

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

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

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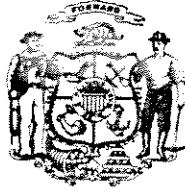
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- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
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- Committee Hearings ... CH
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- Executive Sessions ... ES
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- Hearing Records ... HR
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February 19, 1998
Executive Session JCRAR

Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



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State of Wisconsin Department of Corrections

August 4, 1997

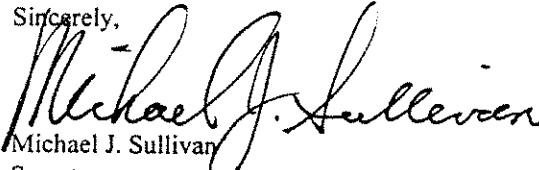
Members of the Legislature

Dear Member of the Legislature:

Enclosed is a copy of the Department of Corrections' emergency rule promulgated by the Department of Corrections. The emergency rule will be published in the Wisconsin State Journal on August 4, 1997. The effective date of the rule is August 4, 1997.

If you have any questions about the rule, please contact Deborah Rychlowski of the Department's Office of Legal Counsel at (608) 266-8426.

Sincerely,


Michael J. Sullivan
Secretary

Enclosure

ORDER OF THE
DEPARTMENT OF CORRECTIONS
ADOPTING RULES

FINDING OF EMERGENCY

The Department of Corrections finds an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

There is a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions have been in effect for years. At the present time there is a substantial backlog of approximately 3,000 inmate complaints which need to be reviewed by the Corrections Complaint Examiner. The Department of Justice's position is that it will no longer do the Corrections Complaint Examiner function.

The Department must change its administrative rule to reflect the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. The Department must also change its administrative rule regarding inmate complaints to make the system more efficient as a substantial backlog now exists, and there will be no new positions at the Department of Corrections to do the work of the Corrections Complaint Examiner.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions. An emergency exists due to the current backlog and the proposed moving of the function which will require the Department of Corrections to do the work of the Corrections Complaint Examiners with no new positions.

The Wisconsin department of corrections proposes an order to repeal DOC 310.125 (intro.), 310.025 (6), 310.125 (7), 310.03 (5), 310.04 (2) (a), 310.04 (3) (a), 310.04 (3) (b), 310.04 (3) (c), 310.04 (3) (d), 310.06 (3), 310.06 (4), 310.08 (title), 310.08

(1), 310.08 (2), 310.09 (7), 310.09 (8), 310.09 (9), 310.12 (1), 310.13 (7), and 310.14 (3); to renumber and amend 310.01 (2) (b), 310.01 (2) (c), 310.01 (2) (d), 310.01 (2) (e), 310.01 (2) (f), 310.01 (2) (g), 310.015, 310.02 (2), 310.02 (3), 310.02 (4), 310.02 (5), 310.02 (6), 310.02 (8), 310.02 (9), 310.02 (10), 310.025 (title), 310.025 (1), 310.025 (2), 310.0125 (2) (a), 310.025 (2) (b), 310.025 (2) (c), 310.025 (3), 310.025 (4), 310.025 (5), 310.03 (title), 310.03 (1), 310.03 (2), 310.03 (3), 310.03 (4), 310.04 (title), 310.04 (1), 310.04 (2), 310.08 (2) (a), 310.04 (2) (c), 310.04 (2) (d), 310.04 (2) (e), 310.04 (3), 310.04 (5), 310.05 (1), 310.05 (2), 310.05 (3), 310.05 (4), 310.05 (5), 310.05 (6), 310.06 (2), 310.06 (5), 310.06 (6), 310.07 (1), 310.07 (2), 310.07 (3), 310.07 (4), 310.07 (5), 310.07 (6), 310.07 (7), 310.07 (8), 310.09 (title), 310.09 (1), 310.09 (2), 310.09 (4), 310.09 (10), 310.09 (11), 310.10 (1), 310.10 (2), 310.10 (2) (b), 310.10 (2) (c), 310.12 (2), 310.12 (3), 310.12 (4) 310.13 (1), 310.13 (2), 310.13 (5), 310.13 (6), 310.14 (1), and 310.14 (2); renumber 310.02 (intro.), 310.02 (1), 310.02 (7), 310.025 (title), 310.04 (2) (b), 310.05 (title), 310.06 (title), 310.06(1), 310.07 (title), 310.09 (3), 310.09 (5), 310.09 (6), 310.10 (title), 310.10 (2) (a), 310.10 (3), 310.12 (title), 310.13 (3), 310.13 (4), 310.14 (title), 310.14 (a), 310.14 (b), 310.14 (c), and 310.14 (d); amend 310.01 (2), 310.01 (2) (a), and 310.02; and create 310.01 (2) (b), 310.03 (2), 310.03 (3), 310.03 (5), 310.03 (9), 310.03 (10), 310.03 (13), 310.03 (14), 310.03 (15), 310.03 (17), 310.06 (2) (b), 310.06 (2) (c), 310.06 (6), 310.08 (2) (a), 310.08 (2) (f), 310.08 (4), 310.08 (4) (a), 310.08 (4) (b), 310.08 (4) (c), 310.05, 310.10 (3), 310.11 (4), 310.11 (4) (a), 310.11 (4) (b), 310.11 (4) (c), 310.11 (5), 310.11 (11), 310.12 (title), 310.12 (1), 310.12 (2), 310.12 (2) (a), 310.12 (2) (b), 310.12 (2) (c), 310.12 (2) (d), 310.12 (2) (e), 310.12 (3), 310.13 (4), 310.14 (2) (d), 310.15 (1), 310.15 (2), 310.18, and 310.19, relating to the inmate complaint review system.

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

Statutes interpreted: ss. 301.02 and 301.03, Stats.

Analysis Prepared by the Department of Corrections

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

This proposed rule eliminates redundant and confusing language, simplifies and clarifies some language, and uses current terminology.

This rule reflects the statutory requirement that requires inmates to exhaust their administrative remedies before commencing a civil action.

This rule uses the term "significant" to modify the "issues" to establish a more administratively efficient inmate complaint review system. This rule requires the institution complaint examiner to dismiss frivolous complaints. This rule permits inmates to appeal the dismissal of a frivolous complaint to the appropriate reviewing authority. This rule prohibits the corrections complaint examiner from reviewing complaints dismissed as frivolous.

This rule permits the institution complaint examiner to accept late complaints for good cause.

This rule requires the written complaint procedure to be readily available to all inmates. It requires inmates to receive written notification and an oral explanation of the complaint procedures. It requires appropriate provisions to be made for non-English speaking, impaired or handicapped inmates.

This rule limits the number of complaints that an inmate may file to 2 complaints in a calendar week unless the institution complaint examiner finds that good cause exists to allow the inmate to file more than 2 complaints in the calendar week.

This rule expands some time lines by changing calendar days to working days. This rule requires the secretary to make a decision on the complaint within 10 calendar days instead of 5 calendar days. This rule permits the time lines to be extended for cause and upon notice to the inmate or all interested parties involved.

This rule permits persons other than the warden to review and make decisions regarding an inmate complaint.

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

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

This rule prohibits inmate participation in the resolution of another inmate's complaint if the complainant objects.

This rule prohibits any inmate or employee who appears to be involved in the matter from deciding the resolution of the complaint.

This rule prohibits any reprisal against an inmate for participation in the complaint procedure.

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

This rule permits the secretary to suspend these rules in an emergency.

Chapter DOC 310

COMPLAINT PROCEDURES

- DOC 310.01 Purpose
- DOC 310.02 Applicability
- DOC 310.03 Definitions
- DOC 310.04 Exhaustion of administrative remedies
- DOC 310.05 Communication of procedures
- DOC 310.06 Organization of inmate complaint review system
- DOC 310.07 Inmate complaint review system
- DOC 310.08 Scope of complaint review system
- DOC 310.09 Filing of complaints
- DOC 310.10 Group Complaints
- DOC 310.00 Processing complaints at the institution level
- DOC 310.12 Appropriate reviewing authority
- DOC 310.13 Review by corrections complaint examiner
- DOC 310.14 Secretary's decision
- DOC 310.15 Implementation of affirmed complaint
- DOC 310.16 Confidentiality
- DOC 310.17 Reports
- DOC 310.18 Preservation of records
- DOC 310.19 Suspension of provisions of this chapter

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

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

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

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

DOC 310.01 (2) (c) To encourage communication between inmates and staff~~7~~.

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

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

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

DOC 310.01 (d) To develop inmates' sense of involvement in and respect for the correctional process~~7~~.

(e) To explain correctional policy to inmates and staff~~7~~.

(f) To afford inmates and staff the opportunity to review correctional policy and gain further insight into the correctional system~~7~~.

(g) To correct any errors and deficiencies in correctional policy through questioning and review~~7~~.

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

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

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

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

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

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

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

DOC 310.03 (6) "CCE" or "corrections complaint examiner" means the ~~person outside employee of~~ the department designated to investigate complaints appealed to the secretary. The CCE shall be assigned to a subunit that is not within the division of adult institutions.

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

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

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

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

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

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

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

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

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

(18) ~~"Superintendent"~~ "Warden" means the ~~superintendent~~ warden of

the institution at which the complaint was filed, or designee.

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

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

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

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

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

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

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

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

DOC 310.06 (2) (d) Attempts to resolve the complaint under s. DOC ~~310.07 (5)~~ 310.11 (9);

(e) Recommends a decision to the ~~superintendent~~ appropriate reviewing authority under s. DOC ~~310.07 (3)~~ 310.11(13).

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

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

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

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

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

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

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

(2) Each ~~superintendent~~ warden shall appoint an ~~inmate institution~~ complaint investigator (ICI) examiner, ~~to implement the complaint review system whose primary responsibility shall be complaint investigation.~~ ~~In some institutions the superintendent~~ The warden may designate ~~an any~~ any employe to function as ~~(ICI)~~ ICE in addition to other duties. ~~Complaint investigation shall be the primary responsibility of this person.~~

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

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

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

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

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

SECTION 22. DOC 310.03 (5) is repealed.

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

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

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

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

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

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

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

(17) "Significant" means a serious or important defect or omission.

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

DOC 310.08 SCOPE OF COMPLAINT REVIEW SYSTEM. (1) The inmate complaint review system ~~(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 institution policy or practice~~ raise significant issues regarding rules, living conditions, and staff actions affecting institution environment, except any of the following:

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

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

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

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

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

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

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

DOC 310.08 (3) ~~After exhausting the appeal in DOC 302.19, 303.75 or 303.76. The~~ 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 decision maker acting on a request for authorized leave. ~~If a complaint challenging the procedure used by the adjustment committee or hearing officer is affirmed, the decisionmaker shall.~~

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

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

DOC 310.08 (5) Civil rights complaints may be filed in the ICRS in accordance with the procedures set forth in this chapter. ~~The ICE~~ ICE at the institution level and CCE at the appeals level may request assistance from the department's affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

SECTION 31. DOC 310.04 is created to read:

DOC 310.04 EXHAUSTION OF ADMINISTRATIVE REMEDIES. Before an inmate may commence a civil action or special proceedings against any officer, employe or agent of the department in the officer's, employe's or agent's official or individual capacity for acts or omissions committed while carrying out that person's duties as an officer, employe or agent or while acting within the scope of the person's office, the inmate is required to file a complaint under ss. DOC 310.09 or 310.10, receive a decision on the complaint under s. DOC 310.13, have an adverse decision reviewed under s.

DOC 310.14, and be advised of the secretary's decision under s. DOC 310.14.

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

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

DOC 310.09 FILING OF COMPLAINTS. (1) A complaint, whether filed by an individual or a group of inmates, shall be written on forms supplied for that purpose and shall be signed by the inmate or by all members of the group filing the complaint. Unsigned complaints or complaints with foul language will not be accepted.

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

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

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

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

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

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

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

DOC 310.09 (5) A signed complaint may be filed by depositing it in a locked box in the living unit designated for complaints or by

placing it in a sealed envelope marked for delivery to the office of the ~~ICI~~ ICE via institution mail.

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

SECTION 38. DOC 310.05 is created to read:

DOC 310.05 COMMUNICATION OF PROCEDURES. The written complaint procedure shall be readily available to all inmates. Upon arrival at an institution, each inmate shall receive written notification and an oral explanation of the procedure, including how to file at the institution. The inmate shall be given the opportunity to ask and have questions answered orally. Appropriate provisions shall be made for non-English speaking, impaired or handicapped inmates.

SECTION 39. DOC 310.06 (title) and 310.06 (1) are renumbered DOC 310.10 (title) and 310.10 (1).

SECTION 40. DOC 310.06 (2) is renumbered DOC 310.10 (2) and is amended to read:

DOC 310.10 (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.~~ All complainants shall sign the form. Alternatively, each may file individually ~~but ask that the complaints be considered together.~~ In either event, the The group shall designate a spokesperson or, if none is designated, the first name signed on the complaint ~~filed~~ shall be deemed the spokesperson for the group. A group complaint counts as a complaint under DOC 310.09(6).

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

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

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

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

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

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

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

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

DOC 310.06 (6) The secretary reviews the CCE's report, makes a decision under s. DOC 310.14, and ensures implementation under DOC 310.15.

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

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

DOC 310.11 PROCESSING COMPLAINTS AT THE INSTITUTION LEVEL. (1) Unless the inmate complaint ~~investigator (ICI)~~ examiner is absent, ~~at least once each working day~~ the ICE shall collect all complaints deposited in any complaint box in the institution. The ~~superintendent~~ warden shall proceed under s. ~~DOC 310.03 (5)~~ 310.07(2) in the event of an absence of the ~~ICI~~ ICE for longer than 2 working days. Except as provided in this section, only only the ~~ICI~~ ICE shall have access to the complaint boxes, which shall be provided with locks.

(2) No complaint may include more than one issue. Each complaint

shall be assigned a file number ~~for purposes of identification, classification code and the date of the receipt shall be noted~~ dated for purposes of identification. Each complaint shall be reviewed and acknowledged in writing by the ~~ICI ICE~~ within 3 ~~calendar working days~~ of the date of receipt. ~~Complaints dealing with health or personal safety shall be given priority.~~

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

SECTION 47. DOC 310.07 (4) through (8) are renumbered DOC 310.11 (6) through (10) and are amended as follows:

DOC 310.11 (6) Staff ~~must~~ shall respond in writing, if requested, to an inquiry by an ~~ICI ICE~~ investigating a complaint.

(7) The ~~ICI ICE~~ shall ~~may~~ attempt to informally resolve the complaint, which may include directing the inmate to discuss the issue with an appropriate institution staff member prior to investigating the complaint, at the institution level. If resolution attempts are successful, the ~~ICI ICE~~ 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 ~~superintendent~~ appropriate reviewing authority for a decision under s. DOC 310.08.

(8) If an inmate is transferred to another institution after a complaint is filed but before a ~~superintendent~~ the appropriate reviewing authority renders a decision, the ~~ICI ICE~~ shall determine if the complaint is moot because of the transfer and, if

so, shall notify the inmate. If the issue still must be decided, the ~~ICF ICE~~ at the institution where the complaint originated shall investigate and make a recommendation to the ~~superintendent~~ appropriate reviewing authority.

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

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

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

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

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

(f) A denial of an open records request.

SECTION 50. DOC 310.08 (4), 310.08 (4) (a) through 310.08 (4) (c) are created to read:

DOC 310.08 (4) Complaints filed in the following areas shall be directed to the following appropriate reviewing authority:

(a) Health care and psychiatric issues shall be directed to the director of the bureau of health services.

(b) Badger state industries and farm issues shall be directed to the director of the bureau of correctional enterprises.

(c) The reviewing authority for all other complaints is the warden, unless another authority is designated by the secretary.

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

DOC 310.13 REVIEW BY CORRECTIONS COMPLAINT EXAMINER. (1) A complainant affected by a superintendent's dissatisfied with a decision may, within 5 calendar days after receipt of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner (CCE).

(2) Appeals shall be sent to the CCE in a sealed envelope that ~~department employees only the CCE or CCE support staff may not~~ open or inspect.

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

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

DOC 310.13 (5) The CCE shall, within 5 ~~calendar~~ working 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~~ working days of a request by the CCE, the ~~inmate institution complaint investigator examiner~~ shall provide the CCE with copies of the complaint, the ~~ICI's~~ ICE's investigation report and associated documentation and the ~~superintendent's appropriate reviewing authority's~~ decision. Appeals dealing with health or personal safety shall be given priority.

SECTION 54. DOC 310.09 (5) and (6) are renumbered DOC 310.13 (6) and (7).

SECTION 55. DOC 310.09 (7), 310.09 (8), and 310.09 (9) are repealed.

SECTION 56. DOC 310.09 (10) and 310.09 (11) are renumbered DOC 310.13 (8) and 310.13 (9) and amended to read:

DOC 310.13 (8) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 37 ~~calendar~~ working days of receipt of the complaint. Should the CCE fail to make a recommendation within the prescribed time, the ~~superintendent's appropriate reviewing authority's~~ decision shall be affirmed. The inmate shall be notified of all decisions in writing.

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

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

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

DOC 310.14 SECRETARY'S DECISION. (1) The corrections complaint examiner's (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~~ 10 ~~calendar~~ working days following receipt of the recommendation. The secretary may ~~take an additional 5 calendar days to make that~~ extend the time for making a decision if there is for cause and the secretary notifies upon notice to all interested parties.

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

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

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

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

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

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

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

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

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

(4) The ICE may reject a complaint that the ICE determines to be frivolous. A complaint rejected because the ICE has determined it

to be frivolous may be appealed only to the appropriate reviewing authority. The ICE may determine the complaint frivolous if the ICE finds one of the following:

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

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

(c) The complaint presents only an abstract question.

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

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

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

SECTION 65. DOC 310.12 (1) is repealed.

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

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

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

~~secretary shall investigate and take all steps necessary to ensure implementation.~~

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

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

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

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

(a) Dismiss the complaint.

(b) Dismiss the complaint with modifications.

(c) Affirm the complaint.

(d) Affirm the complaint with modifications.

(e) Return the recommendation to the ICE for further investigation.

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

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

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

DOC 310.16 CONFIDENTIALITY. (1) Except as otherwise provided in

this section, complaints filed with the inmate complaint review system ~~(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~~ reasonable and appropriate for thorough investigation and implementation of the remedy.

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

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

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

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

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

DOC 310.13 (5) A complainant may waive confidentiality in writing or make public any aspect of a complaint at any time. If the complaint contains a false statement meeting the requirements of s. DOC 303.271, making that false statement public constitutes the offense of lying about staff.

(6) ~~No sanction may be applied against an inmate for filing a complaint~~ may be subjected to reprisal for using or participating in the ICRS. An inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.

SECTION 73. SECTION DOC 310.13 (7) is repealed.

SECTION 74. DOC 310.14 (title) is renumbered DOC 310.17 (title).

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

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

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

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

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

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

SECTION 78. DOC 310.14 (3) is repealed.

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

DOC 310.15 IMPLEMENTATION OF AFFIRMED COMPLAINT. (1) An affirmed decision shall be implemented within 30 working days from date of decision.

2) Inmates shall be notified in writing of affirmed decisions requiring change in institution programs of operations affecting the general inmate population.

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

DOC 310.18 PRESERVATION OR RECORDS. All records related to an inmate complaint shall be kept according to department policy and procedures. The department shall keep all records for at least 3 years following disposition of the complaint.

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

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

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

debate.

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

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

Paragraphs 3 and 4 are deleted.

Paragraph 5, sentence 3 is deleted.

Paragraphs 6 to 9 are deleted.

Paragraph 4 is created to read:

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

Note: DOC 310.02 is repealed.

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

Delete paragraphs 1 to 3.

Amend paragraph 4 as follows:

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

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

Paragraph 3, sentence 4 is amended as follows:

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

Delete paragraph 4, sentence 2.

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

Delete paragraph 2, sentence 1.

Amend paragraph 3, sentence 1 as follows:

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

Amend paragraph 3, sentence 2 as follows:

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

Amend paragraph 3, sentence 3 as follows:

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

Amend paragraph 4, sentence 1 as follows:

The number of complaints one person can file may be limited, ~~except that the ICRS may become overburdened because of multiple complaints from one individual~~ distractions take away time from valid complaints.

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

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

Note: DOC 310.06 is renumbered 310.10.

Paragraph 1, sentence 1, is amended as follows:

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

Paragraphs 2 and 3 are repealed.

Paragraph 4, sentence 1 is amended to read:

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

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

Paragraph 1 sentence 1 is amended as follows:

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

Paragraph 1, create sentences 3 through 6 as follows:

Experience has shown some inmate complaints to be frivolous. For example, a complaint which alleges that an inmate didn't receive the proper food simply because it was "bagged" when the "bagged" meal was permitted under policy and procedures. These complaints serve to distract attention away from the more important issues. DOC 310.11(4) requires the ICE to dismiss frivolous complaints as defined in this section.

Delete paragraph 2.

Paragraph 3, sentence 1, amend as follows:

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

Paragraph 3, sentences 2 and 3 are deleted.

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

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

Paragraph 5, sentence 1 is amended as follows:

Because inmates are frequently transferred within the Wisconsin correctional system, subs. ~~(6)~~ (10) and ~~(7)~~ (11) provide a method for dealing with complaints arising just before or at the time of the transfer.

Note: DOC 310.08 is renumbered DOC 310.12.

Paragraph 1, sentence 1 is amended as follows:

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

Paragraph 1, sentences 3 through 5 are deleted.

Paragraph 1, sentence 3 is created to read:

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

Note: DOC 310.09 is renumbered DOC 310.13.

Paragraph 1, sentence 1 is amended to read:

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

Paragraph 1, sentences 3 and 4 are deleted.

Paragraph 2, sentence 1 is amended to read:

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

Paragraph 2, sentences 2 and 3 are deleted.

Paragraph 2, sentence 2 is created to read:

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

Note: DOC 310.12 is renumbered DOC 310.15.

Paragraph 3, sentence 1 is deleted.

Paragraph 3, sentence 2 is amended to read:

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

Paragraph 3, sentence 3 is amended to read:

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

Note: DOC 310.13 is renumbered DOC 310.16.

Paragraph 1, sentence 1 is amended to read:

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

Paragraph 1, sentence 4 is amended to read:

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

Paragraph 1, sentence 6 is deleted.

Paragraph 2, sentence 1 is amended to read:

The nature of some complaints is such that a meaningful investigation cannot be made without revealing the identify of the complainant, but this should be done only when ~~necessary~~ reasonable and appropriate.

Paragraph 2, sentence 2 is amended to read:

Confidentiality can be waived if it can be shown that the security or the orderly administration of the institution, or the

security of the institution, safety, or health of staff, or inmates is involved.

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

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

Paragraph 4 is deleted.

Paragraph 5, sentence 1, is amended to read:

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

Paragraph 6, sentence 2 is amended to read:

However, if an inmate makes a false accusation pursuant to s. DOC ~~303.271~~ 303.28, revealing that false accusation to persons outside the complaint system may subject the inmate to disciplinary action.

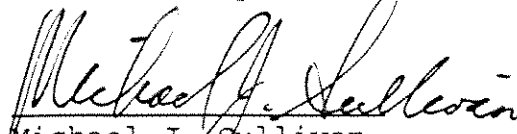
Note: 303.14 is deleted.

Note: DOC 310.19 is created to read:

Experience has shown that there are rare situations when it is necessary to suspend these rules. DOC 310.19 permits the secretary to suspend these rules in an emergency. The rules define an emergency.

This rule shall take effect on publication August 4, 1997.

Wisconsin Department of Corrections



by: Michael J. Sullivan
Secretary

Date: 7-28-97

Seal:

FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No /Adm. Rule No.
DOC 310

Amendment No. if Applicable

Subject

Inmate Complaint Review System

Fiscal Effect

State: No State Fiscal Effect

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

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

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

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive 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 Ch. 20 Appropriations

20.410(1)(a)

Assumptions Used in Arriving at Fiscal Estimate

The Wisconsin Department of Justice (DOJ) will no longer be providing support for the Inmate Complaint Review System (ICRS). As a result, changes in DOC 310 will eliminate the requirement that the "corrections complaint examiner" (CCE) be a person outside the Department. The rule will require that the CCE be assigned to a subunit that is not within the Division of Adult Institutions. This function will be assigned by the Department of Corrections (DOC).

Under the current rule and system, DOJ has had 2.5 FTE -- the 1.0 FTE examiner, a 1.0 FTE investigator and 0.5 FTE program assistant -- to support ICRS. DOC also had a 1.0 FTE investigator working on ICRS.

DOC will be able to devote a 0.5 FTE program assistant to ICRS but will have to absorb the workload of the CCE and the DOJ investigator with existing staff. There is currently a backlog of complaints. If the backlog is not reduced, the State may face an increased risk of legal challenges.

A change in language in DOC 310.01(2)(a) from "questions" to "significant issues" is intended to reduce the number of frivolous inmate complaints, which may reduce caseload and costs. The limit of two complaints by an inmate in a week may also reduce caseload and costs. The reductions cannot be determined. The caseload and cost reductions may, however, be offset by inmate appeals of examiner decisions that complaints were frivolous.

Long-Range Fiscal Implications

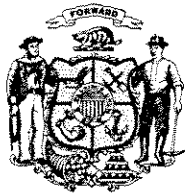
Agency/Prepared by: (Name & Phone No.)
Rick Christofferson 266-8397
Department of Corrections

Authorized Signature/Telephone No.
Robert Margolies
Robert Margolies 266-2931

Date
7/28/97

Tommy G. Thompson
Governor

Michael J. Sullivan
Secretary



Mailing Address
149 East Wilson Street
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 266-2471

State of Wisconsin Department of Corrections

November 12, 1997

Senator Richard Grobschmidt
Joint Committee for Review of Administrative Rules
Room 404, 100 N. Hamilton Street
Madison, Wisconsin 53707

Representative Glenn S. Grothman
Joint Committee for Review of Administrative Rules
State Capitol, Room 125 West
Madison, Wisconsin 53708

Re: Clearinghouse Rule 97-106, Relating to the inmate complaint review system

Dear Senator Grobschmidt and Representative Grothman:

The Department of Corrections has an emergency rule which will expire on January 2, 1998, before it can be replaced by a permanent rule. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the emergency rule amending DOC 310 by 60 days.

This emergency rule is required to provide for necessary changes in the inmate complaint review system. The Department of Corrections has proposed a permanent rule to provide for changes in the inmate complaint review system. The Department submitted the proposed permanent rule to the Administrative Rules Clearinghouse and the Revisor of Statutes on July 30, 1997, a copy of which is enclosed. The Department received the report from the Administrative Rules Clearinghouse on August 27, 1997. On September 15, 1997, the Department scheduled this rule for hearings on October 15, October 16 and October 17, 1997, a copy of the notice of hearing is enclosed. All three hearings were held. The open comment period for written comments extended to October 21, 1997. The Department will not be able to promulgate the permanent rule before the emergency rule expires on January 2, 1998.

Copies of the order creating the emergency rule and the proposed order creating a permanent rule are enclosed. If you have any questions about our request to extend the effective period of the emergency rule, please contact Deborah Rychlowski of the Department's Office of Legal Counsel at 266-8426.

Sincerely,

Michael J. Sullivan
Secretary

Enclosures

cc: JCRAR Members

NOTICE OF HEARING

DEPARTMENT OF CORRECTIONS

(The Inmate Complaint Review System - DOC 310)

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the department of corrections proposes the following rule relating to the inmate complaint review system.

Hearing Information

<u>Date & Time</u>	<u>Location</u>
October 15, 1997 Wednesday 3:00 P.M.	Secretary's Conference Room Department of Corrections 149 E. Wilson Street, 3rd Floor Madison, Wisconsin
October 16, 1997 Thursday 1:00 P.M.	Room 105 State Office Building 718 West Clairemont Eau Claire, Wisconsin
October 17, 1997 Friday 10:00 A.M.	Room 223 State Office Building 141 Northwest Barstow Street Waukesha, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

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

This proposed rule eliminates redundant and confusing language, simplifies and clarifies some language, and uses current terminology.

This rule reflects the statutory requirement that requires inmates to exhaust their administrative remedies before commencing a civil action.

This rule uses the term "significant" to modify the "issues" to establish a more administratively efficient inmate complaint review system. This rule requires the institution complaint

examiner to dismiss frivolous complaints. This rule permits inmates to appeal the dismissal of a frivolous complaint to the appropriate reviewing authority. This rule prohibits the corrections complaint examiner from reviewing complaints dismissed as frivolous.

This rule permits the institution complaint examiner to accept late complaints for good cause.

This rule requires the written complaint procedure to be readily available to all inmates. It requires inmates to receive written notification and an oral explanation of the complaint procedures. It requires appropriate provisions to be made for non-English speaking, impaired or handicapped inmates.

This rule limits the number of complaints that an inmate may file to 2 complaints in a calendar week unless the institution complaint examiner finds that good cause exists to allow the inmate to file more than 2 complaints in the calendar week.

This rule expands some time lines by changing calendar days to working days. This rule requires the secretary to make a decision on the complaint within 10 calendar days instead of 5 calendar days. This rule permits the time lines to be extended for cause and upon notice to the inmate or all interested parties involved.

This rule permits persons other than the warden to review and make decisions regarding an inmate complaint.

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

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

This rule prohibits any reprisal against an inmate for participation in the complaint procedure.

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

This rule permits the secretary to suspend these rules in an emergency.

Note: DOC 310.14 is deleted.

Note: DOC 310.19 is created to read:

Experience has shown that there are rare situations when it is necessary to suspend these rules. DOC 310.19 permits the secretary to suspend these rules in an emergency. The rules define an emergency.

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

Fiscal Estimate

The Wisconsin Department of Justice will no longer be providing support for the Inmate Complaint Review System (ICRS). As a result, changes in DOC 310 will eliminate the requirement that the "corrections complaint examiner" (CCE) be a person outside the Department. The rule will require that the CCE be assigned to a subunit that is not within the Division of Adult Institutions. This function will be assigned by the Department of Corrections (DOC).

Under the current rule and system DOJ has had 2.5 FTE - the 1.0 FTE examiner, a 1.0 FTE investigator and 0.5 FTE program assistant- to support ICRS. DOC also had a 1.0 FTE investigator working on ICRS.

DOC will be able to devote a 0.5 FTE program assistant to ICRS but will have to absorb the workload of the CCE and the DOJ investigator with existing staff. There is currently a backlog of complaints. If the backlog is not reduced, the State may face an increased risk of legal challenges.

A change in language in DOC 310.01 (2) (a) from "questions" to "significant issues" is intended to reduce the number of frivolous inmate complaints, which may reduce caseload and costs. The limit of two complaints by an inmate in a week may also reduce caseload and costs. The reductions cannot be determined. The caseload reductions may, however, be offset by inmate appeals of examiner decisions that complaints were frivolous.

Contact Person

Deborah Rychlowski (608) 266-8426
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707-7925

If you are hearing or visually impaired, do not speak English, or

have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than October 21, 1997, will be given the same consideration as testimony presented at the hearing.

Chapter DOC 310

COMPLAINT PROCEDURES

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

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

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

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

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

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

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

DOC 310.01 (2) (b) To provide the department an early opportunity to decide the issue before an inmate commences a civil action or

special proceeding against a department officer, employe or agent in the officer's, employe's or agent's official or individual capacity.

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

DOC 310.01 (d) To develop inmates' sense of

involvement in and respect for the correctional process~~+~~.

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

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

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

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

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

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

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

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

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

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

DOC 310.03 (6) "CCE" or "corrections complaint examiner" means the person outside employe of the department, who shall be assigned to a subunit that is not within the division of adult institutions, who is designated to investigate complaints appealed to the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Each superintendent warden shall appoint an inmate institution complaint investigator (ICI) examiner ~~to implement the complaint review system whose primary responsibility shall be complaint investigation~~. ~~In some institutions the superintendent~~ The warden may designate an any employe to function as ICI ICE in addition to other duties. ~~Complaint investigation shall be the primary responsibility of this person.~~

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

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

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

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

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

SECTION 22. DOC 310.03 (5) is repealed.

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

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

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

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

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

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

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

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

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

DOC 310.08 SCOPE OF COMPLAINT REVIEW SYSTEM. (1) The inmate complaint review system ~~(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 raise significant issues regarding rules, living conditions, and staff actions affecting institution environment, except any of the following:

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

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

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

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

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

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

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

DOC 310.08 (3) After exhausting the appeal in DOC 302.19, 303.75 or 303.76, 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 decision maker acting on a request for authorized leave. If a complaint challenging the procedure used by the adjustment committee or hearing officer is affirmed, the decisionmaker shall:

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

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

DOC 310.08 (5) Civil rights complaints may be filed in the ICRS in accordance with the procedures set forth in this chapter. The ~~ICI-ICE~~ at the institution level and CCE at the appeals level may request assistance from the department's affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

SECTION 31. DOC 310.04 is created to read:

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

under ch. 303, an inmate shall appeal to the warden under s. 303.76 and file an inmate complaint under s. 310.08 (3) in order to exhaust administrative remedies.

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

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

DOC 310.09 FILING OF COMPLAINTS. (1) A complaint, whether filed by an individual or a group of inmates, shall be written on forms supplied for that purpose and shall be signed by the inmate or by all members of the group filing the complaint. Unsigned complaints or complaints with foul language will not be accepted.

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

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

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

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

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

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

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

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

(6) An inmate may file any number of no more than 2 complaints in any given calendar week, unless the ICE determines in the ICE's discretion that good cause exists to allow the inmate to file more than 2 complaints in the calendar week. However, the ICI ICE shall exercise discretion in determining the order in

which subsequent complaints from an inmate will be processed within the time limits of this section and in keeping with priorities set by s. DOC 310.07 (3) whether to assign individual complaint numbers or to batch complaints of similar content filed by one inmate. Health and personal safety issues shall be excluded from this section and shall be dealt with in the manner provided by s. DOC 310.11 (3).

SECTION 38. DOC 310.05 is created to read:

DOC 310.05 COMMUNICATION OF PROCEDURES. The written complaint procedure shall be readily available to all inmates. Upon arrival at an institution, each inmate shall receive written notification and an oral explanation of the procedure, including how to file at the institution. The inmate shall be given the opportunity to ask and have questions answered orally. Appropriate provisions shall be made for non-English speaking, impaired or handicapped inmates.

SECTION 39. DOC 310.06 (title) and 310.06 (1) are renumbered DOC 310.10 (title) and 310.10 (1).

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

DOC 310.10 (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. All complainants shall sign the form. Alternatively, each may file individually but ask that the complaints be considered together. In either event, the group shall designate a spokesperson or, if none is designated, the first name signed on the complaint filed shall be deemed the spokesperson for the group. A group complaint counts as a complaint under DOC 310.09 (6).

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

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

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

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

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

DOC 310.10 (4) The ICF warden shall determine if decisions or acknowledgments shall be communicated individually issued to all parties to a group complaint or, if individual notice is administratively infeasible, may elect to post decisions or

~~acknowledgments of receipt of appeals posted in a place accessible to the group.~~

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

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

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

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

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

DOC 310.11 PROCESSING COMPLAINTS AT THE INSTITUTION LEVEL. (1) Unless the inmate institution complaint investigator (ICI) examiner is absent, at least once each working day the ICE shall collect all complaints deposited in any complaint box in the institution. The superintendent warden shall proceed under s. DOC 310.03 (5) 310.07(2) in the event of an absence of the ICI ICE for longer than 2 working days. Only Except as provided in this section, only the ICI ICE shall have access to the complaint boxes, which shall be provided with locks.

(2) No complaint may include more than one issue. Each complaint shall be assigned a file number for purposes of identification, and classification code and the date of the receipt shall be noted dated for purposes of identification. Each complaint shall be reviewed and acknowledged in writing by the ICI ICE within 3 5 calendar working days of the date of receipt. Complaints dealing with health or personal safety shall be given priority.

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

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

DOC 310.11 (6) Staff ~~must~~ shall respond in writing, if requested, to an inquiry by an ~~ICI~~ ICE investigating a complaint.

(7) The ~~ICI~~ ICE shall ~~shall~~ may attempt to informally resolve the complaint, which may include directing the inmate to discuss the issue with an appropriate institution staff member prior to investigating the complaint, at the institution level. If resolution attempts are successful, the ~~ICI~~ ICE 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 ~~superintendent for a decision under s. DOC 310.08~~ appropriate reviewing authority.

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

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

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

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

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

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

(f) A denial of an open records request.

SECTION 50. DOC 310.08 (4), 310.08 (4) (a) to 310.08 (4) (c) are created to read:

DOC 310.08 (4) Complaints filed in the following areas shall be directed as follows to the following appropriate reviewing authority:

(a) Health care and psychiatric issues shall be directed to the director of the bureau of health services.

(b) Badger state industries and farm issues shall be directed to the director of the bureau of correctional enterprises.

(c) The reviewing authority for all other complaints is the warden, unless another authority is designated by the secretary.

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

DOC 310.13 REVIEW BY CORRECTIONS COMPLAINT EXAMINER. (1) A complainant affected by a superintendent's dissatisfied with a decision may, within 5 calendar days after receipt of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner ~~(CCE)~~.

(2) Appeals shall be sent to the CCE in a sealed envelope that ~~department employees~~ only the CCE or CCE support staff may ~~not~~ open or inspect.

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

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

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

SECTION 54. DOC 310.09 (5) and (6) are renumbered DOC 310.13 (6) and (7).

SECTION 55. DOC 310.09 (7), 310.09 (8), and 310.09 (9) are repealed.

SECTION 56. DOC 310.09 (10) and 310.09 (11) are renumbered DOC 310.13 (8) and 310.13 (9), and as renumbered, are amended to read:

DOC 310.13 (8) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 37 calendar working days of receipt of the complaint. Should the CCE fail to

make a recommendation within the prescribed time, the superintendent's appropriate reviewing authority's decision shall be affirmed. The inmate shall be notified of all decisions in writing.

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

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

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

DOC 310.14 SECRETARY'S DECISION. (1) The corrections complaint examiner's (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~~ 10 calendar working days following receipt of the recommendation. ~~The secretary may take an additional 5 calendar days to make that extend the time for making a decision if there is for cause and the secretary notifies upon notice to all interested parties.~~

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

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

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

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

(c) Reject the recommendation of the CCE and decide;

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

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

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

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

(4) The ICE may reject a complaint that the ICE determines to be frivolous. A complaint rejected because the ICE has determined it to be frivolous may be appealed only to the appropriate reviewing authority. The ICE may determine the complaint

frivolous if the ICE finds one of the following:

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

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

(c) The complaint presents only an abstract question.

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

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

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

SECTION 65. DOC 310.12 (1) is repealed.

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

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

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

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

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

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

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

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

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

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

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

DOC 310.16 CONFIDENTIALITY. (1) Except as otherwise provided in this section, complaints filed with the inmate complaint review system ~~(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~~ reasonable and appropriate for thorough investigation and implementation of the remedy.

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

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

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

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

SECTION 72. DOC 310.13 (5) and (6) are renumbered DOC 310.16 (5)

and (6), and as renumbered, are amended to read:

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

~~(6) No sanction may be applied against an inmate for filing a complaint~~ may be subjected to reprisal for using or participating in the ICRS. An inmate shall be entitled to pursue, through the ICRS, a complaint that a reprisal has occurred.

SECTION 73. DOC 310.13 (7) is repealed.

SECTION 74. DOC 310.14 (title) is renumbered DOC 310.17 (title).

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

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

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

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

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

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

SECTION 78. DOC 310.14 (3) is repealed.

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

DOC 310.15 IMPLEMENTATION OF AFFIRMED COMPLAINT. (1) An affirmed decision shall be implemented within 30 working days from date of decision.

(2) Inmates shall be notified in writing of affirmed decisions requiring change in institution programs of operations affecting the general inmate population.

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

DOC 310.18 PRESERVATION OF RECORDS. All records related to an inmate complaint shall be kept according to department policy and

procedures. The department shall keep all records for at least 3 years following disposition of the complaint.

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

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

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

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

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

Paragraphs 3 and 4 are deleted.

Paragraph 5, sentence 3 is deleted.

Paragraphs 6 to 9 are deleted.

Paragraph 4 is created to read:

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

Note: DOC 310.02 is repealed.

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

Delete paragraphs 1 to 3.

Amend paragraph 4 as follows:

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

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

Paragraph 3, sentence 4 is amended as follows:

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

Delete paragraph 4, sentence 2.

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

Delete paragraph 2, sentence 1.

Amend paragraph 3, sentence 1 as follows:

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

Amend paragraph 3, sentence 2 as follows:

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

Amend paragraph 3, sentence 3 as follows:

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

Amend paragraph 4, sentence 1 as follows:

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

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

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

Note: DOC 310.06 is renumbered 310.10.

Paragraph 1, sentence 1, is amended as follows:

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

Paragraphs 2 and 3 are repealed.

Paragraph 4, sentence 1 is amended to read:

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

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

Paragraph 1, sentence 1 is amended as follows:

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

Paragraph 1, create sentences 3 through 6 as follows:

Experience has shown some inmate complaints to be frivolous. For example, a complaint which alleges that an inmate had creamy peanut butter rather than chunky peanut butter. These complaints serve to distract attention away from the more important issues.

DOC 310.11 (4) requires the ICE to reject frivolous complaints as defined in this section.

Delete paragraph 2.

Paragraph 3, sentence 1, amend as follows:

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

Paragraph 3, sentences 2 and 3 are deleted.

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

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

Paragraph 5, sentence 1 is amended as follows:

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

Note: DOC 310.08 is renumbered DOC 310.12.

Paragraph 1, sentence 1 is amended as follows:

This section requires the ~~superintendent's~~ appropriate reviewing authority's written decision to be rendered within 23

ealendar working days of the date the complaint is filed.

Paragraph 1, sentences 3 through 5 are deleted.

Paragraph 1, sentence 3 is created to read:

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

Note: DOC 310.09 is renumbered DOC 310.13.

Paragraph 1, sentence 1 is amended to read:

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

Paragraph 1, sentences 3 and 4 are deleted.

Paragraph 2, sentence 1 is amended to read:

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

Paragraph 2, sentences 2 and 3 are deleted.

Paragraph 2, sentence 2 is created to read:

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

Note: DOC 310.12 is renumbered DOC 310.15.

Paragraph 3, sentence 1 is deleted.

Paragraph 3, sentence 2 is amended to read:

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

Paragraph 3, sentence 3 is amended to read:

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

Note: DOC 310.13 is renumbered DOC 310.16.

Paragraph 1, sentence 1 is amended to read:

If the ICRS is to have maintain integrity and the

confidence of the inmates, complaints entered must be treated confidentially and, with certain limited exceptions, no sanctions can result from use of the system.

Paragraph 1, sentence 4 is amended to read:

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

Paragraph 1, sentence 6 is deleted.

Paragraph 2, sentence 1 is amended to read:

The nature of some complaints is such that a meaningful investigation cannot be made without revealing the identity of the complainant, but this should be done only when necessary reasonable and appropriate.

Paragraph 2, sentence 2 is amended to read:

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

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

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

Paragraph 4 is deleted.

Paragraph 5, sentence 1 is amended to read:

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

Paragraph 6, sentence 2 is amended to read:

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