure that a decision is implemented promptly.

Note: DOC 310.13 is renumbered DOC 310.16.

Paragraph 1, sentence 1 is amended to read:

If the ICRS is to ~~have~~ maintain integrity and the confidence of the inmates, complaints entered must be treated confidentially and, with certain limited exceptions, no sanctions can result from use of the system.

Paragraph 1, sentence 4 is amended to read:

~~The complaint system~~ ICRS is an appropriate forum for resolving these issues, but because complaints often identify a staff member as the perceived perpetrator of some injustice, the complainant must be protected from retribution or penalty for legitimate use of the system.

Paragraph 1, sentence 6 is deleted.

Paragraph 2, sentence 1 is amended to read:

The nature of some complaints is such that a meaningful

investigation cannot be made without revealing the identity of the complainant, but this should be done only when necessary reasonable and appropriate.

Paragraph 2, sentence 2 is amended to read:

Confidentiality can be waived if it can be shown that the security ~~of~~ or the orderly administration of the institution, or the security, safety, or health of staff, or inmates is involved.

Paragraph 3, sentences 1 through 3 are amended to read:

This is not to say that inmates are free to make threatening or false statements about staff, knowing they are false and with the intent to harm the staff, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the ~~complaint system~~ ICRS. This rule does not ~~insulate inmates from~~ prohibit disciplinary action for the illegitimate use, or rather abuse, of the ~~complaint system~~ ICRS.

Paragraph 4 is deleted.

Paragraph 5, sentence 1 is amended to read:

The ~~ICI~~ ICE must use discretion in revealing only enough information about the nature of the complaint to allow for a thorough investigation.

Paragraph 6, sentence 2 is amended to read:

However, if an inmate makes a false accusation pursuant to s. DOC 303.271, revealing that false accusation to persons outside the complaint system may subject the inmate to disciplinary action.

Note: DOC 310.14 is deleted.

Note: DOC 310.19 is created to read:

Experience has shown that there are rare situations when it is necessary to suspend these rules. DOC 310.19 permits the secretary to suspend these rules in an emergency. The rule defines an emergency in DOC 310.03 (10).

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Wisconsin Department of Corrections

by: Michael J. Sullivan
Secretary

Date:

Seal: