## APPENDIX

**Note: HSS 310.01.** HSS 310.01 states the purpose of the inmate complaint review system and the commitment of the division to the system.

Subsection (2) lists the objectives of the inmate complaint review system. This structured avenue of communication and involvement will benefit inmates, staff, and the correctional process. Issues and policies that need to be reexamined periodically will be brought to the attention of the administration, and a forum is provided for resolution of questions without prolonged debate.

Correctional authorities and many commentators have recognized the desirability of providing a means of airing legitimate grievances arising in prisons.

Everyone benefits from a fair system. For inmates, the benefits include the opportunity to air complaints in an orderly way and to have them resolved quickly after a careful investigation. Sometimes the result will simply be an explanation or clarification of policy. This itself is of great importance, even if the decision is contrary to the complainant's wishes. At other times, the complaint may reveal deficiency in practice or policy, which can be corrected.

The right to a lawsuit to resolve legitimate grievances is not as meaningful if they could be resolved administratively. A fair system encourages one to respect and willingly live within norms, even if one would prefer that rules be different. Furthermore, a system encouraging involvement is likely to eliminate the use of unacceptable and destructive methods for raising grievances.

Staff and the public benefit as well. No one has an interest in maintaining a system that is rigid and unresponsive to new ideas; that is not understood and respected; or that encourages unacceptable behavior. Everyone does have an interest in affording both staff and inmates the opportunity to reflect on correctional policy, gain insight into it, and suggest improvement.

Finally, no proper interest is served by flooding the courts with grievances that could be resolved administratively. Although the courts have not given the division power to decide what must be done before a lawsuit can be commenced, the federal district court for the eastern district of Wisconsin held that an inmate must exhaust all state administrative procedures before seeking relief under 42 U.S.C. section 1983, thus approving the complaint review system. *McKeever v. Israel,* 476 F. Supp. 1370 (ED. Wis. 1979).

Experience with the Wisconsin complaint system has shown that most complaints relate to personal property, the application of rules, and disagreements with staff. Other complaints include issues such as religion, visiting, correspondence, and publications. These substantive issues are, of course, of great concern to inmates, staff, and the public. Although most of these grievances relate to matters which appear minor to people unfamiliar with the correctional system, many are critical to inmates because of the profound personal effect. For example, lost personal property is of great importance to inmates. While not of constitutional dimension, it frequently affects inmates more than issues to which great importance is attached by the Constitution or courts. For a more detailed description of the types of grievances, see "Resident Complaint Review System Annual Report," report of the Correctional Complaint Examiner for 1978.

See also: American Bar Association's *Tentative Draft of Standards Relating to the Legal Status of Prisoners* (1977) (hereinafter *"ABA"*), Commentary, pp. 569-571, standard 8.6 and commentary, pp. 578-582; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973) (hereinafter *"National Advisory Commission"*), standard 2.14 and commentary, pp. 56-57; and American Correctional Association's *Manual of Standards for Adult Correctional Institutions* (1977) (hereinafter "ACA"), standard 4301.

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

**Note: HSS 310.03.** HSS 303.03 (2) establishes the position of inmate complaint investigator. Although this position title is not listed in the state classified (civil) service, at the major institutions the position is filled from a list of eligible candidates following a competitive qualifying process. The selected person is expected to devote primary attention to the functions of investigating complaints and recommending resolutions.

In some institutions, the superintendent may designate a staff member as the ICI. In any case, the ICI represents the superintendent and reports directly to the superintendent. The inmate complaint investigator does not occupy an easy position. In carrying out the duties,

the ICI must continually serve as liaison between inmates and staff, dealing fairly with both groups if the system is to enjoy any degree of integrity. Mature judgment is required, as is a thorough knowledge of the operation of the institution.

Subsection (3) ensures that the ICI is supplied with resources adequate to carry out the duties. To adequately investigate complaints, the ICI must be able to interview appropriate staff and review pertinent records and documents. This principle is stated in sub. (4). Some records and personnel files, for example, are protected by other rules and would not be included in the ICI's investigation.

Because timeliness is important in handling complaints, the superintendent is authorized to designate an acting ICI in the absence of the appointed investigator.

Note: HSS 310.04. This section establishes the scope and limits of the inmate complaint review system, including both individual and group complaints.

The scope of the grievance system is wide. It can be used to seek change of any institutional policy or practice not listed in sub. (2). Of course, some complaints may lead to a recommendation for change in administrative rules. The problem is whether the issue can be resolved in the ICRS or must result in a recommendation that a rule be changed and in many cases will result in a change in current practice. Of course, the application of a rule may be challenged in the ICRS.

There are 3 principal reasons for the exceptions provided in sub. (2). First, procedures for review of some decisions are provided in other sections of the administrative rules. This is true of disciplinary, program review, and furlough decisions. Second, some matters, such as parole, are not within the authority of corrections. Finally, the nature of the issue may make investigation difficult or may require expertise that is beyond the ICI and the CCE.

The processes by which these decisions are made, except parole, are within the scope of the system. HSS 310.04 is substantially in agreement with *American Bar Association*, standard 8.6 (b), and *American Correctional Association*, standard 4301.

Because health care service is provided by the division of health, appeal of a health-related complaint is referred to that division by the administrator.

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

Since the ICI may require an inmate to attempt to resolve a complaint informally before filing, the aggrieved inmate should talk with staff involved to try to gain a greater understanding of the situation. An informal resolution of the complaint would meet all the objectives of s. HSS 310.01.

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

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

Note: HSS 310.06. Complaints arising from living and working conditions or the application of a rule to a segment of the institution population may be shared by a number of persons in contrast to a complaint that affects only one inmate. Accordingly, this section allows a group of inmates to join in a common complaint.

Occasionally, several similar or closely related complaints will be filed by individuals. Subsection (2) permits the ICI or CCE to consolidate them for investigation or decision, but those complaints will be treated as individual complaints for purposes of notices and acknowledgments.

Sometimes many inmates, almost the entire institution population, join in a complaint. Obviously, making copies and paying postage to send each signer a copy of related document would not be administratively feasible. The ICI must exercise discretion in how sub. (4) is applied.

Since the department is encouraging the use of the complaint system to deal with frustrations and irritations of institution life, prohibiting group complaints would be inappropriate. Subsection (5) makes this clear.

**Note: HSS 310.07.** HSS 310.07 establishes the procedure for processing complaints and authorizes priority handling of complaints dealing with health or personal safety. This reflects the importance attached to these matters.

Subsections (2), (3), and (5) substantially conform with *ABA*, standard 8.6 (a); *National Advisory Commission*, standards 2.14 (2) and (3); and *ACA*, standard 4301.

Informal resolution of a complaint is not only authorized, but also encouraged. The system is well served if a complaint can be resolved at this initial stage. Often a discussion between the complainant and the ICI will open communication channels. This can do much to remove misunderstandings and relieve the tensions from which the complaint developed. Experience with the complaint procedure in Wisconsin has shown that more than one third of the complaints filed are resolved informally. The resolutions are in writing to ensure both that the complainant agrees and that, if a similar complaint arises, the past resolution can be examined as a basis for settlement.

The complainant must have the option to waive time limits for a decision if doing so will result in resolution of the complaint. Because of the time required to investigate some complex complaints, unwaivable time limits would force denial of some complaints. This would not serve the system's purpose.

Because inmates are frequently transferred within the Wisconsin correctional system, subs. (6) and (7) provide a method for dealing with complaints arising just before or at the time of the transfer. A frequent subject of complaint has to do with personal property lost or damaged at transfer, and these complaints must be processed.

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

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

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

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

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

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

**Note: HSS 310.12.** Since the purpose of the complaint system is to air grievances and seek resolutions, decisions resulting in changes in program, policy, or rule interpretation that affect more than a few inmates, must be promptly implemented.

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

Formerly, if an affirmed complaint was not implemented, the complainant notified the CCE who undertook to secure compliance. Subsection (3) modifies this to state that the complainant may notify the administrator of failure to implement a decision. This is proper because the administrator, rather than the CCE, is in a position to ensure that a decision is implemented promptly. This is even more appropriate if the change results from the administrator's decision.

**Note: HSS 310.13.** If the ICRS is to have integrity and the confidence of the inmates, complaints entered must be treated confidentially and, with certain limited exceptions, no sanctions can result from use of the system. Because of the unique and complex relations existing between prison inmates and staff, friction and irritation almost inevitably will arise from time to time. The source of some of these feelings will be the application or misapplication of rules and discretion. The complaint system is an appropriate forum for resolving these issues, but because complaints often identify a staff member as the perceived perpetrator of some injustice, the complainant must be protected from retribution or penalty for legitimate use of the system. If use of the system routinely resulted in penalties or sanctions, the system would quickly be abandoned. The desirability of ensuring that no adverse action results from the filing of a grievance is recognized by National Advisory Commission, standard 2.14 (2) (b), and ACA, standard 4301.

The nature of some complaints is such that a meaningful investigation cannot be made without revealing the identity of the complainant, but this should be done only when necessary. Confidentiality can be waived if it can be shown that the security of the institution, staff, or inmates is involved.

This is not to say that inmates are free to make false statements about staff, knowing they are false and with the intent to harm the staff, especially if those false statements are made public. There have been malicious lies about staff corruption and sexual behavior made in the complaint system. This rule does not insulate inmates from disciplinary action for the illegitimate use, or rather abuse, of the complaint system.

Those inmates joining a group complaint should realize that, if a decision is posted as provided in HSS 310.06 (5), confidentiality cannot be maintained.

The ICI must use discretion in revealing only enough information about the nature of the complaint to allow for a thorough investigation.

The complainant is free to reveal any information about a complaint that he or she has filed. However, if an inmate makes a false accusation pursuant to s. HSS 303.271, revealing that false accusation to persons outside the complaint system may subject the inmate to disciplinary action.

**Note: HSS 310.14.** This section requires accurate uniform reports of complaints filed under the ICRS. The staff responsible for the ICRS and correctional programs can use the report's information to judge the impact of the complaint system and to secure some indication of problems creating frustrations that may inhibit effective programming. Quarterly reports are compiled by each ICI. Concerned persons may obtain copies from the CCE administrator.