

## Chapter DOC 310

### COMPLAINT PROCEDURES

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**Note:** Chapter HSS 310 was renumbered Chapter DOC 310 under s. 13.93 (2m) (b) 1., 2. and 7., Stats.

**Note:** Chapter DOC 310 as it existed on November 30, 2002 was repealed and a new chapter DOC 310 was created, Register November 30, 2002 No. 563, effective December 1, 2002.

**Note:** Most of the sections in this chapter have explanatory material relating to the text of the rule. This material can be found in the appendix following the last section.

**Note:** Chapter DOC 310 as it existed on February 28, 2018 was repealed and a new chapter DOC 310 was created, Register March 26, 2018 No. 747, effective April 1, 2018.

**DOC 310.01 Purpose and authority.** (1) The purpose of this chapter is to afford inmates in institutions a process by which grievances may be expeditiously raised, investigated, and decided.

(2) The inmate complaint review system serves the following objectives:

(a) To allow inmates to raise in an orderly fashion issues regarding department policies, rules, living conditions, and employee actions that personally affect the inmate or institution environment, including civil rights claims.

(b) To provide the department an opportunity to resolve the issue before an inmate commences a civil action or special proceeding.

(c) To encourage communication between inmates and employees.

(d) To review and explain correctional policy or practice to inmates and employees.

(e) To identify errors and deficiencies in correctional policy or practice.

(3) This chapter interprets ss. 301.02 and 301.03 (2), Stats.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.02 Applicability.** (1) This chapter applies to all inmates in the department's legal custody.

(2) Inmates may file complaints with the department for matters under the department's authority.

(3) Inmates housed in other jurisdictions are required to file complaints with that jurisdiction for all matters under that jurisdiction's control.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

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

(1) "Calendar week" means Sunday through Saturday.

(2) "Calendar year" means 12 calendar months beginning January 1 and ending December 31.

(3) "Complaint record" means ICRS forms and evidence compiled in connection with an ICRS complaint by the ICE or CCE.

(4) "Corrections complaint examiner" or "CCE" means the employee of the department who is designated by the secretary to process and review complaints appealed to the secretary.

(5) "Days" means all calendar days including Saturdays, Sundays, and state legal holidays.

(6) "Department" means the department of corrections.

(7) "Division" means the division of adult institutions.

(8) "Employee" means any staff member, an employee of a contract agency, an independent contractor, or a volunteer of the department or an institution.

(9) "Good cause" means substantial grounds, justification, or reason to take a certain action as determined by the examiner.

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

(11) "Institution" means a correctional institution or correctional facility defined under s. 302.01, Stats.

(12) "Institution complaint examiner" or "ICE" means the person or persons at each institution designated by the warden to process, investigate, and make recommendations on complaints filed under this chapter.

(13) "Moot" means any of the following:

(a) Abstract and not arising from existing facts or rights.

(b) Already resolved.

(14) "PREA" means the prison rape elimination act, 42 U.S.C. 15601, et seq. and the standards issued thereunder, 28 C.F.R. Part 115.

(15) "Reviewing authority" means a person who is authorized to review and decide an inmate complaint.

(16) "Secretary" means the secretary of the department or designee.

(17) "Sexual abuse" means the definition given under 28 C.F.R. s. 115.6.

(18) "Sexual harassment" means the definition given under 28 C.F.R. s. 115.6.

(19) "Staff member" or "staff" means a person employed by the department as a permanent, project, or limited term employee.

(20) "Warden" means the warden, superintendent, or designee.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18; correction in (20) made under s. 35.17, Stats, Register March 2018, No. 747.

**DOC 310.04 Inmate complaint review system.** (1) The department shall maintain an inmate complaint review system that shall be accessible to all inmates in institutions. The department shall do all of the following:

(a) Provide access to written notification of the complaint procedures to inmates.

(b) Provide each inmate written or oral explanation of the complaint procedures.

(c) Provide an inmate the opportunity to ask and have questions answered relating to the complaint procedure.

(d) Provide complaint and appeal forms.

(e) Permit an inmate to seek assistance to file a complaint.

(f) Not subject an inmate to retaliation for participation in the ICRS.

(g) Allow an inmate to pursue a complaint of retaliation through the ICRS.

(h) Review and investigate inmate complaints.

(2) Inappropriate use of the ICRS per s. DOC 310.07 (4) may be subject to discipline under ch. DOC 303.

(3) The warden shall designate an employee to function as an institution complaint examiner or to assist in the process.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18; correction in (2) made under s. 35.17, Stats., Register March 2018.

**DOC 310.05 Exhaustion of administrative remedies.** Before an inmate may commence a civil action or special proceedings, the inmate shall exhaust all administrative remedies the department has promulgated by rule.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.06 Scope of complaint review system. (1)**

An inmate may use the ICRS to raise issues regarding policies, rules, living conditions, or employee actions that personally affect the inmate or institution environment.

(2) An inmate may raise issues, including civil rights claims, through the ICRS regarding classification, disciplinary actions, administrative confinement, or request for qualified leave, and decisions regarding requests to authorize new religious practice or religious property only after exhausting any of the following, as appropriate:

(a) The classification administrative review process under ch. DOC 302.

(b) The disciplinary appeal process under ch. DOC 303.

(c) The administrative confinement review process under ch. DOC 308.

(d) A request for qualified leave process under ch. DOC 326.

(e) A review process designated by the department for the request of new religious practice or property.

(3) An inmate may not use the ICRS to challenge any of the following:

(a) A complaint or submission returned under the provisions of s. DOC 310.09 (3) or 310.12 (4) (a) to (e).

(b) A parole commission decision.

(c) A classification decision.

(d) Records or actions not originated by the division.

(e) The declination or denial of a public record request.

(f) The content of health care records.

(g) Actions of the legislature.

(h) Court decisions or orders.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18; correction in (3) (a) made under s. 35.17, Stats., Register March 2018 No. 747.

**DOC 310.07 Filing of complaints. (1)** Prior to filing a formal complaint, an inmate shall attempt to resolve the issue by following the designated process specific to the subject of the complaint. The ICE may request inmates to provide evidence of having followed the specified process.

(2) An inmate shall file a complaint within 14 days after the occurrence giving rise to the complaint. At the discretion of the ICE, a late complaint may be accepted for good cause. An inmate shall request to file a late complaint in the written complaint and explicitly provide the reason for the late filing.

(3) Each complaint shall meet all of the following requirements:

(a) Be submitted on a complaint form provided by the department.

(b) Be legibly handwritten or typed.

(c) Be filed only under the name by which the inmate was committed to the department or the legal name granted by a court.

(d) Include the inmate's original signature.

(e) Not exceed 500 words total and not exceed two pages.

(f) Provide relevant supporting documentation, which may be accepted at the discretion of the ICE.

(4) A complaint will not be processed and a referral for disciplinary action may occur in accordance with ch. DOC 303 if the complaint contains any of the following:

(a) Obscene, profane, abusive, or threatening language unless such language is necessary to describe the factual basis of the complaint.

(b) A foreign substance.

(5) Each complaint may contain only one clearly identified issue.

(6) A complaint must contain sufficient information for the department to investigate and decide the complaint.

(7) An inmate may not file more than one complaint per calendar week except that any of the following are not subject to the filing restrictions contained in this paragraph:

(a) Complaints regarding the inmate's health and personal safety.

(b) Complaints made under PREA.

(8) An inmate shall submit a signed complaint by placing it in a receptacle designated for complaints or by submitting it to the ICE office through institution or USPS mail.

(9) If an inmate is transferred after an incident but before filing a complaint, the inmate shall file a complaint related to the incident at the currently assigned institution. The ICE shall refer the complaint to the ICE at the appropriate institution for investigation and reviewing authority decision. If the transfer is to a contracted facility, the inmate shall file the complaint with the institution where the issue arose.

(10) Inmates shall file complaints with the institution where the incident occurred.

(11) The ICE may waive any requirements under this section for good cause.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.08 PREA complaint procedure.** An inmate may file a complaint alleging sexual abuse using the procedures under this chapter. The following provisions apply to complaints alleging sexual abuse or sexual harassment:

(1) Notwithstanding s. DOC 310.07 (2), an inmate may file a complaint regarding sexual abuse or sexual harassment at any time. If a portion of the complaint alleges an issue that does not relate to sexual abuse or sexual harassment, the time limits under s. DOC 310.07 apply.

(2) Notwithstanding s. DOC 310.07 (1) or (8), an inmate is not required to attempt to resolve the issue with the staff member who is the subject of the complaint or to file a complaint regard-

ing sexual abuse or sexual harassment with the staff member who is the subject of the complaint. The inmate may use an alternative method of filing, including submission of the complaint directly to the warden.

(3) Complaints filed under this section will be referred for a PREA investigation. Department policy shall address the requirements that investigations regarding allegations of sexual abuse or sexual harassment be completed within established time frames.

(4) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist an inmate in filing a request for administrative remedies relating to allegations of sexual abuse or sexual harassment and shall also be permitted to file such requests on behalf of inmates. Requests for administrative remedies filed under this section will be referred for a PREA investigation.

(5) Emergency grievance procedures for complaints alleging a substantial risk of imminent sexual abuse or sexual harassment will be handled in the following manner:

(a) The inmate may contact any staff member who is not the subject of the allegation for immediate corrective action.

(b) The inmate may file a complaint. Complaints collected under s. DOC 310.08 shall be immediately forwarded to the warden to determine if immediate action is warranted.

(c) Reports of substantial risk of imminent sexual abuse or sexual harassment outside of the complaint process under this chapter shall be immediately forwarded to the warden to determine if immediate action is warranted.

(d) Further response will be in accordance with department policy.

(6) The warden may discipline an inmate for filing a complaint related to alleged sexual abuse or sexual harassment only if the warden demonstrates that the inmate filed the complaint in bad faith.

(7) Time frames are waived for PREA related complaints, this does not apply to PREA related complaint appeals.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.09 Filing of complaint appeal.** (1) An inmate may appeal the reviewing authority decision to the CCE within 14 days after the date of the decision or if the inmate does not receive a decision 45 days after the date the ICE enters the complaint.

(2) Appeals shall meet all of the following requirements:

(a) Be submitted on a form provided by the department.

(b) Be legibly handwritten or typed.

(c) Be filed only under the name by which the inmate was committed to the department or the legal name granted by a court.

(d) Include the inmate's original signature.

(e) Not exceed 500 words total and not exceed two pages.

(f) Provide relevant supporting documentation, which may be accepted at the discretion of the CCE.

(g) Be limited to the issue raised in the original complaint.

(3) An appeal will not be processed and a referral for disciplinary action may occur in accordance with ch. DOC 303 if the complaint contains any of the following:

(a) Obscene, profane, abusive, or threatening language unless such language is necessary to describe the factual basis of the complaint.

(b) A foreign substance.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.10 Processing complaints.** (1) The ICE shall collect and date stamp all complaints with the date collected.

(2) The ICE shall accept the complaint, return the complaint in accordance with sub. (5), or reject the complaint in accordance with sub. (6).

(3) The ICE shall assign a file number and classification code to an accepted or rejected complaint.

(4) The ICE shall give written notice to the inmate within 10 days of collection that the complaint has been received.

(5) The ICE may return a complaint within 10 days if it does not meet the criteria under s. DOC 310.07 (1), (3), (4), and (5) to permit the inmate to resubmit the complaint after correcting issues noted by the ICE. Inmates shall be given one opportunity to correct and resubmit a returned complaint. The ICE shall grant 10 days for receipt of the corrected complaint.

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

(a) The inmate submitted the complaint solely for the purpose of harassing or causing a person to suffer emotional distress or to fear bodily injury.

(b) The inmate does not raise an issue regarding policies, rules, living conditions, or employee actions that personally affect the inmate or institution environment.

(c) The issue lacks merit or is otherwise frivolous.

(d) The inmate does not provide sufficient information to support a complaint.

(e) The inmate submitted the complaint beyond 14 days after the date of the occurrence giving rise to the complaint and provides no good cause for the ICE to extend the time limits.

(f) The issue is moot.

(g) The issue has already been addressed through the inmate's prior use of the ICRS.

(h) The complaint contains obscene, profane, abusive, or threatening language unless such language is necessary to describe the factual basis of the substance of the complaint.

(i) The complaint contains a foreign substance, in which case all of the following apply:

1. Complaints that contain a foreign substance will not be included in the complaint record and will be disposed of in accordance with institution procedure.

2. Inmates who submit a complaint containing a foreign substance may be subject to disciplinary action in accordance with ch. DOC 303.

(7) The ICE shall have full access to the institution, inmates, employees, and department records to investigate the complaint.

(8) The ICE shall give priority to complaints dealing with health or personal safety.

(9) The ICE shall either reject the complaint or send a recommendation to the appropriate reviewing authority within 30 days from the date of receipt.

(10) An inmate may appeal a rejected complaint within 10 days to the appropriate reviewing authority who shall only review the basis for the rejection of the complaint. The reviewing authority's decision is final.

(11) The complaint record shall include the names of persons interviewed and evidence that is relevant, material, and not repetitious.

(12) The ICE may recommend to the reviewing authority that the complaint be affirmed or dismissed in whole or in part.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.11 Reviewing authority decision.** (1) The reviewing authority shall make a decision within 15 days following receipt of the recommendation under s. DOC 310.10 (12) or appeal of a rejected complaint.

(2) The reviewing authority shall affirm or dismiss the complaint in whole or in part or return the complaint to the ICE for further investigation.

(3) If the inmate does not receive a decision within 45 days after the date of acknowledgement under s. DOC 310.10 (4), the inmate may appeal to the CCE.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.12 Review by corrections complaint examiner.** (1) An inmate may appeal the reviewing authority decision within 14 days after the date of the decision by filing a typed or legibly printed request for review with the CCE on forms supplied for that purpose. The institution shall make these forms accessible to inmates.

(2) The CCE may accept, return, or recommend rejection of an appeal or complaint.

(3) The CCE will only address issues raised in the original complaint.

(4) The CCE shall return an appeal if any of the following apply:

(a) An original complaint has not been filed except as provided under s. DOC 310.08.

(b) The complaint has been rejected.

(c) The appeal is premature.

(d) The appeal does not list the complaint file number or contains more than one complaint file number.

(e) The appeal does not meet the criteria listed under s. DOC 310.10.

(5) The CCE may recommend rejection of an appeal not filed in accordance with s. DOC 310.09.

(6) Upon good cause as determined by the CCE, an appeal filed later than 14 days after the date of the reviewing authority decision may be accepted.

(7) The CCE shall have full access to the institution, inmates, employees, and department records to investigate the appeal.

(8) The CCE shall give priority to health or personal safety complaints.

(9) For all accepted appeals, the CCE shall recommend that the reviewing authority decision be affirmed or dismissed, in whole or in part, and send its recommendation to the secretary within 45 days of receipt of the appeal. The CCE may extend the time for submitting a recommendation with notice provided to the inmate.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.13 Secretary's decision.** (1) The secretary shall make a decision within 45 days following receipt of the CCE's recommendation. The secretary may extend the time for making a decision for good cause with notice provided to the inmate.

(2) The secretary shall affirm or dismiss the CCE's recommendation, in whole or in part, or return the appeal to the CCE for further investigation.

(3) The secretary's decision is final.

(4) If the inmate does not receive the secretary's written decision within 90 days of the date of receipt of the appeal in the CCE's office, the inmate shall consider the administrative reme-

lies to be exhausted, unless the time has been extended under sub. (1).

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.14 Complaint processing following release.** If an inmate is released from an institution prior to a decision being made on a complaint or appeal, the complaint will be processed in accordance with this chapter.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.15 Resolution of affirmed complaint.** (1) If the decision requires a change in administrative practice or policy, the department shall implement the change as soon as practicable.

(2) If the resolution of an affirmed complaint has not been implemented within 60 days, the inmate may inform the decision-maker in writing.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.

**DOC 310.16 Confidentiality.** (1) Except as otherwise provided in this section, the department shall ensure that complaints filed under this chapter are confidential.

(2) ICRS staff may reveal the identity of inmates and the nature of the complaint to the extent reasonably necessary to investigate the complaint, implement the remedy, or to respond to litigation.

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

(4) The reviewing authority or secretary may waive confidentiality of a complaint to satisfy PREA standards and reporting requirements.

(5) A copy of or reference to a complaint or decision may not be placed in the inmate's institution files except with authorization from the reviewing authority or as required under sub. (2) or (3).

(6) An inmate may file a complaint alleging a breach of confidentiality under this section.

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

(8) The confidentiality of the complaint process does not prohibit disciplinary action under ch. DOC 303 for misuse of the ICRS. Misuse of the ICRS includes complaints that are intended to do any of the following:

(a) Harass.

(b) Cause emotional distress.

(c) Threaten to cause harm or bodily injury.

(d) Erode the integrity or credibility of employees by knowingly providing false statements.

(e) Disrupt department or institution operations.

(9) ICRS staff may access an inmate's protected health information to investigate, make recommendations, render decisions, and decide appeals when access is related to the complaint, subject to any of the following:

(a) Written authorization is not required from the inmate.

(b) Access may include verbal information from a health provider and written health records related to the inmate complaint.

(c) Protected health information entered into the record shall be limited to the minimum necessary to process the inmate complaint.

**(10)** For inmates in restrictive housing, staff may inspect correspondence in the presence of the inmate only to the extent necessary to determine if it contains contraband.

**(11)** Inmates will not have access to other inmate's complaints through the ICRS.

**History:** CR 16-054: cr., Register March 2018, No. 747, eff. 4-1-18.