

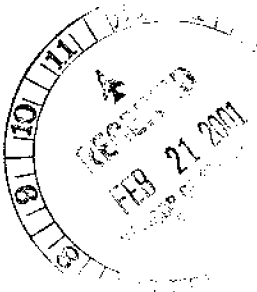
Clearinghouse Rule 00-134

CERTIFICATE

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

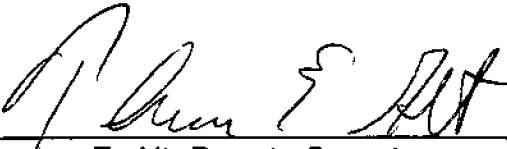
I, Thomas E. Alt, Deputy Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to complaint procedures for inmates of the Wisconsin Resource Center were duly approved and adopted by this Department on February 20, 2001.

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.

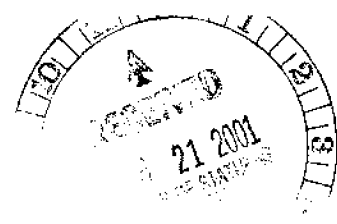


SEAL:

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 20th day of February, 2001.



Thomas E. Alt, Deputy Secretary
Department of Health and Family Services



PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate chapter HFS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center.

Analysis Prepared by the Department of Health and Family Services

This order revises procedures for the resolution of complaints of inmates of the Wisconsin Resource Center.

Effective January 1, 1990, the Department's former Division of Corrections became the Wisconsin Department of Corrections, but the Wisconsin Resource Center (WRC), even though a correctional institution, remained under the administration of the Department's Division of Care and Treatment Facilities. The WRC provides psychological evaluations, specialized learning programs, training and supervision for inmates transferred from other correctional institutions because of serious behavioral problems they have exhibited at their institutions, and whose mental health programming needs can be met by the WRC.

In 1990, the Department of Corrections established a process by which inmates of adult correctional institutions may file complaints and have them expeditiously investigated and decided. The procedures are specified in ch. DOC 310.

Periodically, inmates are transferred for treatment to the WRC. Occasionally, an inmate transferred to WRC will have an outstanding grievance that was initiated when the inmate was at the inmate's DOC facility. In addition, an inmate receiving treatment at the WRC may initiate a grievance while at WRC. To ensure continuity of the handling of grievances between DHFS and DOC, since 1990, the Department has maintained an inmate complaint resolution process in ch. HFS 97 that is virtually the same as that specified by the Department of Corrections in ch. DOC 310.

Effective May 1, 1998, the Department of Corrections sought to improve how its inmate complaint review system works by significantly modifying ch. DOC 310. The changes included the following:

- Permitting institution complaint examiners to reject complaints they determine are frivolous.
- Limiting the number of complaints an inmate may file to 2 complaints in a calendar week.
- Requiring the Department to make the written complaint procedures available to all inmates.
- Permitting the institution complaint examiner to accept late complaints for good cause.
- Generally prohibiting inmates from using language that is profane, obscene, abusive or threatens others when filing a complaint.
- Permitting the Secretary to extend the timelines for cause and upon notice to the inmate and all interested parties.
- Permitting the Department to reveal the identity of complainants and the nature of the complaints to the extent reasonable and appropriate for thorough investigation and implementation of the remedy.
- Removing language that permits the corrections complaint examiner to order an evidentiary hearing.
- Requiring that all records of an inmate complaint be kept for at least 3 years after disposition of the complaint.

- Allowing the Secretary to suspend the rules in an emergency and defining an emergency.
- Eliminating redundant and confusing language and clarifying some language and using current terminology.

Given that the Department of Corrections made a variety of changes to its grievance process in 1998, DHFS is proposing to make comparable changes to ch. HFS 97 so that ch. HFS 97 is, once again, consistent with ch. DOC 310. These revisions to ch. HFS 97 will ensure that the same process will be available to inmates, whether they are at a Department of Corrections institution or at the WRC.

The Department's authority to adopt these rules is found in ss. 46.056 (1) and 227.11 (2), Stats. The rules interpret s. 46.056 (1), Stats.

SECTION 1. Chapter HFS 97 is repealed and recreated to read:

Chapter HFS 97

COMPLAINT PROCEDURES FOR INMATES OF THE WISCONSIN RESOURCE CENTER

HFS 97.01	Authority and purpose.
HFS 97.02	Applicability.
HFS 97.03	Definitions.
HFS 97.04	Exhaustion of administrative remedies.
HFS 97.05	Communication of procedures.
HFS 97.06	Organization of inmate complaint review system.
HFS 97.07	Inmate complaint review system.
HFS 97.08	Scope of complaint review system.
HFS 97.09	Filing of complaints.
HFS 97.10	Group complaints.
HFS 97.11	Processing complaints at the institution level.
HFS 97.12	Appropriate reviewing authority decision.
HFS 97.13	Review by corrections complaint examiner.
HFS 97.14	Secretary's decision.
HFS 97.15	Implementation of affirmed complaint.
HFS 97.16	Confidentiality.
HFS 97.17	Reports.
HFS 97.18	Preservation of records.
HFS 97.19	Suspension of provisions of this chapter.

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

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

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

(b) To encourage communication between inmates and staff.

(c) To provide the department an early opportunity to decide an 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.

(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.

HFS 97.02 Applicability. This chapter applies to the department and to staff and inmates of the Wisconsin Resource Center.

HFS 97.03 Definitions. In this chapter:

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

(2) "Appropriate reviewing authority" means the WRC director or designee.

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

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

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

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

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

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

(9) "ICE" or "institution complaint examiner" means the person or one of the persons at each adult correctional institution designated to investigate complaints filed by inmates.

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

(11) "Persons working in the ICRS" means the secretary, administrator, director or designee, CCE, ICE, 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.

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

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

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

(15) "Wisconsin Resource Center" or "WRC" means the medium security state prison established pursuant to s. 46.056, Stats., and administered by the department.

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

HFS 97.04 Exhaustion of administrative remedies. Before an inmate may commence a civil action 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 file a complaint under s. HFS 97.09 or 97.10, receive a decision on the complaint under s. HFS 97.12, have an adverse decision reviewed under s. HFS 97.13, and be advised of the secretary's decision under s. HFS 97.14. With respect to procedures used by the adjustment committee or hearing officer in a prison disciplinary action under ch. DOC 303, an inmate shall appeal to the director under s. DOC 303.76, receive a decision on the appeal and then file an inmate complaint under s. HFS 97.08 (3) in order to exhaust administrative remedies.

HFS 97.05 Communication of procedures. The department shall do all of the following:

(1) Make the written complaint procedure readily available to all inmates.

(2) Provide each inmate written notification and an oral explanation of the complaint procedures upon the inmate's arrival at an institution, including instructions on how to file a complaint at the institution.

(3) Provide an inmate the opportunity to ask and have questions answered orally.

(4) Make appropriate provisions for non-English speaking, impaired or handicapped inmates.

HFS 97.06 Organization of inmate complaint review system. The following steps outline the procedure for raising and resolving a grievance:

(1) To use the complaint system, an inmate shall file a complaint with the ICE under s. HFS 97.09 or 97.10.

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

(a) Investigate the complaint under s. HFS 97.11.

(b) Reject a complaint in accordance with provisions of this chapter.

(c) Attempt to resolve the complaint under s. HFS 97.11 (7).

(d) Recommend a decision to the appropriate reviewing authority under s. HFS 97.12 (1).

(3) The appropriate reviewing authority, after studying the ICE's report, shall render a decision under s. HFS 97.12 (2).

(4) An inmate may appeal an adverse decision to the CCE under s. HFS 97.13.

(5) The CCE shall then investigate and make a recommendation to the secretary under s. HFS 97.13 (7).

(6) The secretary shall review the CCE's report, make a decision under s. HFS 97.14 and ensure implementation under s. HFS 97.15.

(7) If an adopted recommendation is not implemented, the inmate may inform the secretary who shall investigate and ensure implementation of the adopted recommendation.

HFS 97.07 Inmate complaint review system. (1) To achieve the purpose and objectives of s. HFS 97.01, the division shall maintain an ICRS in the Wisconsin resource center.

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

(3) The department shall provide the ICE with office space and clerical support required to implement the ICRS.

(4) The ICE shall have access to staff, inmates, and any institution or division records pertinent to that investigation when investigating a complaint.

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

HFS 97.08 Scope of complaint review system. (1) An inmate may use the ICRS individually or with a group of inmates collectively.

(2) An inmate may use the ICRS to raise significant issues regarding rules, living conditions, and staff actions affecting institution environment, except any of the following:

(a) The subject matter of a conduct report that has not been resolved through 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 decision on a challenge to an inmate record.

Note: An example of a challenge to an inmate record is the case where an inmate challenges statements made by Department staff in a report subsequently included in the inmate's file or challenges the Department's computation of a release date.

(f) A denial of an open records request.

(3) After exhausting the appeal in s. DOC 302.19, 303.75 or 303.76, an inmate may use the ICRS to challenge the procedure used by the adjustment committee or hearing officer, by a program review committee or by any decisionmaker acting on a request for authorized leave.

(4) The ICE shall process health care and psychiatric complaints in accordance with s. DOC 310.08 (4).

(5) The ICE shall process badger state industries and correctional farm complaints in accordance with s. DOC 310.08 (5).

(6) An inmate may file civil rights complaints in the ICRS in accordance with procedures set forth in this chapter. The ICE at the institution level and CCE at the appeals level may request assistance from the person in the division designated by the secretary to monitor and aid the investigation and resolution of civil rights complaints.

HFS 97.09 Filing of complaints. (1) An inmate or group of inmates who file a complaint shall file the complaint in writing on forms supplied for that purpose and the inmate or all members of the group filing the complaint shall sign the complaint. An inmate shall not file complaints that are unsigned or 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. The ICE shall return complaints that do not meet these standards to the inmate. An inmate shall only include one issue in each complaint.

(2) The institution shall make complaint forms readily available to inmates.

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

(4) 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, an ICRS staff member shall reduce the complaint to writing and shall read it to the inmate. When the inmate is satisfied with the complaint, the inmate shall sign it if able, or mark it with the inmate's mark, if able. An inmate may also provide assistance to another inmate in preparing a complaint.

(5) An inmate may file a signed complaint by depositing it in a locked box designated for complaints in the living unit or by placing it in a sealed envelope marked for delivery to the ICE office via institution mail.

(6) An inmate may file 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 ICE shall exercise discretion in determining 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. HFS 97.11 (3).

HFS 97.10 Group complaints. (1) Except as noted in this section, the department 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 complaint 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 shall be considered as a complaint under s. HFS 97.09 (6).

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

(4) The appropriate reviewing authority shall determine if decisions shall be issued to all parties to a group complaint or posted in a place accessible to the group.

(5) 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.

HFS 97.11 Processing complaints at the institution level. (1) Unless the ICE is absent, the ICE shall collect all complaints deposited in any complaint box in the institution. The director shall proceed under s. HFS 97.07 (5) in the event of an absence of the ICE for longer than 2 working days. Only the ICE may have access to the complaint boxes, which shall be provided with locks.

(2) The ICE shall assign each complaint an identifying file number, classification code categorizing the nature of the complaint and date. The ICE shall review and acknowledge each complaint in writing within 5 working days of the date of receipt.

(3) The ICE shall use discretion in deciding the investigatory method best suited to determine the facts, except that the investigation of complaints under s. HFS 97.08 (3) shall be limited to the record. The record may include personal interviews, telephone calls, and document and correspondence review. The ICE shall give priority to complaints dealing with health or personal safety.

(4) The ICE may reject a complaint that the ICE determines to be frivolous. An inmate may appeal a complaint rejected because the ICE has determined it to be frivolous 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 to harass or cause malicious injury to one or more of the department's 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 does not allege sufficient facts upon which redress may be made.

(5) If an ICE determines that the procedure under these rules 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.

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

(7) The ICE may attempt to informally resolve the complaint at the institution level. The ICE may direct the inmate to discuss the issue with an appropriate institution staff member prior to the complaint investigation. If resolution attempts are successful, the ICE shall record the results in writing and have the complainant sign the report indicating the complainant's acceptance of the resolution. The ICE shall then forward this resolution to the appropriate reviewing authority.

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

(9) If an inmate is transferred from the WRC to another institution after an incident has occurred but prior to filing a complaint, the inmate shall file the complaint at the receiving institution. The ICE at the receiving institution shall forward the complaint to the WRC for investigation.

(10) If an inmate is transferred to the WRC from another institution after an incident but before filing a complaint, the inmate shall file the complaint at the WRC. The ICE at the WRC shall forward the complaint to the ICE at the previous institution for investigation and decision.

(11) The ICE at the WRC shall note the persons interviewed and the documents or records relied on in reaching a recommendation.

(12) Unless extended for cause and upon notice to the complainant, 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. HFS 97.12. The complainant may waive the time limits in writing to allow completion of an investigation or resolution of the complaint.

HFS 97.12 Appropriate reviewing authority decision. (1) The ICE shall deliver the written report and recommendation, and a copy of the institution complaint file, to the appropriate reviewing authority. The appropriate reviewing authority 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 report, recommendation and institution complaint file, 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 parties shall consider the complaint dismissed and the complainant may appeal immediately.

HFS 97.13 Review by corrections complaint examiner. (1) A complainant dissatisfied with a decision may, within 5 calendar days after the date of the decision, appeal that decision by filing a written request for review with the CCE on forms supplied for that purpose. The institution shall provide a supply of appeal forms and make the forms readily available to inmates.

(2) The complainant shall send the appeal to the CCE in a sealed envelope that only the CCE or CCE support staff may open or inspect.

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

(4) The CCE may not review a complaint rejected under s. HFS 97.11 (4).

(5) The CCE shall, within 5 working days after receiving an appeal, issue a written receipt of the appeal to the ICE and the inmate. Within 5 working days of a request by the CCE, the institution complaint examiner shall provide the CCE with copies of the complaint, the ICE's investigation report and associated documentation and the appropriate reviewing authority's decision. The CCE shall give priority to appeals dealing with health or personal safety issues.

(6) The CCE may use any appropriate investigatory method necessary to make a recommendation to the secretary. 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.

(7) Unless extended for cause and upon notice, the CCE shall recommend a decision to the secretary within 35 working days of receipt of the complaint. Should the CCE fail to make a recommendation within the prescribed time, the appropriate reviewing authority's decision shall be affirmed. The department shall notify the inmate of all decisions in writing. If an inmate is unable to read the decision, the inmate may request institution staff or another inmate to read the decision to the inmate. If requested to do so, institution staff shall read the decision to the inmate.

(8) A complainant may waive time limits.

HFS 97.14 Secretary's decision. (1) The CCE shall send the written recommendation, along with a copy of the institution complaint file, to the secretary or his/her designee who shall make a decision based on the record within 10 working days following receipt of the recommendation. The secretary may extend the time for making a decision for cause and upon notice to all interested parties.

(2) The secretary may do any 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 recommendation to the CCE for further investigation.

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

HFS 97.15 Implementation of affirmed complaint. (1) A change in a WRC program or operation affecting the general inmate population and resulting from an affirmed complaint shall be made known through widely distributed written notice to inmates within 14 working days after issuance of the decision.

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

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

HFS 97.16 Confidentiality. Except as otherwise provided in this section, the department shall ensure that complaints filed with the ICRS are kept confidential. Persons working in the ICRS shall respect the confidential nature of the work. The department may reveal the identity of complainants and the nature of the complaint only to the extent reasonable and appropriate for thorough investigation and implementation of a remedy.

(3) The director may waive confidentiality of a complaint if the security, safety or health of the institution, staff or inmates is involved.

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

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

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

(7) 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.

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

HFS 97.17 Reports. (1) The ICE shall submit quarterly reports to the secretary 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 secretary and the administrator. The report shall include all of the following:

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

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

(c) The number of complaints recommended for dismissal.

(d) The number of complaints recommended for acceptance.

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

HFS 97.18 Preservation of records. The department shall keep all records related to an inmate complaint according to its policies and procedures. The department shall keep all records for 11 years following disposition of the complaint.

HFS 97.19 Suspension of provisions of this chapter. The secretary may suspend any provision of this chapter when the secretary determines that a situation affects the security or orderly administration of the institution or the security, safety or health of staff. The secretary may apply the suspension to one or more institutions.

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

Wisconsin Department of Health and
Family Services

By: 

Thomas E. Alt
Deputy Secretary

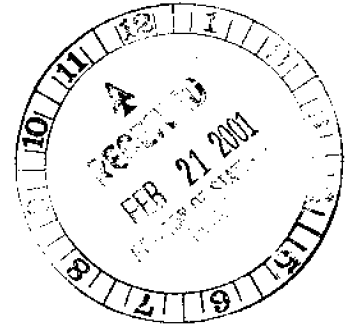
Dated: February 20, 2001

SEAL:



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor



February 20, 2001

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HFS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center.

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

The effect of the rule changes on small businesses as defined in s. 227.114 (1) (a), Stats., is described on an accompanying page of this filing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas E. Alt'.

Thomas E. Alt
Deputy Secretary

Enclosure