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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Corrections and Courts (AC-CC)

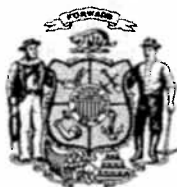
COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)



Scott McCallum
Governor

Jon E. Litscher
Secretary

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State of Wisconsin Department of Corrections

July 31, 2002

Scott Jensen, Speaker
Wisconsin State Assembly
211 West, State Capitol
Madison, Wisconsin 53708

Fred Risser, President
Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

Re: Clearinghouse Rule 02-038

A proposed order to repeal and recreate chapter DOC 310 relating to complaint procedures.

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 regarding the rule, please contact Julie Kane at (608) 240-5015.

Sincerely,

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

Jon E. Litscher
Secretary

Enclosures

Cc: Gary Poulson, Deputy Revisor of Statutes

**PROPOSED ADMINISTRATIVE RULES – DOC 310,
RELATING TO COMPLAINT PROCEDURES.
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

The department's rule on inmate complaint procedures was last amended in 1998. Since that time the department has designed and added a new database and automated many of the record-keeping functions described in this rule. As prison administration continually evolves, so must our administrative code. For these reasons, the department proposes updating the rule.

Since implementing the department's Inmate Complaint Tracking System, physical processing of inmate complaints has changed. This rule helps to clarify the process and that, in turn, promotes efficiency as well as understanding. This rule aims for greater clarity and specificity that could lead to fewer inmate complaints, as they may understand the system better. This rule will also assist the department in investigating inmate complaints in a timelier manner.

In summary, this rule proposal is necessary to more logically and succinctly explain the progression of the complaint from its origin with the inmate through the appeal process and final decision, when applicable, by the Office of the Secretary of the Department of Corrections.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on March 28, 2002. All but the following recommendations were accepted:

5. a. The meaning of the phrase "official or individual capacity: in s. DOC 310.05 is unclear—especially the reference to "individual capacity"—since the provision refers to "acts or omissions committed while carrying out that person's duties...or while acting within the scope of the person's office...."

RESPONSE: It is absolutely critical to keep this language. The same words are found in Wis. Stat. sec. 895.46(1)(a). If "individual capacity" is not included, the Department of Justice would never be authorized to represent a state employee who is in an automobile accident, or a police officer or prison guard accused of using excessive force, or a state employed doctor accused of medical malpractice. All those suits are considered individual capacity suits. Courts give a great deal of significance to whether a suit is against an employee in his official or individual capacity.

Public Hearings

This rule received two public hearings. The schedule and location is as follows:

Date & Time

Location

July 15, 2002
Monday
11:00 A.M.-1:00 P.M.

Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, Wisconsin

July 16, 2002
Tuesday
11:00 A.M.-1:00 P.M.

State Office Building
141 N.W. Barstow Street
Room 137 A
Waukesha, Wisconsin

There were no appearances at the public hearings.

Written Comments

There were no written comments received.

Modifications Made as a Result of Public Hearings

No modifications were made as a result of public hearings.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1.)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-038

AN ORDER to repeal and recreate DOC 310, relating to complaint procedures.

Submitted by **DEPARTMENT OF CORRECTIONS**

03-28-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-22-02 REPORT SENT TO AGENCY.

RNS:SPH:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-038

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. It would be more helpful to persons interested in the changes proposed in ch. DOC 310 by Clearinghouse Rule 02-038 to amend specific provisions rather than repeal and recreate the entire chapter. Most of the provisions of ch. DOC 310 are unaffected by the revision. However, in order to evaluate the changes that are being proposed, an interested person must review the entire chapter line-by-line in order to find the provisions that are revised.

b. Section titles should be shown in bold print. [See s. 1.05 (2) (b), Manual.]

c. All subunits of a rule should end with a period rather than a semicolon.

d. The effective date clause needs to be more specific, rather than providing bracketed alternatives.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. DOC 310.11 (7), the reference to "these rules" should be more specific. Should the reference be to "this chapter" or "this section"?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The meaning of the phrase "official or individual capacity" in s. DOC 310.05 is unclear--especially the reference to "individual capacity"--since the provision refers to "acts or omissions committed while carrying out that person's duties . . . or while acting within the scope of the person's office"

b. Section DOC 310.07 (2) uses the term "examiner," rather than the defined term "ICE" or "institution complaint examiner."

c. Section DOC 310.07 (6) states that the "CCE reviews appeals" Currently, this provision states that the "CCE investigates appeals" The reference to "investigates" is consistent with the definition of "CCE." This inconsistency should be reconciled.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
ADOPTING RULES**

1 The Wisconsin department of Corrections proposes an order to repeal and recreate rule DOC 310
2 relating to complaint procedures.

Statutory Authority: ss. 302.02, 301.03(2) and 227.11(2), Stats.
Statutes Interpreted: ss. 301.02 and 301.03(2), Stats.

Analysis Prepared by the Department of Corrections...

3
4 The department's rule on inmate complaint procedures was last amended in 1998. Since that
5 time the department has designed and added a new database and automated many of the record-
6 keeping functions described in this rule. As prison administration continually evolves, so must
7 our administrative code. For these reasons, the department proposes updating the rule.
8

9 Since implementing the department's Inmate Complaint Tracking System, physical processing of
10 inmate complaints has changed. This rule helps to clarify the process and that, in turn, promotes
11 efficiency as well as understanding. For example, this rule proposal eliminates various vague
12 statements such as in DOC 310.06(2)(b) which states that the Inmate Complaint Examiner may
13 "reject a complaint in accordance with provisions of this chapter;" and inserts a more concrete
14 statement of "return complaint forms that do not meet the filing requirements of this chapter."
15 This language is more specific and provides inmates with the clear understanding that their
16 complaints may be returned without being processed for failure to comply with filing
17 requirements. The previous statement notified inmates that they might have their complaint
18 returned but did not go as far to inform the inmate of a specific reason. Clarity in this rule may
19 even lead to fewer inmate complaints, as they may understand the system better. The addition of
20 specific requirements in s DOC 310.09(1) ensures that inmates know exactly what is required of
21 them in filing complaints. It ensures easier processing of complaints through consistency and
22 should logically result in fewer inmate complaints being returned for incomplete filing. This
23 clarification will also assist the department in investigating inmate complaints in a timelier
24 manner.
25

26 This proposed rule also eliminates redundancy by removing such items as DOC 310.08(1),
27 which states that "an inmate may use the complaint review system individually or with a group
28 of inmates collectively." This statement is simply not necessary at this point in the rule as it is
29 addressed in detail in ss. DOC 310.09 as well as 310.10.
30

31 This rule proposal eliminates unnecessary directives regarding internal processing such as in ss.
32 DOC 310.08(4) and (5), which state where complaints will be directed within the department.
33 DOC 310.11(1) is also amended to simplify existing language to merely specify that "ICE staff"
34 collect complaints.
35

36 This rule proposes changes in the time limits throughout the complaint process. The time limit
37 for making a recommendation to the appropriate reviewing authority and the time needed to
38 render a decision have each expanded by five working days. This change reflects both the
39 increased time needed to effectively review and decide certain complaints, as well as the time
40 needed to review the increasing number of complaints from a growing inmate population.
41

42 The current rule allows an inmate to appeal only a rejected frivolous complaint to the appropriate
43 reviewing authority, while this proposed rule allows inmates to appeal a rejected complaint to the
44 appropriate reviewing authority. Non-frivolous complaints are currently reviewed directly by the
45 Corrections Complaint Examiner, thereby skipping a logical step in the process. The proposed
46 rule also makes the reviewing authority's decision final in all appeals, not just frivolous appeals
47 as in the current rule.
48

49 In summary, this rule proposal more logically and succinctly explains the progression of the
50 complaint from its origin with the inmate through the appeal process and final decision, when
51 applicable, by the Office of the Secretary of the Department of Corrections.

52 **SECTION 1. Chapter DOC 310 is repealed and recreated to read:**

53
54
55 DOC 310.01 Purpose.

56
57 (1) The policy of the department of corrections is to afford inmates in adult institutions a
58 process by which grievances may be expeditiously raised, investigated, and decided. If the
59 decision requires a change in administrative practice, the department shall implement the change.
60

61 (2) The department has the following objectives for the inmate complaint review system:
62

63 (a) To allow inmates to raise, in an orderly fashion, significant issues regarding rules, living
64 conditions, and staff actions affecting institution environment.
65

66 (b) To provide the department an early opportunity to decide the issue before an inmate
67 commences a civil action or special proceeding against a department officer, employee or
68 agent in the officer's, employee's or agent's official or individual capacity.
69

70 (c) To encourage communication between inmates and staff.
71

72 (d) To develop inmates' sense of involvement in and respect for the correctional process.
73

74 (e) To explain correctional policy to inmates and staff.
75

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

78
79 (g) To correct any errors and deficiencies in correctional policy through questioning and review.
80

81 (h) To allow inmates to raise civil rights grievances.
82

83 **DOC 310.02 Applicability.** Pursuant to authority vested in the department of corrections under
84 ss. 301.02, 301.03 (2), and 227.11 (2), Stats., the department adopts this chapter which applies to
85 the department and all inmates confined in a state adult correctional facility. This section
86 interprets ss. 301.02 and 301.03 (2), Stats.
87

88 **DOC 310.03 Definitions.** In this chapter:
89

90 (1) "Administrator" means an administrator in a division of the department of
91 corrections, or designee.
92

93 (2) "Appropriate reviewing authority" means the warden, bureau director, administrator
94 or designee who is authorized to review and decide an inmate complaint.
95

96 (3) "Calendar days" means all days including Saturdays, Sundays, and state legal holidays.
97

98 (4) "Calendar week" means Sunday through Saturday.
99

100 (5) "CCE" or "corrections complaint examiner" means the employee of the department, who is
101 assigned to a subunit that is not within the division of adult institutions, and who is designated by
102 the secretary to review complaints appealed to the secretary and conduct further investigation
103 when necessary.
104

105 (6) "Civil rights grievance" means any inmate complaint relating to an incident affecting the
106 delivery of services to an inmate who alleges discrimination on the basis of race, creed, ethnicity,
107 national origin, sex, handicap, age, religion, color, ancestry, sexual orientation or marital status.
108

109 (7) "Department" means the department of corrections.
110

111 (8) "Director" means a director of a department of corrections bureau, or designee.
112

113 (9) "Emergency" means any situation determined by the secretary to affect the security or
114 orderly administration of the institution or the security, safety, or health of staff.
115

116 (10) "ICE" or "institution complaint examiner" means the person or persons at each adult
117 correctional institution assigned by the warden to investigate complaints filed by inmates.
118

119 (11) "ICRS" or "inmate complaint review system" means the process by which complaints
120 filed by inmates of adult correctional institutions are investigated and resolved.
121

- 122 (12) "Malicious injury" means injury to the department or a person as the result of hatred, ill
123 will, revenge, or as the result of intent to insult or injure.
124
- 125 (13) "Reprisal" means any action or threat of action against anyone for their good faith
126 participation in the complaint procedure.
127
- 128 (14) "Secretary" means the secretary of the department of corrections, or designee.
129
- 130 (15) "Significant issue" means a serious or important defect or omission.
131
- 132 (16) "Warden" means the warden, superintendent, or designee.
133
- 134 (17) "Working days" means all days except Saturdays, Sundays, and state legal holidays.
135
136

137 **DOC 310.04 Inmate complaint review system.**
138

- 139 (1) To achieve the purpose and objectives of s. DOC 310.01, the department shall maintain an
140 inmate complaint review system in the state adult correctional facilities.
141
- 142 (2) Each warden shall appoint an institution complaint examiner whose responsibility shall be
143 complaint investigation. The warden may designate any employee to function as ICE in
144 addition to other duties.
145
- 146 (3) The ICE shall have access to institution staff, inmates, and any institution or department
147 records required when investigating a complaint.
148

149 **DOC 310.05 Exhaustion of administrative remedies.**
150

151 Before an inmate may commence a civil action or special proceedings against any officer,
152 employee or agent of the department in the officer's, employee's or agent's official or individual
153 capacity for acts or omissions committed while carrying out that person's duties as an officer,
154 employee or agent or while acting within the scope of the person's office, the inmate shall
155 exhaust all administrative remedies that the department of corrections has promulgated by rule.
156

157 **DOC 310.06 Communication of procedures.**
158

159 The department shall make the written complaint procedure readily available to all inmates. The
160 department shall provide each inmate written notification and an oral explanation of the
161 complaint procedures. The department shall provide an inmate the opportunity to ask and have
162 questions answered. The department shall make appropriate provisions for non-English speaking,
163 impaired or handicapped inmates.
164

165 **DOC 310.07 Organization of inmate complaint review system.**
166

- 167 (1) To use the complaint system, an inmate files a complaint under ss. DOC 310.09,

168 310.10 or 310.16 (4).

169

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

171

172 (a) Investigate the complaint under s. DOC 310.11 or 310.16 (4).

173

174 (b) Return complaint forms that do not meet the filing requirements of this chapter.

175

176 (c) Recommend a decision to the appropriate reviewing authority under s. DOC
177 310.12 (1) or to the secretary under s. 310.13 (6).

178

179 (3) The appropriate reviewing authority or secretary makes a decision under s. DOC 310.12 (2)
180 or 310.14 (2).

181

182 (4) An inmate may appeal an adverse decision under s. DOC 310.11 (6) or 310.13.

183

184 (5) The reviewing authority's decision on appeals under 310.11 (6) and the secretary's decision
185 on complaints under 310.16 (4) is final.

186

187 (6) The CCE reviews appeals under s. DOC 310.13 and makes a recommendation to the
188 secretary.

189

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

192

193 **DOC 310.08 Scope of complaint review system.**

194

195 (1) An inmate may use the ICRS to raise significant issues regarding rules, living
196 conditions, staff actions affecting institution environment, and civil rights complaints in
197 accordance with this chapter.

198

199 (2) An inmate may not use the ICRS to raise the following issues:

200

201 (a) Any issue related to a conduct report, unless the inmate has exhausted the disciplinary
202 process in accordance with ch. DOC 303.

203

204 (b) A program review committee's decision.

205

206 (c) A decision of the parole commission.

207

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

209

210 (e) A challenge to an inmate record, including a pre-sentence investigation report.

211

212 (f) A denial of an open record request.

213

214 (3) After exhausting the appeal process in s. DOC 302.18, 303.75, 303.76, 308.04, or 326.06, an
215 inmate may use the ICRS to challenge only the procedure used in the program review process,
216 the disciplinary process, the administrative confinement review process, or by any decisionmaker
217 acting on a request for authorized leave.
218

219 **DOC 310.09 Filing of complaints.**
220

221 (1) Complaints filed by an inmate or a group of inmates shall:
222

223 (a) Be typed or written legibly on forms supplied for that purpose.
224

225 (b) Be signed by the inmate.
226

227 (c) Not contain language that is obscene, profane, abusive, or threatens others, unless such
228 language is necessary to describe the factual basis of the substance of the complaint.
229

230 (d) Be filed only under the name by which the inmate was committed to the department or the
231 legal name if an inmate has had a name change.
232

233 (e) Contain only one issue per complaint, and shall clearly identify the issue.
234

235 (2) Inmates may not file more than two complaints per calendar week, except that the ICE may
236 waive this limit for good cause. The ICE shall exclude complaints that raise health and
237 personal safety issues from this limit.
238

239 (3) The ICE shall return, and not process as complaints, submissions that do not meet the
240 following requirements *under 310.09(1)*
241

242 (4) Prior to accepting the complaint, the ICE may direct the inmate to attempt to resolve the
243 issue.
244

245 (5) The institution shall make complaint forms accessible to inmates.
246

247 (6) An inmate shall file a complaint within 14 calendar days after the occurrence giving rise to
248 the complaint, except that the institution complaint examiner may accept a late complaint for
249 good cause.
250

251 (7) The department shall not exclude impaired, handicapped or illiterate inmates from full
252 participation in the ICRS. If an inmate is unable to write a complaint, the inmate may seek
253 assistance in doing so.
254

255 (8) An inmate shall file a signed complaint by depositing it in a locked box designated for
256 complaints or by submitting it to the office of the ICE via institution mail.
257

258 **DOC 310.10 Group complaints.**
259

- 260 (1) Except as noted in this section, the ICE shall process group complaints in the same way as
261 individual complaints.
262
- 263 (2) Inmates who have a complaint in common may file as a group by using one complaint form.
264 All complainants shall sign the form. The group shall designate a spokesperson or, if none is
265 designated, the first name signed on the first complaint shall be deemed the spokesperson for the
266 group. A group complaint counts as a complaint under
267 s. DOC 310.09 (1) (f).
268
- 269 (3) The ICE shall issue a receipt acknowledging the complaint only to the spokesperson.
270
- 271 (4) The reviewing authority shall determine the manner in which decisions in group complaints
272 are issued.
273
274
- 275 (5) The CCE shall issue a receipt acknowledging the appeal only to the spokesperson.
276
- 277 (6) The secretary shall determine the manner in which decisions on appeals of group complaints
278 are issued.
279
- 280 (7) The department shall not consider group complaints filed in accordance with this section a
281 group petition within the meaning of s. DOC 303.20 and shall not subject the complainants to
282 discipline under that section.
283

284 **DOC 310.11 Processing complaints at the institution level.**
285

- 286 (1) ICE staff shall collect all complaints.
287
- 288 (2) The ICE shall assign each complaint a file number, classification code, and date for purposes
289 of identification. The ICE shall review and acknowledge each complaint in writing within 5
290 working days after the date of receipt by the ICE.
291
- 292 (3) The ICE shall use discretion in deciding the method best suited to determine the facts,
293 including personal interviews, telephone calls, and document review, except that the processing
294 of complaints under s. DOC 310.08 (2) shall be limited to review of the record. The ICE shall
295 give priority to complaints dealing with health or personal safety.
296
- 297 (4) The ICE shall direct complaint recommendations to the appropriate reviewing authority.
298
- 299 (5) The ICE may reject a complaint for the following reasons:
300
- 301 (a) The inmate submitted the complaint solely for the purpose of harassing or causing malicious
302 injury to one or more of the department's employees, agents, independent contractors, or any
303 other person.
304
- 305 (b) The inmate does not raise a significant issue regarding rules, living conditions, or staff

306 actions affecting institution environment.

- 307
- 308 (c) The inmate does not allege sufficient facts upon which redress may be made.
- 309
- 310 (d) The inmate submitted the complaint beyond 14 calendar days from the date of the occurrence
- 311 giving rise to the complaint and provides no good cause for the ICE to extend the time limits.
- 312
- 313 (e) The issue raised in the complaint does not personally affect the inmate.
- 314
- 315 (f) The issue is moot.
- 316
- 317 (g) The issue has already been addressed through the inmate's prior use of the ICRS.
- 318
- 319 (h) The issue raised is not within the scope of the ICRS as defined in 310.08.
- 320
- 321 (6) An inmate may appeal a rejected complaint within 10 calendar days only to the appropriate
- 322 reviewing authority who shall only review the basis for the rejection of the complaint. The
- 323 reviewing authority's decision is final.
- 324
- 325 (7) If an ICE determines that the procedure under this chapter would subject the inmate to
- 326 substantial risk of personal injury or cause other serious and irreparable harm, the ICE shall refer
- 327 the complaint to the appropriate reviewing authority.
- 328
- 329 (8) Staff shall respond in writing, if requested, to an inquiry by an ICE investigating a complaint.
- 330
- 331 (9) If an inmate is transferred after an incident but before filing a complaint, the inmate shall file
- 332 the complaint at the currently assigned institution. The ICE shall forward the complaint to the
- 333 ICE at the appropriate institution for investigation and decision.
- 334
- 335 (10) The ICE shall note the persons interviewed and the documents used as a basis for the
- 336 decision.
- 337
- 338 (11) The ICE shall either reject the complaint or send a recommendation to the appropriate
- 339 reviewing authority within 20 working days from the date of acknowledgment.
- 340

341 **DOC 310.12 Appropriate reviewing authority decision.**

342

- 343 (1) The appropriate reviewing authority shall make a decision within 10 working days following
- 344 receipt of the recommendation.
- 345
- 346 (2) The appropriate reviewing authority shall do one of the following:
- 347
- 348 (a) Dismiss the complaint.
- 349
- 350 (b) Dismiss the complaint with modifications.
- 351

- 352 (c) Affirm the complaint.
353
354 (d) Affirm the complaint with modifications.
355
356 (e) Return the complaint to the ICE for further investigation.
357
358 (3) If the complainant does not receive the decision within 30 working days after the ICE
359 acknowledges receipt of the complaint under s. DOC 310.11 (2), the complainant may appeal
360 to the CCE.
361

362 **DOC 310.13 Review by corrections complaint examiner.**
363

- 364 (1) A complainant dissatisfied with a reviewing authority decision may, within 10 calendar days
365 after the date of the decision, appeal that decision by filing a written request for review with
366 the corrections complaint examiner on forms supplied for that purpose. The institution shall
367 make these forms accessible to inmates.
368
369 (2) Upon good cause, the CCE may accept for review an appeal filed later than 10 calendar days
370 after receipt of the decision.
371
372 (3) The CCE shall not review a rejected complaint. ?
373
374 (4) The CCE shall, within 5 working days after receiving an appeal, issue a written receipt of the
375 appeal to the inmate.
376
377 (5) The CCE shall use discretion in deciding the method best suited to determine the facts,
378 including personal interviews, telephone calls, and document review. The CCE shall have full
379 access to inmates, staff, physical plant, and department records. If an appeal necessitates
380 resolution of disputed issues of fact, the CCE may require sworn statements from the principals.
381 The CCE shall give priority to complaints dealing with health or personal safety.
382
383 (6) The CCE shall recommend a decision to the secretary within 35 working days of receipt of
384 the appeal.
385

386 **DOC 310.14 Secretary's decision.**
387

- 388 (1) The secretary shall make a decision within 10 working days following receipt of the CCE's
389 recommendation. The secretary may extend the time for making a decision for cause and
390 upon notice to the inmate.
391
392 (2) The secretary shall do one of the following:
393
394 (a) Accept the recommendation of the CCE and adopt it as the decision.
395
396 (b) Adopt the recommendation of the CCE with modifications.
397

398 (c) Reject the recommendation of the CCE and make a decision.

399

400 (d) Return the appeal to the CCE for further investigation.

401

402 (3) If the inmate does not receive the secretary's written decision within 45 working days of the
403 CCE's acknowledgement of receipt of the appeal, the inmate shall consider the administrative
404 remedies to be exhausted, unless the time has been extended under (1).

405

406 **DOC 310.15 Implementation of affirmed complaint.**

407

408 (1) The department shall implement an affirmed decision within 30 working days from the date
409 of decision.

410

411 (2) If an affirmed complaint has not been implemented within 30 working days, the complainant
412 may directly inform the decision-maker in writing of the failure to implement the decision.

413

414 **DOC 310.16 Confidentiality.**

415

416 (1) Except as otherwise provided in this section, the department shall ensure that complaints
417 filed with the inmate complaint review system are confidential. Persons working in the ICRS
418 may reveal the identity of complainants and the nature of the complaint only to the extent
419 necessary to investigate the complaint, implement the remedy, or in response to litigation.

420

421 (2) The appropriate reviewing authority may waive confidentiality of a complaint if the security,
422 safety, or health of the institution or any person is involved.

423

424 (3) A copy of ICRS documents may not be filed in any case file, nor may any notations
425 regarding a complaint be made in those files, except pursuant to s. DOC 310.16 (1) and (2).

426

427 (4) A breach of confidentiality in the process may itself be the subject of a complaint.
428 This type of complaint shall be filed directly with the CCE.

429

430 (5) An inmate waives confidentiality by making known any aspect of a complaint to persons
431 outside the ICRS.

432

433 (6) The department may not subject an inmate to reprisal for using or participating in the ICRS.
434 An inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.

435

436 **DOC 310.17 Records.**

437

438 (1) The department shall maintain statistics showing the number, type and disposition of
439 complaints.

440

441 (2) The department shall keep all records related to an inmate complaint according to its policies
442 and procedures

443

444 **310.18 Suspension of provisions of this chapter.**
445

446 The secretary may suspend any provisions of this chapter in an emergency. The secretary may
447 apply the suspension to one or more institutions.
448
449

450

451 **SECTION 2. DOC 310 Appendix is repealed and recreated to read:**

452

1 **Note: DOC 310.01.** DOC 310.01 states the purpose of the inmate complaint review system
2 (ICRS) and the commitment of the department to the system.

3 Subsection (2) lists the objectives of the ICRS. The ICRS benefits inmates, staff, and the
4 correctional process. Through the ICRS, inmates bring issues and policies that need to be
5 reexamined periodically to the attention of the administration. Paragraph (a) allows inmates to
6 raise significant issues. Although the department encourages the use of the ICRS, the system
7 cannot function efficiently when large numbers of insignificant and frivolous complaints are
8 filed.

9 The ICRS promotes an acceptable and positive method for resolving grievances.
10

11 **Note: Doc 310.08.** This section establishes the scope and limits of ICRS.

12 The ICRS can be used to seek change in any institution policy or practice not listed in
13 sub.(2). The application of a rule may be challenged in the ICRS.

14 There are two principal reasons for the exceptions provided in sub. (2). First, procedures
15 for review of some decisions are provided in other sections of the administrative rules. This is
16 true of disciplinary, program review, and authorized leave decisions. Second, the nature of the
17 issue may make other avenues of resolution more appropriate.
18

19 However, except for parole, under sub. (3), the procedure followed in these decisions is
20 within the scope of the ICRS, after exhaustion of administrative remedies required under other
21 chapters.
22

23 **Note: DOC 310.09.** DOC 310.09 sets out the procedure by which a complaint can be
24 filed. It is intended to make filing as easy as possible. No one should be excluded from legitimate
25 use of the system because he or she does not have complaint forms or is unable to write.

26 Subsection (2) allows the ICE to direct the inmate to attempt to informally resolve the
27 issue prior to accepting the complaint. This meets the objective of DOC 310.01

28 Subsection (4) underscores the importance of filing a timely complaint. The ICE is given
29 discretion, however, to accept late complaints for good cause. Promptness in filing a complaint
30 is required for a thorough investigation of the facts. This is especially true of complaints
31 involving lost or damaged personal property. Recollections can dim or property can be altered or
32 destroyed, making investigation difficult or impossible.
33

34 **Note: DOC 310.10.** Complaints arising from living and working conditions or the
35 application of a rule may be shared by a number of persons. Accordingly, this section allows a
36 group of inmates to join in a common complaint.

37 The department encourages the use of the complaint system to deal with frustrations and
38 irritations of institution life, so prohibiting group complaints would be inappropriate. Subsection
39 (7) makes this clear.
40

41 **Note: DOC 310.11.** DOC 310.11 establishes the procedure for processing complaints and
42 sub. (3) authorizes priority handling of complaints dealing with health or personal safety.
43 Experience has shown some complaints to raise insignificant issues. For example, a complaint
44 alleging that the institution served creamy peanut butter but the inmate preferred chunky peanut
45 butter. These complaints take attention away from significant issues.
46

47 Because inmates are transferred within the Wisconsin correctional system, sub. (9) provides a
48 method for dealing with complaints arising around the time of the transfer.
49

50 **Note: DOC 310.12.** This section requires the appropriate reviewing authority's written
51 decision to be rendered within 25 working days after the complaint is acknowledged. If the
52 complaint system is to have any value as a method of resolving conflict, decisions must be
53 rendered quickly. Experience in the ICRS has shown that timeliness is an important factor in the
54 process.
55

56 **Note: DOC 310.13.** DOC 310.13 defines the procedure for appealing an adverse decision
57 to the CCE. This section requires that appeals be filed within 10 calendar days, although the CCE
58 may accept an appeal filed later for good cause.
59

60 Appeal to the CCE provides another element deemed essential to a credible complaint
61 system; namely, a review by someone outside the division of adult institutions chain of
62 command. CCE's shall give priority to appeals dealing with health and personal safety.
63

64 **Note: DOC 310.15** Since the purpose of the complaint system is to air grievances and
65 seek resolutions, decisions resulting in a change in program, policy, or rule interpretation that
66 affect more than a few inmates, must be promptly implemented.
67

68 Subsection (2) states that the complainant may notify the decision- maker of failure to
69 implement a decision within 30 working days. The decision-maker is in a position to ensure that
70 a decision is implemented promptly.
71

72 **Note: DOC 310.16** If the ICRS is to maintain integrity and the confidence of the inmates,
73 complaints entered must be treated confidentially and, with certain limited exceptions, no
74 sanctions can result from the good faith use of the system. The ICRS is an appropriate forum for
75 resolving staff issues. However, because complaints often identify a staff member as the
76 perceived perpetrator of some injustice, the complainant must be protected from retribution or
77 penalty for good faith use of the system.
78

79 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 to
investigate the complaint, implement the remedy, or in response to litigation. Confidentiality can

80 be waived if it can be shown that the security or orderly administration of the institution, or the
81 security, safety or health of any person is involved.

82 This is not to say that inmates are free to make threatening or false statements about staff,
83 knowing they are false, especially if those false statements are made public. There have been
84 malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not
85 prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under DOC
86 303.271.

87 The ICE must use discretion in revealing only enough information about the nature of the
88 complaint as necessary to investigate the complaint, implement the remedy, or in response to
89 litigation.

90
91 **Note: DOC 310.18** Experience has shown that there are rare situations when it is
92 necessary to suspend these rules. DOC 310.18 permits the secretary to suspend these rules in an
93 emergency. The rule defines an emergency in s. DOC 310.03(9).
94
95

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

98 Wisconsin Department of Corrections
99

100

Dated: _____

Agency: _____
Jon E. Litscher, Secretary

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DOC 310

Subject
 Repeal and recreate rule DOC 310, relating to inmate complaint procedures

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The department's rule on inmate complaint procedures was last amended in 1998. Since that time, the department has designed and added a new database and has also automated many of the recordkeeping functions described in this rule. For these reasons, the department proposes updating the rule.

The updated language helps clarify the process by adding specificity, eliminating redundancy, and providing inmates with a clear understanding of how the process works.

This rule proposes changes in the time limits throughout the complaint process. The time limit for making a recommendation to the appropriate reviewing authority and the time needed to render a decision have each expanded by five working days. This change reflects both the increased time needed to effectively review and to make a decision.

Ultimately, this rule proposal explains the complaint process in a more logical and concise manner. It is not anticipated that these changes will have any fiscal impact on the department.

Long-Range Fiscal Implications

Prepared By: Nathan White	Telephone No. (608) 240-5415	Agency DOC
Authorized Signature <i>Robert Mayslin</i>	Telephone No. (608) 240-5056	Date (mm/dd/ccyy) 03/25/02



TO: Members of the Assembly Committee on Corrections and the Courts
FROM: Melissa Gilbert, Clerk
DATE: August 19, 2002
RE: Clearinghouse Rule 02-038

The following clearinghouse rule has been referred to the Assembly Committee on Corrections and the Courts:

CR 02-038 An order to repeal and recreate DOC 310, relating to complaint procedures.

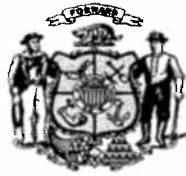
The committee's jurisdiction over CR 02-038 ends Thursday, Sept. 12. If you wish to receive a copy of this rule or submit comments, please contact me at 266-9180. If you want to request a hearing, please contact Anne in Vice Chairman Scott Suder's office at 7-0280.

Thank you.



Scott McCallum
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

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September 11, 2002

The Honorable Robert Jauch, Chairperson
Senate Committee on Economic Development and Corrections
Room 313 South, State Capitol
Madison, Wisconsin 53707

The Honorable Scott Suder, Vice-Chairperson
Assembly Committee on Corrections and the Courts
Room 21 North, State Capitol
Madison, Wisconsin 53708

Re: Clearinghouse Rule 02-038
Proposed rule relating to complaint procedures

Gentlemen:

On August 6, 2002, the Department submitted Clearinghouse Rule 02-038, relating to complaint procedures, to the presiding officers of the Legislature for review by standing committees. Subsequently, the proposed rules were referred to your committees. After reviewing the rule, Representative Cogs requested this Department to submit a germane modification to add a definition for the word "moot." Pursuant to s. 227.19(4)(b)(3) Stats., the Department is resubmitting the proposed rules, with a single germane modification, to the committees. A copy of the revised CR 02-038 is attached to this letter. Please see the modification to DOC 310.03(13) in the attached copy of the rule.

If you have any questions regarding the rule, please contact Julie Kane at (608) 240-5015.

Sincerely,

Jon E. Litscher
Secretary

Attachment

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
ADOPTING RULES**

1 The Wisconsin department of Corrections proposes an order to repeal and recreate rule DOC 310
2 relating to complaint procedures.

Statutory Authority: ss. 302.02, 301.03(2) and 227.11(2), Stats.
Statutes Interpreted: ss. 301.02 and 301.03(2), Stats.

Analysis Prepared by the Department of Corrections...

3
4 The department’s rule on inmate complaint procedures was last amended in 1998. Since that
5 time the department has designed and added a new database and automated many of the record-
6 keeping functions described in this rule. As prison administration continually evolves, so must
7 our administrative code. For these reasons, the department proposes updating the rule.
8

9 Since implementing the department’s Inmate Complaint Tracking System, physical processing of
10 inmate complaints has changed. This rule helps to clarify the process and that, in turn, promotes
11 efficiency as well as understanding. For example, this rule proposal eliminates various vague
12 statements such as in DOC 310.06(2)(b) which states that the Inmate Complaint Examiner may
13 “reject a complaint in accordance with provisions of this chapter;” and inserts a more concrete
14 statement of “return complaint forms that do not meet the filing requirements of this chapter.”
15 This language is more specific and provides inmates with the clear understanding that their
16 complaints may be returned without being processed for failure to comply with filing
17 requirements. The previous statement notified inmates that they might have their complaint
18 returned but did not go as far to inform the inmate of a specific reason. Clarity in this rule may
19 even lead to fewer inmate complaints, as they may understand the system better. The addition of
20 specific requirements in s DOC 310.09(1) ensures that inmates know exactly what is required of
21 them in filing complaints. It ensures easier processing of complaints through consistency and
22 should logically result in fewer inmate complaints being returned for incomplete filing. This
23 clarification will also assist the department in investigating inmate complaints in a timelier
24 manner.
25

26 This proposed rule also eliminates redundancy by removing such items as DOC 310.08(1),
27 which states that “an inmate may use the complaint review system individually or with a group
28 of inmates collectively.” This statement is simply not necessary at this point in the rule as it is
29 addressed in detail in ss. DOC 310.09 as well as 310.10.
30

31 This rule proposal eliminates unnecessary directives regarding internal processing such as in ss.
32 DOC 310.08(4) and (5), which state where complaints will be directed within the department.
33 DOC 310.11(1) is also amended to simplify existing language to merely specify that “ICE staff”
34 collect complaints.
35

36 This rule proposes changes in the time limits throughout the complaint process. The time limit
37 for making a recommendation to the appropriate reviewing authority and the time needed to
38 render a decision have each expanded by five working days. This change reflects both the
39 increased time needed to effectively review and decide certain complaints, as well as the time
40 needed to review the increasing number of complaints from a growing inmate population.

41
42 The current rule allows an inmate to appeal only a rejected frivolous complaint to the appropriate
43 reviewing authority, while this proposed rule allows inmates to appeal a rejected complaint to the
44 appropriate reviewing authority. Non-frivolous complaints are currently reviewed directly by the
45 Corrections Complaint Examiner, thereby skipping a logical step in the process. The proposed
46 rule also makes the reviewing authority's decision final in all appeals, not just frivolous appeals
47 as in the current rule.

48
49 In summary, this rule proposal more logically and succinctly explains the progression of the
50 complaint from its origin with the inmate through the appeal process and final decision, when
51 applicable, by the Office of the Secretary of the Department of Corrections.

52 **SECTION 1. Chapter DOC 310 is repealed and recreated to read:**

53
54
55 DOC 310.01 Purpose.

56
57 (1) The policy of the department of corrections is to afford inmates in adult institutions a
58 process by which grievances may be expeditiously raised, investigated, and decided. If the
59 decision requires a change in administrative practice, the department shall implement the change.

60
61 (2) The department has the following objectives for the inmate complaint review system:

62
63 (a) To allow inmates to raise, in an orderly fashion, significant issues regarding rules, living
64 conditions, and staff actions affecting institution environment.

65
66 (b) To provide the department an early opportunity to decide the issue before an inmate
67 commences a civil action or special proceeding against a department officer, employee or
68 agent in the officer's, employee's or agent's official or individual capacity.

69
70 (c) To encourage communication between inmates and staff.

71
72 (d) To develop inmates' sense of involvement in and respect for the correctional process.

73
74 (e) To explain correctional policy to inmates and staff.

75

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

78
79 (g) To correct any errors and deficiencies in correctional policy through questioning and review.
80

81 (h) To allow inmates to raise civil rights grievances.
82

83 **DOC 310.02 Applicability.** Pursuant to authority vested in the department of corrections under
84 ss. 301.02, 301.03 (2), and 227.11 (2), Stats., the department adopts this chapter which applies to
85 the department and all inmates confined in a state adult correctional facility. This section
86 interprets ss. 301.02 and 301.03 (2), Stats.
87

88 **DOC 310.03 Definitions.** In this chapter:
89

90 (1) "Administrator" means an administrator in a division of the department of
91 corrections, or designee.
92

93 (2) "Appropriate reviewing authority" means the warden, bureau director, administrator
94 or designee who is authorized to review and decide an inmate complaint.
95

96 (3) "Calendar days" means all days including Saturdays, Sundays, and state legal holidays.
97

98 (4) "Calendar week" means Sunday through Saturday.
99

100 (5) "CCE" or "corrections complaint examiner" means the employee of the department, who is
101 assigned to a subunit that is not within the division of adult institutions, and who is designated by
102 the secretary to review complaints appealed to the secretary and conduct further investigation
103 when necessary.
104

105 (6) "Civil rights grievance" means any inmate complaint relating to an incident affecting the
106 delivery of services to an inmate who alleges discrimination on the basis of race, creed, ethnicity,
107 national origin, sex, handicap, age, religion, color, ancestry, sexual orientation or marital status.
108

109 (7) "Department" means the department of corrections.
110

111 (8) "Director" means a director of a department of corrections bureau, or designee.
112

113 (9) "Emergency" means any situation determined by the secretary to affect the security or
114 orderly administration of the institution or the security, safety, or health of staff.
115

116 (10) "ICE" or "institution complaint examiner" means the person or persons at each adult
117 correctional institution assigned by the warden to investigate complaints filed by inmates.
118

119 (11) "ICRS" or "inmate complaint review system" means the process by which complaints
120 filed by inmates of adult correctional institutions are investigated and resolved.
121

122 (12) "Malicious injury" means injury to the department or a person as the result of hatred, ill
123 will, revenge, or as the result of intent to insult or injure.
124

125 (13) "Moot" means the issue or complaint is one which seeks to determine an abstract
126 question which does not arise upon existing facts or rights, or where there would be no
127 practical effect to any remedy because the issue or complaint is already resolved.
128

129 ~~(13)~~(14) "Reprisal" means any action or threat of action against anyone for their good faith
130 participation in the complaint procedure.
131

132 ~~(14)~~(15) "Secretary" means the secretary of the department of corrections, or designee.
133

134 ~~(15)~~(16) "Significant issue" means a serious or important defect or omission.
135

136 ~~(16)~~(17) "Warden" means the warden, superintendent, or designee.
137

138 ~~(17)~~(18) "Working days" means all days except Saturdays, Sundays, and state legal
139 holidays.
140
141

142 **DOC 310.04 Inmate complaint review system.**

143

144 (1) To achieve the purpose and objectives of s. DOC 310.01, the department shall maintain an
145 inmate complaint review system in the state adult correctional facilities.
146

147 (2) Each warden shall appoint an institution complaint examiner whose responsibility shall be
148 complaint investigation. The warden may designate any employee to function as ICE in
149 addition to other duties.
150

151 (3) The ICE shall have access to institution staff, inmates, and any institution or department
152 records required when investigating a complaint.
153

154 **DOC 310.05 Exhaustion of administrative remedies.**

155

156 Before an inmate may commence a civil action or special proceedings against any officer,
157 employee or agent of the department in the officer's, employee's or agent's official or individual
158 capacity for acts or omissions committed while carrying out that person's duties as an officer,
159 employee or agent or while acting within the scope of the person's office, the inmate shall
160 exhaust all administrative remedies that the department of corrections has promulgated by rule.
161

162 **DOC 310.06 Communication of procedures.**

163

164 The department shall make the written complaint procedure readily available to all inmates. The
165 department shall provide each inmate written notification and an oral explanation of the
166 complaint procedures. The department shall provide an inmate the opportunity to ask and have
167 questions answered. The department shall make appropriate provisions for non-English speaking,

168 impaired or handicapped inmates.

169

170 **DOC 310.07 Organization of inmate complaint review system.**

171

172 (1) To use the complaint system, an inmate files a complaint under ss. DOC 310.09,
173 310.10 or 310.16 (4).

174

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

176

177 (a) Investigate the complaint under s. DOC 310.11 or 310.16 (4).

178

179 (b) Return complaint forms that do not meet the filing requirements of this chapter.

180

181 (c) Recommend a decision to the appropriate reviewing authority under s. DOC
182 310.12 (1) or to the secretary under s. 310.13 (6).

183

184 (3) The appropriate reviewing authority or secretary makes a decision under s. DOC 310.12 (2)
185 or 310.14 (2).

186

187 (4) An inmate may appeal an adverse decision under s. DOC 310.11 (6) or 310.13.

188

189 (5) The reviewing authority's decision on appeals under 310.11 (6) and the secretary's decision
190 on complaints under 310.16 (4) is final.

191

192 (6) The CCE reviews appeals under s. DOC 310.13 and makes a recommendation to the
193 secretary.

194

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

197

198 **DOC 310.08 Scope of complaint review system.**

199

200 (1) An inmate may use the ICRS to raise significant issues regarding rules, living
201 conditions, staff actions affecting institution environment, and civil rights complaints in
202 accordance with this chapter.

203

204 (2) An inmate may not use the ICRS to raise the following issues:

205

206 (a) Any issue related to a conduct report, unless the inmate has exhausted the disciplinary
207 process in accordance with ch. DOC 303.

208

209 (b) A program review committee's decision.

210

211 (c) A decision of the parole commission.

212

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

- 214
215 (e) A challenge to an inmate record, including a pre-sentence investigation report.
216
217 (f) A denial of an open record request.
218
219 (3) After exhausting the appeal process in s. DOC 302.18, 303.75, 303.76, 308.04, or 326.06, an
220 inmate may use the ICRS to challenge only the procedure used in the program review process,
221 the disciplinary process, the administrative confinement review process, or by any decisionmaker
222 acting on a request for authorized leave.
223

224 **DOC 310.09 Filing of complaints.**
225

- 226 (1) Complaints filed by an inmate or a group of inmates shall:
227
228 (a) Be typed or written legibly on forms supplied for that purpose.
229
230 (b) Be signed by the inmate.
231
232 (c) Not contain language that is obscene, profane, abusive, or threatens others, unless such
233 language is necessary to describe the factual basis of the substance of the complaint.
234
235 (d) Be filed only under the name by which the inmate was committed to the department or the
236 legal name if an inmate has had a name change.
237
238 (e) Contain only one issue per complaint, and shall clearly identify the issue.
239
240 (2) Inmates may not file more than two complaints per calendar week, except that the ICE may
241 waive this limit for good cause. The ICE shall exclude complaints that raise health and
242 personal safety issues from this limit.
243
244 (3) The ICE shall return, and not process as complaints, submissions that do not meet the
245 following requirements under sub. (1):
246
247 (4) Prior to accepting the complaint, the ICE may direct the inmate to attempt to resolve the
248 issue.
249
250 (5) The institution shall make complaint forms accessible to inmates.
251
252 (6) An inmate shall file a complaint within 14 calendar days after the occurrence giving rise to
253 the complaint, except that the institution complaint examiner may accept a late complaint for
254 good cause.
255
256 (7) The department shall not exclude impaired, handicapped or illiterate inmates from full
257 participation in the ICRS. If an inmate is unable to write a complaint, the inmate may seek
258 assistance in doing so.
259

260 (8) An inmate shall file a signed complaint by depositing it in a locked box designated for
261 complaints or by submitting it to the office of the ICE via institution mail.

262

263 **DOC 310.10 Group complaints.**

264

265 (1) Except as noted in this section, the ICE shall process group complaints in the same way as
266 individual complaints.

267

268 (2) Inmates who have a complaint in common may file as a group by using one complaint form.
269 All complainants shall sign the form. The group shall designate a spokesperson or, if none is
270 designated, the first name signed on the first complaint shall be deemed the spokesperson for the
271 group. A group complaint counts as a complaint under
272 s. DOC 310.09 (1) (f).

273

274 (3) The ICE shall issue a receipt acknowledging the complaint only to the spokesperson.

275

276 (4) The reviewing authority shall determine the manner in which decisions in group complaints
277 are issued.

278

279

280 (5) The CCE shall issue a receipt acknowledging the appeal only to the spokesperson.

281

282 (6) The secretary shall determine the manner in which decisions on appeals of group complaints
283 are issued.

284

285 (7) The department shall not consider group complaints filed in accordance with this section a
286 group petition within the meaning of s. DOC 303.20 and shall not subject the complainants to
287 discipline under that section.

288

289 **DOC 310.11 Processing complaints at the institution level.**

290

291 (1) ICE staff shall collect all complaints.

292

293 (2) The ICE shall assign each complaint a file number, classification code, and date for purposes
294 of identification. The ICE shall review and acknowledge each complaint in writing within 5
295 working days after the date of receipt by the ICE.

296

297 (3) The ICE shall use discretion in deciding the method best suited to determine the facts,
298 including personal interviews, telephone calls, and document review, except that the processing
299 of complaints under s. DOC 310.08 (2) shall be limited to review of the record. The ICE shall
300 give priority to complaints dealing with health or personal safety.

301

302 (4) The ICE shall direct complaint recommendations to the appropriate reviewing authority.

303

304 (5) The ICE may reject a complaint for the following reasons:

305

- 306 (a) The inmate submitted the complaint solely for the purpose of harassing or causing malicious
307 injury to one or more of the department's employees, agents, independent contractors, or any
308 other person.
309
- 310 (b) The inmate does not raise a significant issue regarding rules, living conditions, or staff
311 actions affecting institution environment.
312
- 313 (c) The inmate does not allege sufficient facts upon which redress may be made.
314
- 315 (d) The inmate submitted the complaint beyond 14 calendar days from the date of the occurrence
316 giving rise to the complaint and provides no good cause for the ICE to extend the time limits.
317
- 318 (e) The issue raised in the complaint does not personally affect the inmate.
319
- 320 (f) The issue is moot.
321
- 322 (g) The issue has already been addressed through the inmate's prior use of the ICRS.
323
- 324 (h) The issue raised is not within the scope of the ICRS as defined in 310.08.
325
- 326 (6) An inmate may appeal a rejected complaint within 10 calendar days only to the appropriate
327 reviewing authority who shall only review the basis for the rejection of the complaint. The
328 reviewing authority's decision is final.
329
- 330 (7) If an ICE determines that the procedure under this chapter would subject the inmate to
331 substantial risk of personal injury or cause other serious and irreparable harm, the ICE shall refer
332 the complaint to the appropriate reviewing authority.
333
- 334 (8) Staff shall respond in writing, if requested, to an inquiry by an ICE investigating a complaint.
335
- 336 (9) If an inmate is transferred after an incident but before filing a complaint, the inmate shall file
337 the complaint at the currently assigned institution. The ICE shall forward the complaint to the
338 ICE at the appropriate institution for investigation and decision.
339
- 340 (10) The ICE shall note the persons interviewed and the documents used as a basis for the
341 decision.
342
- 343 (11) The ICE shall either reject the complaint or send a recommendation to the appropriate
344 reviewing authority within 20 working days from the date of acknowledgment.
345
- 346 **DOC 310.12 Appropriate reviewing authority decision.**
347
- 348 (1) The appropriate reviewing authority shall make a decision within 10 working days following
349 receipt of the recommendation.
350
- 351 (2) The appropriate reviewing authority shall do one of the following:

- 352
353 (a) Dismiss the complaint.
354
355 (b) Dismiss the complaint with modifications.
356
357 (c) Affirm the complaint.
358
359 (d) Affirm the complaint with modifications.
360
361 (e) Return the complaint to the ICE for further investigation.
362
363 (3) If the complainant does not receive the decision within 30 working days after the ICE
364 acknowledges receipt of the complaint under s. DOC 310.11 (2), the complainant may appeal
365 to the CCE.
366

367 **DOC 310.13 Review by corrections complaint examiner.**
368

- 369 (1) A complainant dissatisfied with a reviewing authority decision may, within 10 calendar days
370 after the date of the decision, appeal that decision by filing a written request for review with
371 the corrections complaint examiner on forms supplied for that purpose. The institution shall
372 make these forms accessible to inmates.
373
374 (2) Upon good cause, the CCE may accept for review an appeal filed later than 10 calendar days
375 after receipt of the decision.
376
377 (3) The CCE shall not review a rejected complaint.
378
379 (4) The CCE shall, within 5 working days after receiving an appeal, issue a written receipt of the
380 appeal to the inmate.
381
382 (5) The CCE shall use discretion in deciding the method best suited to determine the facts,
383 including personal interviews, telephone calls, and document review. The CCE shall have full
384 access to inmates, staff, physical plant, and department records. If an appeal necessitates
385 resolution of disputed issues of fact, the CCE may require sworn statements from the principals.
386 The CCE shall give priority to complaints dealing with health or personal safety.
387
388 (6) The CCE shall recommend a decision to the secretary within 35 working days of receipt of
389 the appeal.
390

391 **DOC 310.14 Secretary's decision.**
392

- 393 (1) The secretary shall make a decision within 10 working days following receipt of the CCE's
394 recommendation. The secretary may extend the time for making a decision for cause and
395 upon notice to the inmate.
396
397 (2) The secretary shall do one of the following:

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(a) Accept the recommendation of the CCE and adopt it as the decision.

(b) Adopt the recommendation of the CCE with modifications.

(c) Reject the recommendation of the CCE and make a decision.

(d) Return the appeal to the CCE for further investigation.

(3) If the inmate does not receive the secretary's written decision within 45 working days of the CCE's acknowledgement of receipt of the appeal, the inmate shall consider the administrative remedies to be exhausted, unless the time has been extended under (1).

DOC 310.15 Implementation of affirmed complaint.

(1) The department shall implement an affirmed decision within 30 working days from the date of decision.

(2) If an affirmed complaint has not been implemented within 30 working days, the complainant may directly inform the decision-maker in writing of the failure to implement the decision.

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 are confidential. Persons working in the ICRS may reveal the identity of complainants and the nature of the complaint only to the extent necessary to investigate the complaint, implement the remedy, or in response to litigation.

(2) The appropriate reviewing authority may waive confidentiality of a complaint if the security, safety, or health of the institution or any person is involved.

(3) A copy of ICRS documents may not be filed in any case file, nor may any notations regarding a complaint be made in those files, except pursuant to s. DOC 310.16 (1) and (2).

(4) A breach of confidentiality in the process may itself be the subject of a complaint. This type of complaint shall be filed directly with the CCE.

(5) An inmate waives confidentiality by making known any aspect of a complaint to persons outside the ICRS.

(6) 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.

DOC 310.17 Records.

(1) The department shall maintain statistics showing the number, type and disposition of

444 complaints.

445
446 (2) The department shall keep all records related to an inmate complaint according to its policies
447 and procedures

448
449 **310.18 Suspension of provisions of this chapter.**

450
451 The secretary may suspend any provisions of this chapter in an emergency. The secretary may
452 apply the suspension to one or more institutions.

453
454

455

456 **SECTION 2. DOC 310 Appendix is repealed and recreated to read:**

457
1 **Note: DOC 310.01.** DOC 310.01 states the purpose of the inmate complaint review system
2 (ICRS) and the commitment of the department to the system.

3 Subsection (2) lists the objectives of the ICRS. The ICRS benefits inmates, staff, and the
4 correctional process. Through the ICRS, inmates bring issues and policies that need to be
5 reexamined periodically to the attention of the administration. Paragraph (a) allows inmates to
6 raise significant issues. Although the department encourages the use of the ICRS, the system
7 cannot function efficiently when large numbers of insignificant and frivolous complaints are
8 filed.

9 The ICRS promotes an acceptable and positive method for resolving grievances.

10

11 **Note: Doc 310.08.** This section establishes the scope and limits of ICRS.

12 The ICRS can be used to seek change in any institution policy or practice not listed in
13 sub.(2). The application of a rule may be challenged in the ICRS.

14 There are two principal reasons for the exceptions provided in sub. (2). First, procedures
15 for review of some decisions are provided in other sections of the administrative rules. This is
16 true of disciplinary, program review, and authorized leave decisions. Second, the nature of the
17 issue may make other avenues of resolution more appropriate.

18

19 However, except for parole, under sub. (3), the procedure followed in these decisions is
20 within the scope of the ICRS, after exhaustion of administrative remedies required under other
21 chapters.

22

23 **Note: DOC 310.09.** DOC 310.09 sets out the procedure by which a complaint can be
24 filed. It is intended to make filing as easy as possible. No one should be excluded from legitimate
25 use of the system because he or she does not have complaint forms or is unable to write.

26 Subsection (2) allows the ICE to direct the inmate to attempt to informally resolve the
27 issue prior to accepting the complaint. This meets the objective of DOC 310.01

28 Subsection (4) underscores the importance of filing a timely complaint. The ICE is given
29 discretion, however, to accept late complaints for good cause. Promptness in filing a complaint
30 is required for a thorough investigation of the facts. This is especially true of complaints

31 involving lost or damaged personal property. Recollections can dim or property can be altered or
32 destroyed, making investigation difficult or impossible.

33
34 **Note: DOC 310.10.** Complaints arising from living and working conditions or the
35 application of a rule may be shared by a number of persons. Accordingly, this section allows a
36 group of inmates to join in a common complaint.

37 The department encourages the use of the complaint system to deal with frustrations and
38 irritations of institution life, so prohibiting group complaints would be inappropriate. Subsection
39 (7) makes this clear.

40
41 **Note: DOC 310.11.** DOC 310.11 establishes the procedure for processing complaints and
42 sub. (3) authorizes priority handling of complaints dealing with health or personal safety.
43 Experience has shown some complaints to raise insignificant issues. For example, a complaint
44 alleging that the institution served creamy peanut butter but the inmate preferred chunky peanut
45 butter. These complaints take attention away from significant issues.

46
47 Because inmates are transferred within the Wisconsin correctional system, sub. (9) provides a
48 method for dealing with complaints arising around the time of the transfer.

49
50 **Note: DOC 310.12.** This section requires the appropriate reviewing authority's written
51 decision to be rendered within 25 working days after the complaint is acknowledged. If the
52 complaint system is to have any value as a method of resolving conflict, decisions must be
53 rendered quickly. Experience in the ICRS has shown that timeliness is an important factor in the
54 process.

55
56 **Note: DOC 310.13.** DOC 310.13 defines the procedure for appealing an adverse decision
57 to the CCE. This section requires that appeals be filed within 10 calendar days, although the CCE
58 may accept an appeal filed later for good cause.

59 Appeal to the CCE provides another element deemed essential to a credible complaint
60 system; namely, a review by someone outside the division of adult institutions chain of
61 command. CCE's shall give priority to appeals dealing with health and personal safety.

62
63 **Note: DOC 310.15** Since the purpose of the complaint system is to air grievances and
64 seek resolutions, decisions resulting in a change in program, policy, or rule interpretation that
65 affect more than a few inmates, must be promptly implemented.

66
67 Subsection (2) states that the complainant may notify the decision- maker of failure to
68 implement a decision within 30 working days. The decision-maker is in a position to ensure that
69 a decision is implemented promptly.

70
71 **Note: DOC 310.16** If the ICRS is to maintain integrity and the confidence of the inmates,
72 complaints entered must be treated confidentially and, with certain limited exceptions, no
73 sanctions can result from the good faith use of the system. The ICRS is an appropriate forum for
74 resolving staff issues. However, because complaints often identify a staff member as the
75 perceived perpetrator of some injustice, the complainant must be protected from retribution or
76 penalty for good faith use of the system.

77 The nature of some complaints is such that a meaningful investigation cannot be made
78 without revealing the identity of the complainant, but this should be done only when necessary to
79 investigate the complaint, implement the remedy, or in response to litigation. Confidentiality can
80 be waived if it can be shown that the security or orderly administration of the institution, or the
81 security, safety or health of any person is involved.

82 This is not to say that inmates are free to make threatening or false statements about staff,
83 knowing they are false, especially if those false statements are made public. There have been
84 malicious lies about staff corruption and sexual behavior made in the ICRS. This rule does not
85 prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under DOC
86 303.271.

87 The ICE must use discretion in revealing only enough information about the nature of the
88 complaint as necessary to investigate the complaint, implement the remedy, or in response to
89 litigation.

90
91
92 **Note: DOC 310.18** Experience has shown that there are rare situations when it is
93 necessary to suspend these rules. DOC 310.18 permits the secretary to suspend these rules in an
94 emergency. The rule defines an emergency in s. DOC 310.03(9).

95
96 This rule shall take effect on the first day of the month following publication in the Wisconsin
97 administrative register as provided in s.227.22 (2) Stats.

98 Wisconsin Department of Corrections

99

100

Dated: _____

Agency: _____

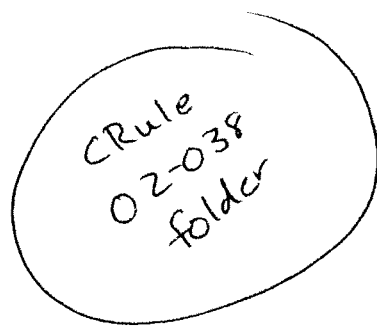
Jon E. Litscher, Secretary



Gilbert, Melissa

From: Emerson, Anne
Sent: Monday, September 23, 2002 1:28 PM
To: de Felice, David Patrick
Cc: Gilbert, Melissa
Subject: RE: Germane Modification

Thanks David!



CRule
02-038
folder

-----Original Message-----

From: de Felice, David Patrick
Sent: Monday, September 23, 2002 1:25 PM
To: Emerson, Anne
Cc: Kane, Julie M. DOC; Margolies, Robert S. DOC
Subject: Germane Modification

Anne:

Rep. Coggs has reviewed and finds acceptable the germane modification to Clearinghouse Rule 02-038 relating to the definition of the word "moot."

David de Felice
Office of Rep. G. Spencer Coggs
State Assembly
608-266-5580 phone
608-282-3617 fax