

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**Note:** Chapter DOC 310 as it existed on November 30, 2002 was repealed and a new chapter DOC 310 was created, Register November 30, 2002 No. 563, effective December 1, 2002.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

**DOC 310.01 Purpose.** The policy of the department of corrections is to afford inmates in adult institutions a process by which grievances may be expeditiously raised, investigated, and decided. If the decision requires a change in administrative practice, the department shall implement the change.

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

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

(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, employee or agent in the officer's, employee's or agent's official or individual capacity.

(c) To encourage communication between inmates and staff.

(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.

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**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 inmates confined in a state adult correctional facility. This section interprets ss. 301.02 and 301.03 (2), Stats.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

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

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

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

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

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

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

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

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

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

(9) "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.

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

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

(12) "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.

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

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

(15) "Secretary" means the secretary of the department of corrections, or designee.

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.04 Inmate complaint review system.**

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.05 Exhaustion of administrative remedies.** Before an inmate may commence a civil action or special proceedings against any officer, employee or agent of the department in the officer's, employee's or agent's official or individual capacity for acts or omissions committed while carrying out that person's duties as an officer, employee or agent or while acting within the scope of the person's office, the inmate shall exhaust all administrative remedies that the department of corrections has promulgated by rule.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.06 Communication of procedures.** The department shall make the written complaint procedure readily available to all inmates. The department shall provide each inmate written notification and an oral explanation of the complaint procedures. The department shall provide an inmate the opportunity to ask and have questions answered. The department shall make appropriate provisions for non-English speaking, impaired or handicapped inmates.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.07 Organization of inmate complaint review system.** (1) To use the complaint system, an inmate files a complaint under ss. DOC 310.09, 310.10 or 310.16 (4).

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

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

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

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

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

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

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.08 Scope of complaint review system.** (1) An inmate may use the ICRS to raise significant issues regarding rules, living conditions, staff actions affecting institution environment, and civil rights complaints in accordance with this chapter.

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

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

(b) A program review committee's decision.

(c) A decision of the parole commission.

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

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

(f) A denial of an open record request.

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.09 Filing of complaints.** (1) Complaints filed by an inmate or a group of inmates shall:

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

(b) Be signed by the inmate.

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

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

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

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

(3) The ICE shall return, and not process as complaints, submissions that do not meet the requirements under sub. (1).

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

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

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.10 Group complaints.** (1) Except as noted in this section, the ICE shall process group complaints in the same way as individual complaints.

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

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

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

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.11 Processing complaints at the institution level. (1)** ICE staff shall collect all complaints.

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

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

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

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

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

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

(c) The inmate does not allege sufficient facts upon which redress may be made.

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

(e) The issue raised in the complaint does not personally affect the inmate.

(f) The issue is moot.

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

(h) The issue raised is not within the scope of the ICRS as defined in s. DOC 310.08.

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

(7) If an ICE determines that the procedure under this chapter 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.

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

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

(10) The ICE shall note the persons interviewed and the documents used as a basis for the decision.

(11) The ICE shall either reject the complaint or send a recommendation to the appropriate reviewing authority within 20 working days from the date of acknowledgment.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.12 Appropriate reviewing authority decision. (1)** The appropriate reviewing authority shall make a decision within 10 working days following receipt of the recommendation.

(2) The appropriate reviewing authority shall do one 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 complaint to the ICE for further investigation.

(3) If the complainant does not receive the decision within 30 working days after the ICE acknowledges receipt of the complaint under s. DOC 310.11 (2), the complainant may appeal to the CCE.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.13 Review by corrections complaint examiner. (1)** A complainant dissatisfied with a reviewing authority decision may, within 10 calendar days after the date of the decision, appeal that decision by filing a written request for review with the corrections complaint examiner on forms supplied for that purpose. The institution shall make these forms accessible to inmates.

(2) Upon good cause, the CCE may accept for review an appeal filed later than 10 calendar days after receipt of the decision.

(3) The CCE shall not review a rejected complaint.

(4) The CCE shall, within 5 working days after receiving an appeal, issue a written receipt of the appeal to the inmate.

(5) The CCE shall use discretion in deciding the method best suited to determine the facts, including personal interviews, telephone calls, and document review. The CCE shall have full access to inmates, staff, physical plant, and department records. If an appeal necessitates resolution of disputed issues of fact, the CCE may require sworn statements from the principals. The CCE shall give priority to complaints dealing with health or personal safety.

(6) The CCE shall recommend a decision to the secretary within 35 working days of receipt of the appeal.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.14 Secretary's decision. (1)** The secretary shall make a decision within 10 working days following receipt of the CCE's recommendation. The secretary may extend the time for making a decision for cause and upon notice to the inmate.

(2) The secretary shall do one of the following:

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

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

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.15 Implementation of affirmed complaint. (1)** The department shall implement an affirmed decision within 30 working days from the date of decision.

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.16 Confidentiality. (1)** Except as otherwise provided in this section, the department shall ensure that complaints filed with the inmate complaint review system are confidential. Persons working in the ICRS may reveal the identity of complainants and the nature of the complaint only to the extent necessary to investigate the complaint, implement the remedy, or in response to litigation.

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

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

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

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

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.17 Records.** (1) The department shall maintain statistics showing the number, type and disposition of complaints.

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

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.

**DOC 310.18 Suspension of provisions of this chapter.** The secretary may suspend any provisions of this chapter in an emergency. The secretary may apply the suspension to one or more institutions.

**History:** CR 02-038: cr. Register November 2002 No. 563, eff. 12-1-02.