

CR 86-125

CERTIFICATE

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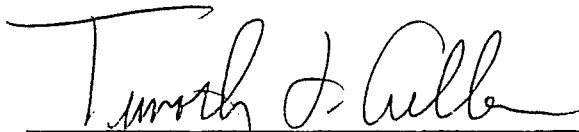
JAN 14 1987
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Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to inmate complaint procedures at adult correctional institutions were duly approved and adopted by this Department on January 14, 1987.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 14th day of January, 1987.



Timothy F. Cullen, Secretary
Department of Health and Social Services

SEAL:

4-1-87

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

To renumber HSS 302.19 (9); to amend HSS 302.19 (7), 302.19 Note, 310.01 (2)(e) and (f), 310.025 (1), 310.04 (2)(b), 310.05 (2), 310.05 Note, 310.07 (2) and (3), 310.08 and Note, 310.09 (1), (3), (4) and (10), 310.09 Note, 310.10 (1), 310.11 (1), (2) and (6), 310.12 and Note, and 310.14 and Note; to repeal and recreate HSS 310.02; and to create HSS 302.19(9), 310.01 (2)(g) and 310.04 (5), relating to inmate complaint procedures at adult correctional institutions.

Analysis by the Department of Health and Social Services

Several changes are made in the rules governing inmate complaint procedures in adult correctional institutions. The changes are mainly in response to United State Department of Justice requirements for certification of grievance procedures and a recent assessment of Wisconsin's inmate grievance procedures by former Chief Justice Bruce F. Beilfuss.

In the revised rules most time limits for making a decision at each level of the complaints process are reduced. Justice Beilfuss' report identified timeliness as an important element of grievance procedures which affects inmate perceptions of the system's effectiveness. The revised rules also provide that complaints about discrimination in the delivery of services can be filed in the inmate complaint review system (ICRS) and that an affirmative action/civil rights compliance officer will help investigate those complaints. Additionally, the revised rules permit the complaint investigator to require that an inmate try to get the complaint resolved informally before it is formally processed through the ICRS.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 46.03(1) and (6)(b) and 227.11(2), Stats., the Department of Health and Social Services hereby renumbers, amends, repeals and recreates, and creates rules interpreting s. 46.03(1) and (6)(b), Stats., as follows:

SECTION 1. HSS 302.19(7) is amended to read:

HSS 302.19 (7) If a vote of the PRC as to security classification, transfer, or approval for work or study release is not unanimous ~~or if a vote as to program assignment results in a tie~~, the case shall be referred to the A&E director or designee ~~with responsibility for decisions at the institution~~ and the superintendent or ~~an assistant superintendent~~ designee for a recommendation as to the security classification, ~~and transfer,~~ or work or study release status and a decision as to program assignment. If they are unable to agree, the case shall be referred with comments but without recommendation to the classification chief ~~with recommendations~~ for a decision. The resident's views, to the extent they differ from the PRC's, shall be forwarded to the classification chief. If the PRC vote on a program assignment results in a tie, the case shall be referred to the superintendent or his or her designee for a decision.

SECTION 2. HSS 302.19(9) is renumbered 302.19(10).

SECTION 3. HSS 302.19(9) is created to read:

HSS 302.19 (9) An inmate may appeal the PRC's decision as to program assignment to the superintendent within 10 days after receipt of the decision.

SECTION 4. HSS 302.19 Note is amended to read:

Note: HSS 302.19. HSS 302.19 provides the procedure for the review and change of classification and program assignment. The division's classification chief ~~shall have~~ has final decisionmaking authority for all security classification changes and transfers. HSS 302.19 (4). The PRC has this authority for program assignments. HSS 302.19 (5). Inmates may appeal the PRC's decision as to program assignment to the superintendent. HSS 302.19 (9).

Typically, the classification chief's decision is made on the recommendation of the PRC. If ~~a recommendations~~ recommendation for transfer or change of security classification ~~are~~ is not unanimous, all recommendations are considered. ~~HSS-302.19 (8)~~

If there is not unanimity as to the change in security classification, transfer or approval for work or study release, ~~or if there is a tie vote as to program assignments,~~ the A & E director and the superintendent or ~~assistant superintendent~~ designee have the authority to ~~decide the question of program assignment and~~ make a recommendation as to the security classification and placement in an institution. If they cannot agree, the ~~issues go~~ issue goes to the classification chief without a formal recommendation but with comments. If there is a tie vote as to program assignment, the superintendent or designee has the authority to make that decision.

The same principles discussed in the note to HSS 302.16 dictate the procedure criteria for program review. There is no need to repeat them here. ~~except to make sure that there are additional requirements.~~ The resident's social worker must interview the resident and make a recommendation. This is desirable to ~~insure~~ ensure continued review of the resident's status by the social worker.

The resident has the option to appear before the PRC. In the camp system, the distance of the resident from the PRC may require that the personal appearance be before a single member of the committee. This should occur as infrequently as possible. The resident must appear before a change in security classification or a transfer may be made. HSS 302.19 (1).

The procedure for decisionmaking at the end of the A & E process and; periodically thereafter by the program review committee may seem cumbersome. However, the assignments made at these stages have a substantial impact upon the quality of life of a resident and upon parole release decisions. For example, a person at a minimum security institution is accorded more freedom than a person at a maximum security institution. Successful adjustment at a camp might influence the parole release decision. So; correctional authorities and residents have a substantial interest in ~~insuring~~ ensuring that classification decisions are made in a careful way, by experienced people after a thorough development and review of the facts.

With roughly ~~3500~~ 5000 residents in the Wisconsin correctional system, review of each every 6 months means that there are ~~seven~~ ten thousand reviews per year, exclusive of reviews due to changed circumstances. This large volume of work means that responsibility must be delegated at each institution. Yet uniformity is also desirable. For these reasons, decisionmaking is structured to include staff at the institution level while leaving final authority ~~in~~ with the division's classification chief.

~~The procedure has obvious strengths and is designed to prevent the possible abuses pointed out by Kenneth Gulp Davis on institutional decision-making.~~

~~A institutional decision of an administrative agency is a decision made by an organization and not by an individual or solely by agency heads. A trial judge's decision is personal; the judge hears evidence and argument and decides the case. In the administrative process, evidence may be taken before an examiner, the examiner or other subordinates may sift the evidence, various kinds of specialists of the agency's staff may contribute to the writing of the initial or recommended decision, and the agency heads may in fact lean so heavily on the work of the staff as to know little or nothing about the problems involved in many of the cases decided in the agency's name. In the institutional decision lie elements of special strength and elements of special weakness of the administrative process. The strength springs from the superiority of group work -- from internal checks and balances, from cooperation among specialists in various disciplines, from assignment of relatively menial tasks to low-paid personnel so as to utilize most economically the energies of high-paid personnel, and from capacity of the system to handle huge volumes of business and at the same time maintain a reasonable degree of uniformity of policy determinations. The weaknesses of the institutional decision lie in its anonymity, in its reliance on extra-record advice, in frustration of parties' desire to reach the men who influence the decision behind the scenes, and in the separation of the deciding function from the writing of the opinion or report.~~

Decisionmaking throughout these rules is structured to ~~insure~~ ensure fairness and thoroughness.

SECTION 5. HSS 310.01 (2)(e) and (f) are amended to read:

HSS 310.01(2)(e) To afford inmates and staff the opportunity to review correctional policy and gain further insight into the correctional system; ~~and~~

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

SECTION 6. HSS 310.01(2)(g) is created to read:

HSS 310.01(2)(g) To allow inmates to raise civil rights grievances.

SECTION 7. HSS 310.02 is repealed and recreated to read:

HSS 310.02 DEFINITIONS. In this chapter:

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

(2) "Administrator" means the administrator of the department's division of corrections, or his or her designee.

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

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

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

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

(7) "Director" means the director of the bureau of adult institutions in the department's division of corrections.

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

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

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

(11) "Superintendent" means the superintendent of the institution at which the complaint was filed, or that person's designee.

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

Note: HSS 310.02. Section HSS 310.02 defines the terms used in this chapter. The use of "designee" in subs. (1), (10) and (11) is acknowledgement that, due to the workload at the administrative levels, a staff member may be directed to draft responses to appeals.

SECTION 8. HSS 310.025 (1) is amended to read:

HSS 310.025 (1) To use the complaint system, an inmate files a complaint with the inmate complaint investigator (ICI) under s. HSS 310.05.

SECTION 9. HSS 310.04 (2)(a) and (b) and (3) are amended to read:

HSS 310.04 (2)(a) A finding of guilt or a penalty imposed by an adjustment committee or a disciplinary hearing officer as the result of a disciplinary

hearing under ch. HSS 303, except that the ICRS may be used to challenge procedural errors in accordance with sub. (3);

(b) A program review committee's decision ~~under ch. HSS 308 to place a person in administrative confinement;~~

(3) The ICRS may be used to challenge the procedure used by the adjustment committee or hearing officer, by a program review committee, or by any 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:

1. Affirm the adjustment committee's or hearing officer's decision but reduce the sentence in type or quality;

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

3. Return the case to the adjustment committee or hearing officer for further consideration.

SECTION 10. HSS 310.04 (5) is created to read:

HSS 310.04 (5) Civil rights complaints may be filed in the ICRS in accordance with the procedures set forth in this chapter. The ICI at the institution level and CCE at the appeals level may request assistance from the division's

affirmative action/civil rights compliance officer to investigate or resolve a civil rights complaint.

SECTION 11. HSS 310.05 (2) and 310.05 Note are amended to read:

HSS 310.05 (2) A complaint shall be filed within 14 calendar days ~~of~~ after the occurrence giving rise to the complaint, except that the inmate complaint investigator (ICI) ~~can~~ may accept a late complaint for cause.

Note: HSS 310.05. HSS 310.05 sets out the procedure by which a complaint can be filed. It is intended to make filing as easy as possible. No one should be excluded from legitimate use of the system because ~~of lack of~~ he or she does not have complaint forms or inability is unable to write.

~~Although it is not required that all informal avenues of resolution be exhausted before filing a formal complaint, it is certainly in the spirit of the process that~~ Since the ICI may require an inmate to attempt to resolve a complaint informally before filing, the aggrieved inmate should talk with staff involved to try to gain a greater understanding of the situation. An informal resolution of the complaint would meet all the objectives of s. HSS 310.01.

Subsection (2) underscores the importance of filing a complaint as soon as it is apparent that no other acceptable method of resolution is possible. The ICI is given discretion, however, to accept old complaints if he or she believes it is still possible to adequately determine the facts needed to make a recommendation. Promptness in filing a complaint is required to ensure a thorough investigation of the facts. This is especially true of complaints involving lost or damaged personal property. Recollections can dim or property can be altered or destroyed, making investigation difficult or impossible. ~~The ICI is given discretion, however, to accept old complaints if he or she believes it is still possible to adequately determine the facts needed to make a recommendation.~~

The number of complaints one person can file should not be limited, except that ~~the process cannot be stopped~~ the ICRS may become overburdened because of multiple complaints from one individual. The ICI must have the discretion to set priorities in handling complaints. All complaints should be resolved promptly, however.

SECTION 12. HSS 310.07 (2) and (3) are amended to read:

HSS 310.07 (2) Each complaint shall be assigned a file number for purposes of identification, and the date of receipt shall be noted. Each complaint shall be reviewed and acknowledged in writing by the ICI ~~by the end of the next working day~~ within 3 calendar days of the date of receipt. Complaints dealing with health or personal safety shall be given priority.

(3) The ICI shall employ discretion in deciding the investigatory method best suited to expeditiously determine the facts, including personal interviews, telephone calls, and document and correspondence review. The ICI shall forward a report and recommendation to the superintendent within ~~10 working~~ 15 calendar days from the date of acknowledgment for decision in accordance with s. HSS 310.08. The complainant may waive the time limits for up to an additional ~~10 working~~ 30 calendar days to allow completion of an investigation. The report shall include those items required by ~~HSS-310.07~~ subs. (5) and (6), when applicable. The inmate may waive time limits if the additional time will result in resolution of the complaint.

SECTION 13. HSS 310.08 and Note are amended to read:

HSS 310.08 SUPERINTENDENT'S DECISION. (1) Within 5 ~~working~~ calendar days ~~of~~ after receipt of the ICI's report, the superintendent shall render a written decision, including the reasons for the decision. If the superintendent accepts the ICI's recommendation, indication of acceptance shall be sufficient. The superintendent's decision and the ICI's report shall be delivered to the complainant or to the designated spokesperson in a group complaint as provided in s. HSS 310.06 (4).

(2) If the complainant does not receive the superintendent's decision within ~~15-working~~ 23 calendar days of the ICI's receipt of the complaint, the complaint shall be considered denied and ~~can~~ may be appealed immediately.

Note: HSS 310.08. This section requires the superintendent's written decision to be rendered within ~~15-working~~ 23 calendar days of the date the complaint is filed. If the complaint system is to have any value as ~~an-informal~~ a method of resolving conflict, decisions must be rendered quickly. In a standard listing of institution grievance mechanisms ~~is~~ in which important elements of such a mechanism were identified, one of the most important was timeliness. The speed with which a complaint is handled is often viewed by inmates as indicating the importance attached to it. For inmates who have nothing in more abundance than time, the element of time assumes great importance.

The importance of fixed time limits and a written response was further recognized by National Advisory Commission, standard 2.14 (4); ACA, standard 4301; and ABA, standard 8.6 (c).

SECTION 14. HSS 310.09 (1), (3), (4), (10) and Note are amended to read:

HSS 310.09 (1) A complainant affected by a superintendent's decision may, within ~~10-working~~ 5 calendar days after receipt of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner (CCE).

(3) The CCE may accept for review an appeal filed later than ~~10-working~~ 5 calendar days after receipt of the decision if the elapsed time has not made it difficult or impossible to investigate the complaint.

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

(10) Unless extended for cause and upon notice, the CCE shall recommend a decision to the administrator within ~~22-working~~ 37 calendar days of receipt of the complaint. Should the CCE fail to make a recommendation within the prescribed time, ~~the assumption shall be that~~ the superintendent's decision is shall be affirmed. The inmate shall be notified of all decisions.

Note: HSS 310.09. HSS 310.09 sets out the procedure for appealing a superintendent's adverse decision to the CCE. This section requires that appeals be filed within ~~10-working~~ 5 calendar days, although the CCE may accept an appeal filed later and as a matter of practice usually does so. The appeal is sent directly to the CCE and is not subject to mail inspection at the institution. This exempt status is provided in HSS 309.02 (2). ~~The balance of the rule sets out the methods and resources the CCE may employ in gathering facts necessary to make a recommendation.~~

Appeal to the CCE provides another element deemed essential to a valid complaint system, namely, a review by someone outside the correctional agency. The CCE is currently ~~an assistant attorney general~~ employed by the department of justice but assigned to function in the complaint process. This person has no other connection with the division of corrections.

The necessity of outside review is a feature of most prison grievance systems having any degree of inmate acceptance. This position is well stated in Krantz et al., Model Rules and Regulations on Prisoner Rights and Responsibilities (1973) p. 203.

Moreover, the uniqueness of the correctional system would seem to require the availability of external mechanisms to review complaints. It is believed that internal grievance procedures "are part of the system," and that where "recommended action" comes from prison officials, directly or indirectly connected with reviewing a complaint, peer group pressure or command influence may adversely affect a fair decision.

SECTION 15. HSS 310.10 (1) is amended to read:

HSS 310.10 (1) The corrections complaint examiner's (CCE's) written recommendation, along with a copy of the institution complaint file, shall be delivered to the division administrator who shall make a decision based on the record within ~~10-working~~ 5 calendar days following receipt of the recommendation. ~~For cause and upon the administrator's notice to all interested parties, an additional 10 working days shall be allowed.~~ The administrator may take an additional 5 calendar days to make that decision if there is cause and the administrator notifies all interested parties.

SECTION 16. HSS 310.11 (1), (2) and (6) are amended to read:

HSS 310.11 (1) Any inmate whose appeal to the administrator was denied may, within ~~15-working~~ 5 calendar days ~~of~~ after receipt of the decision, appeal the decision to the secretary ~~of the department~~.

(2) An appeal filed later than ~~15-working~~ 5 calendar days ~~of~~ after receipt of the administrator's decision may be accepted by the secretary at his or her discretion.

(6) Within ~~15-working~~ 10 calendar days ~~of~~ after receipt of the complaint file, the secretary shall determine all issues raised in the appeal and shall set forth in writing his or her decision and the reasons for the decision. If the ~~secretary affirms~~ secretary's decision is to affirm the decision of the administrator, it shall be sufficient to indicate affirmance and the reason. If the secretary ~~should fail~~ fails to reach a decision within the allotted time, the decision of the administrator shall stand and the secretary shall so notify the complainant. If the issue raised in the complaint can best be dealt with through revising the administrative rules, the secretary ~~shall~~ may direct the administrator to undertake rulemaking in accordance with s. HSS 310.12 (4). The secretary's decision shall be delivered promptly to all affected persons, including the person requesting the review, the administrator, and the corrections complaint examiner.

SECTION 17. HSS 310.12 and Note are amended to read:

HSS 310.12 IMPLEMENTATION OF AFFIRMED COMPLAINT. (1) Changes in an institution program or operation affecting the general inmate population and

resulting from an affirmed complaint shall be made known through widely distributed written notice to inmates within ~~10-working~~ 14 calendar days of after issuance of the decision.

(2) Within ~~22-working~~ 30 calendar days of after issuance of the administrator's decision, the director of the bureau of adult institutions shall notify all affected parties of decisions that affect more than one institution.

(3) If an affirmed complaint has not been implemented at any level within ~~22~~ working 30 calendar days, of after a decision to affirm, the complainant may directly inform the administrator by mail of the failure to implement the decision. The administrator shall investigate and take all steps necessary to ensure implementation.

(4) If a decision on a complaint requires a change in an administrative rule, the decisionmaker ~~can~~ shall initiate rulemaking.

Note: HSS 310.12. Since the purpose of the complaint system is to air grievances and seek resolutions, ~~it follows that, if a decision results~~ decisions resulting in changes in program, policy, or rule interpretation that ~~affects~~ affect more than a few inmates, ~~then that decision~~ must be promptly implemented. ~~Subsections (1)-(3) require that an institution-wide change be implemented within 10-working 14-calendar days; a decision affecting more than the institution where the complaint originated must be implemented within 22-working 30-calendar days.~~

~~If a decision on a complaint requires a new or modified administrative rule for implementation, the administrator or secretary may direct that rulemaking be undertaken under ch. 227, Stats.~~

Throughout these rules the principle has been repeatedly set out that, to be enforceable or effective, rules and notices must be posted in places readily available to inmates and in a form the inmates can be reasonably expected to see. This principle is restated with respect to rules or policies altered by a complaint decision.

Formerly, if an affirmed complaint was not implemented, the complainant notified the CCE who undertook to secure compliance. Subsection (3) modifies this to state that the complainant may notify the administrator of failure to implement a decision. This is proper because the administrator, rather than the

CCE, is in a position to ensure that a decision is implemented promptly. This is even more appropriate if the change results from ~~an~~ the administrator's decision.

SECTION 18. HSS 310.14 and Note are amended to read:

HSS 310.14 REPORTS. ~~(1) The corrections complaint examiner (CCE) shall prescribe record-keeping requirements for all persons working in the system.~~

~~(2)~~ (1) The inmate complaint investigator (ICI) shall submit quarterly reports to the ~~CCE on forms provided by the CCE~~ administrator to indicate the number and type of complaints processed and the disposition of the complaints.

~~(3)~~ (2) The CCE shall file an annual report with the attorney general, the secretary, and the administrator. This report shall include:

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

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

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

(d) The number of complaints ~~accepted~~ recommended for acceptance.

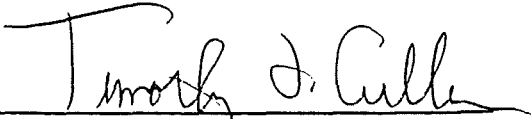
~~(4)~~ (3) The CCE may include in its reports other information or make recommendations concerning the ICRS.

Note: HSS 310.14. This section requires accurate uniform reports of complaints filed under the ICRS. The ~~administrators~~ staff responsible for the ICRS and correctional programs can use the report's information to judge the impact of the complaint system and to secure some indication of problems creating frustrations that may inhibit effective programming. Quarterly reports are compiled by each ICI. ~~and are available~~ Concerned persons may obtain copies from the CCE administrator. ~~to concerned persons. Annually, the CCE will make a consolidated report of all activity under the ICRS during the year, along with comments or observations that might lead to improvement of the system.~~

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Department of Health and Social Services

Dated: January 14, 1987

By: 
Timothy F. Cullen
Secretary

Seal:

354/rgm



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

1 West Wilson Street, Madison, Wisconsin 53702

Tommy Thompson
Governor

Timothy F. Cullen
Secretary

January 14, 1987

RECEIVED

Mailing Address:
Post Office Box 7850
Madison, WI 53707

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

JAN 14 1987
Revisor of Statutes
Bureau

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 310, administrative rules relating to inmate complaint procedures at adult correctional institutions.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to inmates of adult correctional institutions and to adult correctional institutions. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Timothy F. Cullen
SECRETARY

Enclosure