

Chapter HSS 97

COMPLAINT PROCEDURES FOR INMATES OF THE
WISCONSIN RESOURCE CENTER

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HSS 97.01 Authority and purpose. (1) This chapter is promulgated under the authority of ss. 46.056 (1) and 227.11 (2) Stats., to afford inmates in the Wisconsin resource center a process by which their grievances may be easily raised, and expeditiously decided. If a decision on a grievance requires a change in administrative practice, the change shall be implemented.

(2) The objectives of the inmate complaint review system are:

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

(b) To encourage communication between inmates and staff;

(c) To develop inmates' sense of involvement in and respect for the correctional process;

(d) To explain correctional policy to inmates and staff;

(e) To afford inmates and staff the opportunity to review correctional policy and gain further insight into the correctional system;

(f) To correct any errors and deficiencies in correctional policy through questioning and review; and

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

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.015 Applicability. This chapter applies to the department and to staff and inmates of the Wisconsin resource center. It interprets s. 46.056 (1), Stats.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.02 Definitions. In this chapter:

(1) "AA/CRC officer" or "affirmative action/civil rights compliance officer" means the person in the division designated by the secretary to monitor and aid in the investigation and resolution of civil rights complaints.

(2) "Administrator" means the administrator of the department's division of care and treatment facilities.

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

(4) "CCE" or "corrections complaint examiner" means the person outside the department designated to investigate complaints appealed to the secretary.

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

(6) "Department" means the Wisconsin department of health and social services.

(7) "Director" means the director of the Wisconsin resource center or that person's designee.

(8) "Division" means the department's division of care and treatment facilities.

(9) "ICI" or "inmate complaint investigator" means the person at each adult correctional institution designated to investigate complaints filed by inmates.

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

(11) "Secretary" means the head of the department, or that person's designee.

(12) "Wisconsin resource center" or "WRC" means the medium security state prison established per s. 46.056, Stats., and administered by the department.

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

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.025 Organization of inmate complaint review system. The following steps outline the procedure for raising and resolving a grievance:

(1) To use the complaint system, an inmate shall file a complaint with the ICI under s. HSS 97.05.

(2) The ICI shall then:

(a) Investigate the complaint under s. HSS 97.07;

(b) Attempt to resolve the complaint under s. HSS 97.07 (5); and

(c) Recommend a decision to the director under s. HSS 97.07 (3).

(3) The director, after studying the ICI's report, shall render a decision under s. HSS 97.08.

(4) An inmate may appeal an adverse decision to the CCE under s. HSS 97.09 (1).

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(5) The CCE shall then investigate and make a recommendation to the secretary under s. HSS 97.09 (10).

(6) The secretary, under s. HSS 97.10, shall:

- (a) Adopt the recommendation;
- (b) Adopt the recommendation with modifications; or
- (c) Reject the recommendation.

(7) If an adopted recommendation is not implemented, the inmate may inform the secretary who shall:

- (a) Investigate; and
- (b) Ensure implementation.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.03 Inmate complaint review system. (1) To effectuate the purpose and objectives of s. HSS 97.01, the division shall maintain an ICRS in the Wisconsin resource center.

(2) The director shall appoint an ICI to implement the ICRS. The director may designate an employe to function as ICI in addition to other duties, in which case complaint investigation shall be the primary responsibility of this person.

(3) The ICI shall be provided with office space and clerical support required to implement the ICRS.

(4) In investigating a complaint, the ICI shall have access to staff, inmates, and any institution or division records pertaining to that investigation not otherwise protected by rule or statute.

(5) When the ICI is absent from the institution more than 2 working days, the director shall designate another staff member to act as ICI in the interim.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.04 Scope of complaint review system. (1) The ICRS may be used by an inmate acting individually or by a group of inmates acting collectively.

(2) The ICRS may be used to seek a change of any institutional policy or practice except:

(a) A finding of guilt or a penalty imposed by an adjustment committee or a disciplinary hearing officer as the result of a disciplinary hearing under ch. DOC 303 except that the ICRS may be used to challenge procedural errors in accordance with sub. (3);

(b) A program review committee's decision;

(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.

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(3) The ICRS may be used 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:

(a) Affirm the adjustment committee's or hearing officer's decision but reduce the sentence in type or quality;

(b) Reverse the adjustment committee's or hearing officer's decision. In this case, all records of the decision shall be removed from all offender-based files. Records may be kept for statistical purposes only; or

(c) Return the case to the adjustment committee or hearing officer for further consideration.

(4) Complaints regarding inmate health care may be filed in the ICRS.

(5) Civil rights complaints may be filed in the ICRS. The ICI at the institution level and CCE at the appeals level may request assistance from the division's affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.05 Filing of complaints. (1) A complaint, whether filed by an individual or a group of inmates, shall be written on a form supplied for that purpose. The written complaint shall be signed by the inmate or, if it is a group complaint, by all members of the group.

(2) A complaint shall be filed within 14 calendar days after the occurrence giving rise to the complaint, except that the ICI may accept a late complaint for cause.

(3) If an inmate is unable to write a complaint, the ICI shall reduce the complaint to writing and shall read it to the inmate. When the inmate is satisfied with the complaint, the inmate shall sign it. An inmate may also receive assistance from another inmate in preparing a complaint.

(4) The institution shall provide a supply of complaint forms readily available to inmates.

(5) A signed complaint may be filed by depositing it in a locked box in the living unit or by placing it in a sealed envelope marked for delivery to the office of the ICI.

(6) An inmate may file any number of complaints. However, the ICI shall exercise discretion in determining the order in which subsequent complaints from an inmate will be processed within the time limits of this section.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.06 Group complaints. (1) Except as noted in this section, group complaints are processed in the same way as individual complaints.

(2) Inmates having a complaint in common may file as a group by using one complaint form and affixing the signatures of all complainants to the form. Alternatively, each may file individually but ask that the complaints be considered together. In either event, the group shall designate

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a spokesperson or, if none is designated, the first name signed on the first complaint filed shall be deemed spokesperson.

(3) If more than one complaint is filed on the same subject, the ICI or the CCE may treat the complaints as a group complaint, but each complainant shall be furnished with notices and acknowledgements of receipt of appeals as if they were individual complaints.

(4) The ICI shall determine if the complaint is in fact a common complaint. If the ICI determines that the complainants do not share a common complaint, the reasons for that determination shall be sent in writing to the complainants.

(5) The ICI shall determine if decisions or acknowledgments are to be communicated individually to all parties to a group complaint or, if individual notice is administratively not feasible, may elect to post decisions or acknowledgements of receipt of appeals in a place accessible to the group.

(6) A group complaint 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.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.07 Processing complaints at the institution level. (1) Unless the ICI is absent, at least once each working day the ICI shall collect all complaints deposited in any complaint box in the institution. The director shall proceed under s. HSS 97.03 (5) in the event of an absence of the ICI for longer than 2 working days. Only the ICI may have access to the complaint boxes, which shall be provided with locks.

(2) Each complaint shall be assigned a file number for purposes of identification, and the date of receipt shall be noted. Each complaint shall be reviewed and acknowledged in writing by the ICI within 3 calendar days after the date of receipt. Complaints dealing with health or personal safety shall be given priority.

(3) The ICI shall decide the investigatory methods best suited to expeditiously determine the facts. These may include personal interviews, telephone calls and review of documents and correspondence. The ICI shall forward a report and recommendation to the director within 15 calendar days after the date of acknowledgment for decision in accordance with s. HSS 97.08. 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.

(4) Staff shall respond in writing, if requested, to an inquiry by an ICI investigating a complaint.

Note: The department's original intent was to include the following as sub. (5) but failed to include it in the final draft. The department will add this language in a future rule-making order.

(5) The ICI shall attempt to informally resolve the complaint at the institution level. If resolution attempts are successful, the ICI shall record the results in writing and have the complainant sign the report indicating the complainant's acceptance of the resolution. This resolution shall then be forwarded to the director for a decision under s. HSS 97.08.

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(6) If an inmate is transferred to another institution after a complaint is filed but before the director renders a decision, the ICI shall determine if the complaint is moot because of the transfer and, if so, shall notify the inmate. If the issue must still be decided, the ICI at WRC shall investigate and make a recommendation to the director. The ICI shall note the persons interviewed and the documents or records relied on in reaching a recommendation.

(7) If an inmate is transferred after an incident but before filing a complaint, the inmate, pursuant to s. DOC 310.07 (7), shall file the complaint at the receiving institution. The ICI there, pursuant to s. DOC 310.07 (7), shall send the complaint to the ICI at WRC for investigation and decision. The ICI at the WRC shall note the persons interviewed and the documents or records relied on in reaching a recommendation.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.08 Director's decision. (1) Within 5 calendar days after receipt of the ICI's report, the director shall render a written decision, including the reasons for the decision. If the director accepts the ICI's recommendation, indication of acceptance shall be sufficient. The director's decision and the ICI's report shall be delivered to the complainant or to the designated spokesperson in a group complaint as provided under s. HSS 97.06 (4).

(2) If the complainant does not receive the director's decision within 23 calendar days after the ICI's receipt of the complaint, the complaint shall be considered denied and may be appealed immediately under s. HSS 97.09.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.09 Review by corrections complaint examiner. (1) A complainant affected by a director's decision may, within 5 calendar days after receipt of the decision, appeal that decision by filing a written request for review with the CCE.

(2) An appeal shall be sent to the CCE in a sealed envelope. Department employees may not open or inspect that envelope.

(3) The CCE may accept for review an appeal filed later than 5 calendar days after receipt of the decision if the elapsed time has not made it difficult or impossible to investigate the complaint.

(4) The CCE shall, within 5 calendar days after receiving an appeal, review and acknowledge receipt of the appeal. Appeals dealing with health and personal safety shall be given priority attention. Within 5 calendar days after a request for review is received by the CCE, the ICI shall provide the CCE with copies of the complaint, the ICI's investigation report and the director's decision.

(5) The CCE may use any appropriate investigatory method necessary to arrive at a recommendation for the secretary. The CCE shall have full access to inmates, staff, physical plant, and Wisconsin resource center records. If an appeal necessitates resolution of disputed issues of fact, the CCE may require sworn statements from the principals.

(6) The CCE shall be treated as a division employee for purposes of access to records.

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(7) If issues are extremely complex and many witnesses are involved, and the CCE feels other investigatory methods are inadequate, the CCE may order an evidentiary hearing. In that event, the CCE shall:

(a) Give adequate and timely notice of the hearing to the inmate and any person whose presence is necessary at the hearing;

(b) Arrange for production of witnesses;

(c) Provide for representation for parties when necessary;

(d) Personally preside at the hearing; and

(e) Determine the method of proceeding and the rules of evidence to be used during the hearing.

(8) Transcription of the proceedings shall be at the discretion of the CCE.

(9) If a hearing is held, the time limits for a recommendation may be extended by written agreement of the complainant and the superintendent.

(10) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 37 calendar days after receipt of the complaint. If the CCE fails to make a recommendation within the prescribed time, the director's decision shall be affirmed. The inmate shall be notified of all decisions.

(11) A complainant may waive time limits if doing so may result in a favorable decision by the secretary under s. HSS 97.10 rather than an affirmation of the director's decision.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.10 Secretary's decision. (1) The CCE's 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 calendar days following receipt of the CCE'S recommendation. The secretary may take an additional 5 calendar days to make that decision if there is cause and the secretary notifies all interested parties.

(2) The secretary may:

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

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

(c) Reject the recommendation of the CCE.

(3) If no written decision is made by the secretary within the time limit, the findings and recommendation of the CCE shall be deemed to be the secretary's decision, and the secretary shall promptly advise the parties concerned in writing.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.12 Implementation of affirmed complaint. (1) A change in a WRC program or operation affecting the general inmate population and resulting from an affirmed complaint shall be made known through

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widely distributed written notice to inmates within 14 calendar days after issuance of the decision.

(2) If an affirmed complaint has not been implemented at any level within 30 calendar days after a decision to affirm, the complainant may directly inform the secretary by mail of the failure to implement the decision. The secretary shall investigate and take all steps necessary to ensure implementation.

(3) If a decision on a complaint requires a change in an administrative rule, the department shall initiate rulemaking.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.13 Confidentiality. (1) Except as otherwise provided in this section, complaints filed with the ICRS shall be confidential. Persons working in the ICRS shall respect the confidential nature of the work. The identity of complainants and the nature of the complaint shall be revealed only to the extent necessary for thorough investigation and implementation of the remedy.

(2) Confidentiality of a complaint may be waived by the director if the security of the institution, staff or inmates is involved.

(3) A copy of material relating to an inmate's written complaint may not be filed in any case file, nor may any notation regarding a complaint be made in that file.

(4) A breach of confidentiality in the process may itself be the subject of a complaint. An inmate or a group of inmates shall file this type of complaint directly with the CCE.

(5) A complainant may 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 constitutes the offense of lying about staff.

(6) No sanction may be applied against an inmate for filing a complaint.

(7) Subsections (3), (4) and (6) do not apply if a conduct report based on an inmate's complaint is filed under s. DOC 303.271.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

HSS 97.14 Reports. (1) The ICI shall submit quarterly reports to the 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, the secretary, and the administrator. The report shall include:

(a) The number and type of complaints processed at the CCE level of the ICRS;

(b) The number of complaints resolved by mediation at the CCE level;

(c) The number of complaints recommended for dismissal; and

(d) The number of complaints recommended for acceptance.

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(3) The CCE may include in its reports other information or make recommendations concerning the ICRS.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.