

**ORDER OF THE
DEPARTMENT OF CORRECTIONS
TO ADOPT PERMANENT RULES**

CR 16-054

INTRODUCTORY CLAUSE

The Wisconsin Department of Corrections proposes an order to repeal DOC 310 appendix; amend sections DOC 303.82(4), DOC 327.26(2)(a), DOC 327.26(2)(b); and recreate chapter DOC 310, relating to inmate complaint procedures.

RULE SUMMARY

- A. Statutes interpreted: ss. 301.02, 301.03 (2), Stats.
- B. Statutory authority to promulgate the rule: ss. 301.02, 301.03 (2), 302.04, 302.07, and 227.11 (2), Stats.
- C. Explanation of agency authority: The department of corrections is responsible for the supervision of all inmates, including their rights to file complaints..
- D. Related statute or rule: Chapters DOC 302, 304, 306, 308, 309, 310, 311, 313, 314, 316, 324, 325, 326, and 327, relating to the supervision of inmates.

E. Plain language analysis:

The rule:

1. Reorganizes and updates the rule chapter.
2. Repeals the following definitions: Administrator, appropriate reviewing authority, calendar day, civil rights grievance, director, emergency, malicious injury, reprisal, significant issue, and working days.
3. Amend the following definitions: corrections complaint examiner, institution complaint examiner, and moot. (Section DOC 310.03.)
4. Creates the following definitions: calendar year, complaint record, days, division, employee, good cause, institution, PREA, reviewing authority, sexual abuse, and staff member. (Section DOC 310.03.)
5. Repeals the following subchapters: Communication of procedures, Organization of inmate complaint review system, Group complaints, Records, Suspension of provisions of this chapter and Appendix.
6. Creates the following subchapters: PREA, Filing of complaint appeal and Complaint processing following release.
7. Defines all filing deadlines as calendar days for consistency throughout the chapter.
8. Creates language to forbid the department from retaliation of inmates using the ICRS.
9. Updates the chapter to clarify the filing of complaints by limiting the annual number of complaints an inmate can file up to one complaint per week.
10. Creates a subsection to address requirements of the Prison Rape Elimination Act (PREA).
11. Creates language to clarify the appeals process. The appeal process must be written in 500 words on no less than two pages. Amends the appeal filing time frame from 10 calendar days to 14 days, repeals the 5 working days to issue a written receipt, amends the time frame

for the CCE to make a recommendation to the Secretary from 35 working days to 45 days, amends the time frame for an inmate to file an appeal if he doesn't hear back for the ICE from 30 working days to 45 days

12. Creates language in the processing section to require date stamping of complaints, allows the inmate extra time to re-file returned complaints, amends the time frame for the ICE to acknowledge receiving the complaint in writing from 5 working days to 10 calendar days, creates a 10 day time frame for the ICE to return complaints and amends the ICE time frame to make a recommendation to the reviewing authority or reject the complaint from 20 working days to 30 days.

13. Repeals the ability to dismiss or affirm complaint with modifications. Complaint can now be dismissed or affirmed in whole or part, amends the time frame for the reviewing authority to make a decision from 10 working days to 15 days and amends the time frame from 30 working days to 45 days an inmate must wait to appeal if he doesn't get a response.

14. Repeals the ability for the Secretary to adopt the CCE's recommendation with modifications, amends the time frame for the Secretary to make a decision from 10 working days to 45 days and amends the wait time for the inmate to proceed if he doesn't hear back from 45 working days to 90 days.

15. Creates language to allow complaints to be processed under this chapter if the inmate is released.

16. Amends time frame for the inmate to inform decision maker the implementation of an affirmed complaint hasn't been done from 30 working days to 60 days.

17. Creates language to allow the ICE to access protected health information in order to investigate.

18. Corrected references to DOC 310 in other DOC chapters.

F. Summary of and comparison with existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rule:

The Federal Regulations for the Prison Rape Elimination Act (PREA) National Standards require that departments provide inmates with multiple internal ways to privately report sexual abuse and sexual harassment, retaliation for reporting such incidents, and staff neglect or violation of responsibilities that may have contributed to such incident. (28 C.F.R. Part 115.51(a)) The Federal PREA Regulations provide that staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports. (28 C.F.R. Part 115.51(c)) Wisconsin rules permit inmates or third parties to file a complaint using the inmate complaint review system or may use alternative methods of filing, including submission of the complaint directly to the warden.

The PREA regulations require that the department shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse. (28 C.F.R. Part 115.52(b)(1)) The department may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse. (28 C.F.R. Part 115.52(b)(1)) Wisconsin has a similar rule.

The PREA regulations require that the department shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. (28 C.F.R. Part 115.52(b)(1)) An inmate who alleges sexual assault may submit a grievance without submitting it to a staff member who is a subject in the complaint first. (28 C.F.R. Part 115.52(b)(1)) Wisconsin has a similar rule.

The PREA regulations require that third parties, including fellow inmates, staff members, family members, attorneys and outside advocates shall be permitted to assist inmates in filing request for administrative remedies relating to allegations of sexual abuse, and shall be permitted to file such requests on behalf of inmates. (28 C.F.R. Part 115.52(e)(1)) Wisconsin has a similar rule.

The PREA regulations require that the department shall establish procedures for filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse. (28 C.F.R. Part 115.52(f)(1)) Wisconsin has a similar rule. Wisconsin rules permit inmates to contact any staff member who is not the subject of the allegation for immediate corrective action.

The PREA regulations require that the department may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith. (28 C.F.R. Part 115.52(g)) Wisconsin has a similar rule. The warden may discipline an inmate for filing a complaint related to alleged sexual abuse only where the warden demonstrates that the inmate filed the complaint in bad faith.

The Department of Justice provides informative standards that may be adopted or applied by departments to permit inmate grievance procedures within the institution that affect them personally. (28 C.F.R. Part 40.5) The standards provide that a grievance procedure shall afford a successful grievant a meaningful remedy. (28 C.F.R. 40.6)

The regulations provide that an institution may require an inmate to attempt informal resolution before the inmate files a grievance. (28 C.F.R. 40.7(a)). Wisconsin rules have a similar rule.

The federal regulations permit institutions to include inmates with an advisory role for employees and inmates in the operation of the grievance system. (28 C.F.R. 40.7(b)) The Wisconsin rules permit inmates to submit grievances and respond to inquiries, if applicable from institution complaint examiners.

The federal standards provide that no inmate or employee who appears to be involved in the matter shall participate in the resolution of the grievance. (28 C.F.R. 40.7(c)) Wisconsin rules provide that inmates submit complaints to designated complaint examiners.

The federal standards provide that each grievance shall be answered in writing at each level of decision and review along with simple directions how to seek further review, if applicable. (28 C.F.R. 40.7(f)) Each response shall be made within fixed time limits at each level. Wisconsin rules adopt time limits for each level of the review process.

Each grievant shall be entitled to review by a person or other entity, not under the institution's supervisor or control, of the disposition of all grievances, including alleged reprisals by an employee against an inmate. (28 C.F.R. 40.7(f)) Wisconsin rules have similar provisions.

The grievance procedure shall contain special provisions for responding to grievances of an emergency nature. (28 C.F.R. 40.8) Wisconsin rules have emergency procedures for PREA related complaints.

G. Comparison with similar rules in adjacent states:

1. Illinois

Illinois requires inmates to attempt to resolve any issues with his or her counselor before filing a complaint. (20 Ill. Adm. Code 504.810 § (a)) If the complaint cannot be resolved on the lowest level, an inmate may file a complaint within 60 days of the incident that gave rise to the complaint. (20 Ill. Adm. Code § 504.810 (a)) The 60 day requirement can be waived by the department if good cause is shown for an untimely filing. (20 Ill. Adm. Code § 504.810 (a)) Wisconsin also requires that inmates attempt to resolve any issues on the lowest level before filing a formal complaint. (DOC 310.07 (1)-(2)) If the issue cannot be resolved, an inmate has 14 days from the incident that gave rise to the complaint in which he or she may file a formal complaint. (DOC 310.07 (1)-(2)) An inmate may receive an extended time limit for submitting the complaint beyond 14 days if the inmate can show good cause. (DOC 310.09(5) (d))

In Illinois, if there is an emergency situation in which there is a substantial risk of harm to the offender, complaint proceedings will be expedited. (20 Ill. Adm. Code § 504.840(a)-(b)) Wisconsin has a similar provision. (DOC 310.11(8))

Illinois requires only that details of the incident be included in a complaint. (20 Ill. Adm. Code § 504.810 (b)) Wisconsin has more requirements for how a complaint should be filled out. Wisconsin requires that the complaint be neatly handwritten or typed on the correct form, that the complaint include an original inmate signature, that the complaint include only 500 words or two pages of description, and that the complaint not contain any obscene or threatening language or a foreign substance. (DOC 310.07 (2) (a)-(g))

Illinois rules require a grievance officer to review complaints weekly. (20 Ill. Adm. Code § 504.830 (a)) Although Wisconsin rules do not require officers to review complaints weekly, the rules do require an Institution Complaint Examiner (ICE) to acknowledge receipt of a complaint in writing within 10 days of receipt. (DOC 310.09 (3))

Illinois allows the grievance officer to reject a complaint if (1) the issue had previously been addressed and no new information is presented or (2) the issue does not affect the inmate in question. (20 Ill. Adm. Code § 504.830 (a) (1)-(2)) Like in Illinois, the ICE in Wisconsin may reject a complaint if 1) the issue had previously been addressed and no new information is presented or (2) the issue does not affect the inmate in question. (DOC 310.09 (5) (b),(f)) Furthermore, the ICE may also reject a complaint if (1) the complaint is made solely to harass a person, (2) if the complaint does not raise a significant issue regarding policies, rules, living conditions, or employee actions that affect the inmate, (3) if there is insufficient information in the complaint to properly resolve the issue, (4) if complaint content and timeline requirements are not met, (5) if the issue is moot, (6) if the complaint contains obscene or threatening language, or (7) if the complaint contains a foreign substance. (DOC 310.09 (a)-(h))

In order to complete an investigation, Illinois allows the inmate to appear before the grievance officer, and the grievance officer may also call witnesses. (20 Ill. Adm. Code § 504.830 (c)) In order to complete an investigation, Wisconsin gives the ICE complete access to facilities, inmates, employees and department records to make a determination about the complaint (DOC 310.09 (6))

Illinois rules requires the grievance officer to report his or her findings to the chief administrative officer, who in turn provides the inmate with a written decision within 2 months of receipt of the written grievance when reasonably feasible. (20 Ill. Adm. Code § 504.830 (d)) Wisconsin rules allows the ICE to make a recommendation to the reviewing authority, which must occur within 30 days from the date of receiving the complaint. (DOC 310.09 (8)) The reviewing authority has 15 days of receiving the recommendation to a make a decision. (DOC 310.10 (1))

When inmates feel their issue has not been resolved adequately, Illinois allows inmates to appeal to the director within 30 days after the initial decision. (20 Ill. Adm. Code § 504.850 (a)) On the other hand, Wisconsin requires that inmates appeal a complaint decision to the Corrections Complaint Examiner(CCE) within 14 days of the decision (DOC 310.11 (1)) or within 14 days if the inmate has not received a response after 45 days of receipt of acknowledgment. (DOC 310.08(1))

When a complaint is on appeal in Illinois, the director has discretion in determining whether the complaint requires a hearing before the administrative board. (20 Ill. Adm. Code § 504.850 (b)) After an administrative board hearing, the director must review the findings of the board and make a final decision concerning the complaint within 6 months of receiving the appealed complaint. (20 Ill. Adm. Code § 504.850 (f)) In Wisconsin, after the CCE makes a determination about the appeal, the CCE must send a recommendation to dismiss or affirm the appeal to the secretary of the department of corrections within 45 days. (DOC 310.11 (9)) The secretary then has 20 days to make a decision about the appeal after receiving the CCE's recommendation. (DOC 310.12 (1))

Illinois's inmate complaint rules states that inmates that are unable to speak or read English may request the procedure to be conducted in the inmate's own language. (20 Ill. Adm. Code § 504.810 (d) (2)) Wisconsin's DOC 310 does not contain any similar rules.

Illinois does not address the issue of confidentiality specifically. Wisconsin requires that all filed complaints must be kept confidential, though confidentiality may be waived by the inmate. (DOC 310.14 (1),(3))

Illinois allows records of the complaint process to be maintained in offender's master file without restriction (20 Ill. Adm. Code § 504.860) whereas Wisconsin mandates that a record of the complaint process cannot be maintained in the inmate's file unless a reviewing authority gives permission, or maintaining a record in the inmate's file is reasonably necessary to investigate the complaint, administer a remedy, or for litigation purposes. (DOC 310.14 (2)-(4))

Illinois refers to people within state custody for correctional purposes as offenders. Wisconsin refers to people within state custody for correctional purposes as inmates. The Illinois system used to resolve inmate issues upon request is referred to as a grievance system. The Wisconsin system used to resolve inmate issues upon request is referred to as a complaint system.

2. Iowa

Iowa administrative code has only one provision that addresses an inmate complaint system. 201 IAC 50.21(3)(c) requires that an inmate complaint system be available to all prisoners and that prisoners unable to read English receive an explanation of the complaint process. (201 IAC 50.21 (3)) The complaint system must include at least one level of appeal, and a jail is allowed to limit the use of the system to ensure it does not become abused.

Iowa does not have any further administrative rules which govern the complaint process for inmates in prison. The Iowa department of corrections has issued a policy and procedure which addresses complaint procedures in institutions. (Policy Number IN-V-46 (eff. 1/2005))

3. Michigan

There are no Michigan statutes or administrative code rules that set out procedures to address complaint processes. However, MCL § 791.203 gives the director of corrections the power "to

supervise and control the affairs of the department, and the several bureaus thereof.” Under this authority, Michigan’s department of corrections implemented Policy Directive 03.02.130 (eff. 7/2007) to address inmate complaints.

4. Minnesota

There is only one Minnesota administrative code rule that governs inmate complaint procedures. Minn. R. 2911.900 requires that inmates have access to a written complaint procedure that includes at least one level of appeal. Additionally, Minn. Stat. § 243.56 gives inmates the ability to communicate in writing with the facility’s chief executive officer and with the commissioner of corrections. Under this authority, Minnesota’s department of corrections implemented Policy 303.100 (eff. 9/2012) to address inmate complaints.

H. Summary of the factual data and analytical methodologies that DOC used in support of its determination of the rule’s fiscal effect on small businesses under s. 227.114, Stats.

The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.114, Stats. See attached.

I. Any analysis and supporting documents that DOC used in support of the department’s determination of the proposed rule’s effect on small businesses or that was used when the DOC prepared an economic impact report.

Not applicable.

J. Effect on small businesses.

Not applicable.

K. Agency contact person.

Katharine Ariss, Assistant Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI, 53707-7925; by phone: (608)240-5039; or by email: DOCAAdministrativeRulesCommittee@wisconsin.gov.

L. Place where comments were to be submitted and deadline for submission.

Written comments on the proposed rule were accepted and received consideration if received by December 23, 2016. Written comments were to be addressed to: Jeffrey Pugh, c/o Glen Mercier II DOC, P.O. Box 7925, Madison, WI 53707-7925, or by email: DOCAAdministrativeRulesCommittee@wisconsin.gov.

FISCAL ESTIMATE. See Attached.

ANY STATEMENT, SUGGESTED CHANGES, OR OTHER MATERIAL SUBMITTED TO THE AGENCY BY THE SBRRB. N/A.

A COPY OF ANY ECONOMIC IMPACT ANALYSIS PREPARED BY THE AGENCY.
See Attached.

A COPY OF ANY REVISED ECONOMIC IMPACT ANALYSIS PREPARED BY THE AGENCY. N/A

LEGISLATIVE COUNCIL STAFF CLEARINGHOUSE REPORT. See Attached.

STATEMENT OF THE BASIS AND PURPOSE OF THE RULE INCLUDING HOW THE RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

1. The department is seeking revision of ch. DOC 310 to reflect changes in law and correctional practice and to clarify provisions relating to the complaint process for inmates. The last full review of the chapter occurred November 30, 2002. Since then there have been many changes in procedures and practices due to developing law.
2. More details and a listing of significant changes can be found in the Plain Language Analysis Section of this document.

A SUMMARY OF PUBLIC COMMENTS TO THE PROPOSED RULE AND THE AGENCY'S RESPONSE TO THOSE COMMENTS, AND AN EXPLANATION OF ANY MODIFICATION MADE IN THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENTS OR TESTIMONY RECEIVED AT A PUBLIC HEARING:

Summary of comments and the department's response to those comments:

1. Concerns expressed about limiting complaints to 25 per year.
Response: Accepted. The department decided to expand this limit to be one complaint per week.
2. Concerns expressed about 500-word limit.
Response: Rejected. The department decided the limit was reasonable and provided sufficient room for alleging a complaint.
3. Concern expressed about complaint process timelines.
Response: Rejected. The comment did not address specific timeline concerns, and the Department decided timelines addressed in rule were sufficient.
4. Concern expressed about lacking data to support changes.
Response: Accepted. The department reviewed data to support its decision to expand the previously drafted limit of 25 complaints per year, and modified that limit to be rather one per week.
5. Concern expressed about lack of an impartial third party involved in complaint process.
Response: Rejected. The Department determined that inmate complaints would best be addressed as established in this rule.
6. Concern expressed about the postage cost for sending in complaints.

Response: Rejected. The Department determined that legal costs would not be properly addressed in this particular rule.

7. Concern expressed that portions of the rule were vague concerning s. DOC 310.07(1).

Response: Rejected. The department determined that the rule was not vague rather the process will vary per institution handbooks.

8. Concern expressed that the rule lacked flexibility for late complaints.

Response: Rejected. Timeframes and proper procedures were carefully considered by the Department in developing the procedures. Moreover, the rule permits inmates to substantiate a late complaint by substantiating the untimely complaint with good cause.

Explanation of modifications made to the proposed rule in response to public comments received:

DOC 310.07 (7) - The Department changed the complaint per year limit from 25 complaints per year, to be one per week. The department reviewed data to support this decision.

LIST OF PERSONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE PROPOSED RULE AT A PUBLIC HEARING.

A. Two public hearings were held on the rule:

Public Hearing Location 1

December 5, 2016

8:00 a.m. – 10:00 a.m.

1001 Maple Bluff Road, Conf Room 1
Stevens Point, WI 54482

Public Hearing Location 2

December 12, 2016

8:00 a.m. – 10:00 a.m.

819 North 6th Street, Room 40
Milwaukee, Wisconsin 53203

B. List of persons who appeared or registered for or against the proposed rule at the public hearings:

In person:

Judy Erthum, Public Hearing on December 5, 2016 in Stevens Point

Rickie Fields, Public hearing held December 12, 2016, in Madison

Persons who submitted written comments:

Ardell, Korry L.
Berg, Jordan
Brossard, Ben
Carpenter, David
Culen, Donna
Davis, Jeffrey
Downing, Charles
Elliot, Matthew
Errthum, Judy
Faber, Jason

Fields, Rickie
Gates, Jonathan
Gehrke, James
Geraghty, Maureen
Haldemann, Herbert
Hamilton, Robert
Henrichs, Scott
Jackson, Jevon
Leiser, Jeff
Lelinski, Steven

Mueller, Terry
Overturf, Jared
Parmer, Larry
Rogers, Roy
Ruegg, Paul
Shaw, Terrance
Wield, Donald
Wollschlager, Scott

EXPLANATION OF ANY CHANGES THAT HAVE BEEN MADE TO THE RULE SUMMARY OR THE FISCAL ESTIMATE:

There are no changes that have been made to the rule summary or fiscal estimate.

RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS IN THE CLEARINGHOUSE REPORT:

Form, Style and Placement in Administrative Code

1. Recommendation: The introductory clause for the proposed rule should be revised to list the types of treatment in the following order: to repeal; to amend; and to repeal and recreate. [s. 1.02 (1) (b), Manual.]

Response: Accepted. Treatment changed to the following order: to repeal; to amend; and to repeal and recreate.

2. Recommendation: In the rule summary, the explanation of agency authority should be completed.

3. Recommendation: A specific date should be given for the deadline to submit comments on the proposed rule.

Response: DOC will consider applying a deadline for public comments on future public hearing notices.

4. Recommendation: The treatment of ss. DOC 303.82 (4) and 327.26 (2) (a) and (b) should be reviewed and corrected to ensure that when amending the current rule provision the language to be removed is stricken-through and new material to be inserted is underscored. [s. 1.06, Manual.]

Response: Accepted in part. Amendment made to accurately reflect changes to DOC 303.82(4) and DOC 327.26 per recommendation.

5. Recommendation: Consider whether it is necessary to repeal and recreate ch. DOC 310. Repealing a provision and reusing the existing section numbers can cause confusion and may lead to erroneous cross-references. It also does not signal to readers which provisions of the rule have been rewritten. [ss. 1.03 (5) (a) and 1.065, Manual.]

Response: Rejected. The Department reviewed its scope statement and determined that repealing and recreating the chapter is appropriate.

6. Recommendation: Review the proposed rule to place the beginning of each subsection or paragraph on a new line. For example, the placement of ss. DOC 310.07 (7) and 310.10 (5) should be corrected.

Response: Accepted. The beginning of each subsection and paragraph starts on a new line.

7. Recommendation: In s. DOC 310.12 (5), insert “s.” prior to “DOC 310.09”. [s. 1.07 (2) (Table), Manual.]

Response: Accepted. Revision includes “s.” prior to prior to “DOC 310.09”.

8. Recommendation: SECTIONS 4 and 5 of the proposed rule could be combined. When two or more subunits of the same rule section are affected by the same treatment, they may be included in the same SECTION of the proposed rule. [s. 1.04 (2) (a) 4., Manual.]

Response: Accepted. Department combined the two sections into simply being Section 4.

9. Recommendation: SECTION 6 of the proposed rule should be removed. Only one effective date is required and SECTION 8 provides this provision in the appropriate form and placement. [s. 1.02 (4), Manual.]

Response: Accepted. Section 6 contents are removed. Sections are renumbered accordingly.

10. Recommendation: SECTION 7 of the proposed rule, the initial applicability provision should be revised to specify that the rule “first applies” to complaints received on the effective date of the rule. [s. 1.02 (3m) (Example), Manual.]

Response: Accepted. Section is revised to read, “The rule first applies to Complaints received on the effective date of the rule.”

11. Recommendation: SECTION 9 of the proposed rule should be removed. A Regulatory Flexibility Analysis is not an appropriate provision for the rule text. [s. 1.02 (6), Manual.]

Response: Section 9 is removed.

12. Recommendation: The final line of the text of the proposed rule should be removed as it is not part of the text of the rule (“Fiscal Estimate. See Attached.”).

Response: Final line of text is removed.

Adequacy of References to Related Statutes, Rules and Forms

Recommendation: In s. DOC 310.10 (5), insert “DOC” between “s.” and “310.07”.

Response: Accepted. Revision includes “DOC” between “s.” and “310.07”.

Clarity, Grammar, Punctuation and Use of Plain Language

1. Recommendation: Section DOC 310.07 of the rule specifies that “an inmate shall attempt to resolve the issue by following the designated process specific to the subject of the complaint.” It would be helpful to specify these designated processes.

Response: Rejected. The department determined that the process will vary per institution handbooks.

2. Recommendation: It is unclear what s. DOC 310.07 (10) is trying to accomplish. Is this attempting to state that the inmate must file a complaint at the institution where the related incident occurred?

Response: Accepted. DOC 310.07 (10) is revised to read, “Inmates shall file complaints with the institution where the incident occurred.”

3. Recommendation: In s. DOC 310.08 (1), it is unclear whether the time limits under s. DOC 310.07 apply to complaints of sexual abuse if the same complaint also alleges an issue that does not relate to sexual abuse. Is it the department’s intent to apply the time limits under s. DOC 310.07 only to the portion of the complaint that alleges an issue that does not relate to sexual abuse?

Response: Rejected. The Department determines that it is clear that the time limits under s. DOC 310.07 only apply to the portion of the complaint that alleges an issue that does not relate to sexual abuse.

FINAL REGULATORY FLEXIBILITY ANALYSIS: The department of corrections has determined that the rule will not have a significant economic impact on a substantial number of small businesses since the rule does not regulate small businesses as that term is defined in s. 227.1145, Stats.

TEXT OF RULE

SECTION 1. Chapter DOC 310 is repealed and recreated to read:

Chapter DOC 310

COMPLAINT PROCEDURES

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.

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.

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 their designee.

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 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.

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.

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)-(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.

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.

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 regarding 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.

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.

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.

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.

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.

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

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.

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.

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.

SECTION 2. Chapter DOC 310 appendix is repealed.

SECTION 3. Sections DOC 303.82(4), DOC 327.26 (2) (a), Section DOC 327.26 (2) (b) are amended to read:

DOC 303.82(4) The warden's decision is final regarding the sufficiency of the evidence. An inmate may appeal claims of procedural errors as provided under s. ~~DOC 310.08(3)~~ DOC 310.06(2).

DOC 327.26 (2) (a) Under s. ~~DOC 310.08(2)~~ DOC 310.06 (3), the complaint shall be considered denied and may be appealed if the superintendent does not send his or her decision to the complainant within 23 calendar days after the ICI's receipt of the complaint; and

DOC 327.26 (2) (b) Under s. ~~DOC 310.03(2)~~ DOC 310.03 (15), the superintendent may designate a CRC staff member to function as ICI in addition to other duties. Complaint investigation does not have to be the primary responsibility of this person;

SECTION 4. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats., or April 1, 2018, whichever is later.

Section Initial Applicability. The rule first applies to Complaints received on the effective date of the rule.